PRISONER DISCIPLINE PROCEDURES (only applicable to adjudications which commenced before 1 Feb 2019)

This instruction applies to:		Reference :
Prisons and Young Offender Institutions		**PSI 47/2011**
Issue date	**Effective Date**	**Expiry Date**
1 Feb 2019 (Re-issue)	1 October 2011	
Issued on the authority of	HMPPS Agency Board	
For action by	Governors/Directors of Contracted Prisons and YOIs. In this document, the term Governor also applies to Directors of Contracted Prisons	
For information	All staff who have contact with prisoners	
Contact	Operational_policy1@Justice.gsi.gov.uk	
Associated documents	Service Specification for Prisoner Discipline Procedures	

Replaces the following documents which are hereby cancelled :-
PSO 2000 Prison Discipline Manual Adjudications (except in respect of adjudications begun prior to the effective date of this PSI), PSI 11/2008, PSI 13/2010, PSI 32/2010, Standard 2 Adjudications
Letter from Michelle Jarman-Howe to Regional Managers 11th October 2007 :- instruction to contracted prisons

Audit/monitoring: - The Director of National Operational Services and Governors/Directors will monitor compliance with the mandatory actions set out in the associated Specification

Introduces amendments to the following documents: - None

NOTES:
Re-issued 1 Feb 2019: This PSI has now been replaced by PSI 05/2018. But PSI 47/2011 must be used for adjudications which commenced before 1/2/2019.

Re-issued 25 July 2018: Contact details for Prisoner Casework Unit (formerly in Briefing and Casework Unit) and the Chief Magistrate's Office have been updated to ensure that the paperwork is sent to the correct address - see paragraphs 3.4 – 3.6, 2.26 and 3.10. The PSI and forms have not changed from those previously issued.

Re-issued 19 September 2017: Following the HMPPS and MoJ organisational restructure, a new Operational Policy Enquires functional mailbox has been set up. All operational policy enquiries, including for adjudications which would usually have been sent to the adjudication enquiries mailbox should now be sent to the operational policy enquiries functional mailbox at Operational_policy1@Justice.gsi.gov.uk.

Re-issued 10 August 2016 – Adjudication forms DIS 1 – 9, AI 1 – 4, & MR 1 inserted at Annex B for ease of access due to old intranet hyperlinks which are now obsolete. The forms and this Instruction have not changed to those previously issued.

Updated 1 November 2013 - Paragraphs 2.84 and 2.129 in Annex A have been removed having been superseded by PSI 31/2013 – Recovery of Monies for Damage to Prisons and Prison Property. DIS 2, DIS 3, DIS 7, DIS 8, IA 3 and IA 4 forms have also been revised and replaced. Theses changes reflect the new powers in respect of the non-punitive compensation requirements.

F&S Revised 26 June 2013 - This is a revision to PSI 47/2011
Contact: Roy Donno's details have now been removed. Any enquiries should be addressed to the Adjudications functional mailbox detailed above.
Paragraph 2.4 should be amended to: Adjudications, including opening and adjourning hearings, must be conducted by operational Managers (or equivalent in contracted prisons), at a minimum level of Band 7, who have passed the Adjudications training provided by Training Services, or equivalent training provided for staff of contracted prisons. In establishments where a Minor Reports system operates Minor Report hearings may be conducted by competent Supervising Officers who have passed the Minor Reports course.

Annex A, para. 1.3 should be amended to: "In establishments operating a minor reports system these hearings may be delegated to trained and competent Supervising Officers…" and to : Minor reports may be delegated to suitably trained and operationally experienced managers designated by the Governor

References in the PSI to DPSMs have now been deleted.

References within the PSI to Senior Officers should now be read as Supervising officers.

CONTENTS

1. Executive summary

Background

1.1 This instruction provides guidance to prison staff on adjudication procedures, including Minor Reports. It replaces PSO 2000, although most of the procedures are unchanged. The Specification Benchmarking and Costing (SBC) Team will issue further guidance on implementing the accompanying Discipline Specification. *Where a prisoner has been charged and/or an adjudication hearing has begun before the effective date of this PSI it must be completed according to the procedures set out in PSO 2000. Adjudications begun on or after the effective date must be completed in compliance with this PSI.* The adjudication forms have been redesigned and renumbered, and new forms should be used for all cases begun on or after the effective date. But stocks of old forms may be used up during a transitional period of six weeks after the effective date.

1.2 The main body of this instruction implements the service elements and outputs set out in the specification in order to achieve the key outcomes which are mandatory and are indicated by italics. Further non-mandatory guidance on delivering these outcomes is contained in Annex A. Where guidance is specific and detailed we strongly recommend that it is followed, but Governors may adopt alternative methods and procedures if appropriate, to achieve the required outcomes.

1.3 *Safer custody, decency and equality must be regarded as high priority issues at all times, and are particularly relevant to implementation of prison discipline procedures.*

Desired outcomes

1.4 Adjudications are conducted lawfully, fairly and justly, and contribute to the maintenance of order, control, discipline and a safe environment by investigating offences and punishing those responsible.

Application

1.5 *Governors must ensure that all staff employed on adjudication duties are properly trained and competent to carry out these procedures in accordance with the mandatory requirements of the specification, appointing suitable staff and arranging authorised training as necessary. All staff employed on these duties must be familiar with the relevant parts of the specification and this instruction.*

(signed)

Digby Griffith
Director of Operational Services, NOMS

Key Service ElementsOutcomes for Service

2.1 **The use of authority in the establishment is proportionate, lawful and fair. A safe, ordered and decent prison is maintained. Prisoners understand the consequences of their behaviour and consider and address the negative aspects of their behaviour as a result.**

2.2 *Charges alleging a disciplinary offence must be laid as soon as possible and, other than in exceptional circumstances, within 48 hours of the discovery of the alleged offence.* If a prisoner is transferred before a charge can be laid the sending prison should forward the notice of report, or details of the alleged offence, to the receiving prison and ask them to lay the charge within 48 hours of discovery*. This time limit is strict, and may not be extended for reasons such as absence of the reporting officer or the prisoner's attendance at court (which are not unusual occurrences), but only for exceptional reasons. The hearing must then be opened, again other than in exceptional circumstances, on the following day, unless that day is a Sunday or public holiday – in which case it will be opened on the next working day.* The 'following day' does not mean within 24 hours – the opening of the hearing will still be in time as long as it takes place before the end of the day (or next working day) after the charge is laid. At the discretion of the Governor hearings can be opened on Sundays, however, Prison and Young Offender Institution Rules are unclear about this practice and the legal position remains untested. Where racial and non-racial versions of a charge have been laid both should be opened at the same time (or at least both opened on the day after the charges are laid).

2.3 *Every establishment must have an Adjudication Liaison Officer (ALO), who has passed the ALO training provided by Training Services, whose role is to advise staff on whether a disciplinary charge is an appropriate response to an incident involving a prisoner, and if so what charge to lay.*

2.4 *Adjudications, including opening and adjourning hearings, must be conducted by operational Manager grades (or equivalent in contracted prisons), at a minimum level of Band 7, who have passed the Adjudications training provided by Training Services, or equivalent training provided for staff of contracted prisons In establishments where a Minor Reports system operates Minor Report hearings may be conducted by competent Supervising Officers who have passed the Minor Reports course.*

2.5 *Adjudicators must inquire into reports of alleged disciplinary offences by prisoners under the Prison or Young Offender Institution (YOI) Rules, investigating the charge impartially and prepared to inquire in an unbiased manner into the facts of the case by questioning the accused prisoner, the reporting officer, and any witnesses, and acting fairly and justly. The adjudicator must reach a fair decision based on all relevant evidence presented at the hearing and decide whether or not the charge has been proved beyond reasonable doubt. This means that the adjudicator must be 'de novo' – that is not to have had any direct role in the incident that led to the current charge, and must, as far as possible, disregard any prior knowledge of the prisoner or the prisoner's previous disciplinary record . There must be no prior knowledge of the evidence against the prisoner, nor knowledge of any information that might be perceived as leading to bias for or against any of the parties to the hearing.*

2.6 *If the adjudicator is unable to conduct the hearing 'de novo' then it must be adjourned and arrangements made for a different adjudicator to continue it.*

2.7 *Any punishment the adjudicator may impose, if the prisoner is found guilty, must be proportionate and in accordance with the Prison or YOI Rules. Prisoners must be advised of the outcome of the adjudication and any punishments imposed and the means of requesting a review must be explained to them.*

2.8 *If the adjudicator considers that the alleged offence is so serious that a punishment of additional days would be appropriate if the prisoner is found guilty, and the prisoner is eligible for that punishment, the adjudicator must refer the charge to an independent adjudicator (District Judge)(IA) for the IA to inquire into it.*

Service Element: Placing the prisoner on report

2.9 **Output 1: Alleged offences against Prison Rules are reported**

2.10 *The member of staff reporting an alleged disciplinary offence must consult the local Adjudication Liaison Officer, or their line manager, whose role is to advise whether to lay a charge and the correct charge to lay, before making a charge against a prisoner. Any charge must accord with the offences listed in the Prison or YOI Rules.*

2.11 *If a charge is to be laid, the reporting officer must complete a notice of report giving details of the accused prisoner, the charge and relevant Prison or YOI Rule, and the arrangements for the hearing.*

2.12 *Save in exceptional circumstances, the notice of report must be issued to the prisoner within 48 hours of the discovery of the alleged offence, and a copy retained in the prisoner's personal record. The time and date of issue must be recorded. P-NOMIS must be updated as appropriate.*

2.13 See Annex A section 1 for further details on charging.

Service Element: Initial Documentation (Once prisoner is placed on report)

2.14 **Output 2: Prisoners understand the initial charges laid against them. Prisoners have access to further information and receive necessary support to understand the adjudication process**

2.15 The notice of report must describe the incident which lead to the charge in enough detail to enable the accused prisoner to understand what is alleged. The prisoner must be given a written (and, if necessary, oral) explanation of the adjudication procedure. The prisoner must be allowed at least two hours before the hearing to prepare a defence to the charge, and be given access to a copy of this instruction and other documents and reference books available in the prison library.

2.16 *If, during the initial hearing, the accused prisoner requests an opportunity to seek legal advice, the adjudicator must adjourn the hearing for a sufficient time to allow the prisoner to consult a legal adviser* (see annex A paragraph 2.8). Young or vulnerable prisoners, who may lack experience of adjudications, should be encouraged to request help from an advocate. If, when the hearing resumes, the prisoner requests a further adjournment to seek legal advice the adjudicator should consider whether this is justified, and may either grant an adjournment or refuse it. *If a further adjournment is refused the reasons must be recorded on the record of hearing.* If the prisoner requests copies of documentation relevant to the adjudication in order to forward them to a legal adviser, they should be supplied.

2.17 If the accused prisoner requests legal representation or a McKenzie friend at the hearing the adjudicator must consider this request under the 'Tarrant Principles' (see Annex A 2.10-11, and Annex D). If the request is refused the reasons must be recorded on the record of hearing.

Service Element: Prison Manager Adjudication Administration, Schedule and Conduct Hearing

2.18 **Output 3: Hearings are scheduled within correct timescales and staff and prisoners are aware of their requirement to attend scheduled adjudication hearings**

2.19 Save in exceptional circumstances, an adjudication hearing must be opened by an adjudicator no later than the day following the laying of the charge, unless that day is a Sunday or public holiday, when the opening of the hearing may be delayed until the next working day. The accused prisoner, the reporting officer, and any other witnesses must be informed that they are required to attend the hearing and when and where it will take place. (But the hearing may proceed in the prisoner's absence – see Annex A paragraph 2.3).

2.20 **Output 4: Prisoners have access to further information and receive necessary support during the hearing**

2.21 The adjudicator must confirm during the hearing that the accused prisoner understands the adjudication proceedings, and provide any necessary guidance. Arrangements must be made to provide appropriate assistance to any prisoner who may have difficulty understanding the proceedings or presenting their case due to disability or insufficient knowledge of English. A copy of this instruction must be available in the hearing room for consultation by all parties if required.

2.22 Output 5: Adjudication punishments are fair, safe and proportionate to the charge. Prisoners understand the outcome of the adjudication and the review process, if necessary

2.23 If the charge against the prisoner is proved the adjudicator must consider the appropriate punishment(s), taking into account the seriousness of the offence, local punishment guidelines in relation to that type of offence, the prisoner's previous disciplinary record, the likely effect of the punishment on the prisoner, and any mitigation the prisoner may offer. Any punishment must accord with the punishments listed in the Prison or YOI Rules, and be proportionate to the offence. The punishment and reasons for any departure from the local guidelines must be recorded on the record of hearing and explained to the prisoner, along with the means by which a review of the guilty finding or punishment may be requested (Annex A paragraphs 3.2 - 3.17)

2.24 If the charge is dismissed or not proceeded with, this must be recorded and the prisoner informed.

Service Element: Independent Adjudication Administration, Schedule and Conduct Hearing

2.25 Output 6: Hearings are scheduled within correct timescales and staff and prisoners -are aware of their requirement to attend scheduled adjudication hearings

2.26 If the prison manager conducting the hearing decides at any stage that the charge should be referred to an independent adjudicator (IA), the hearing must be adjourned and arrangements made for an IA to attend and re-open the hearing within 28 days of the date of referral. The accused prisoner, reporting officer, and any witnesses must be informed of the time and place of the IA hearing, and the requirement for them to attend. (But the hearing may proceed in the prisoner's absence – see Annex A paragraph 2.3).

2.27 Output 7: Prisoners have access to further information and receive necessary support during the hearing

2.28 *The IA must confirm that the accused prisoner understands the adjudication proceedings, and provide guidance on them as necessary. The prison must make arrangements to provide appropriate assistance to any prisoner who may have difficulty understanding the proceedings and presenting a case due to disability or insufficient knowledge of English. A copy of this instruction must be available for consultation by all parties in the hearing room.*

2.29 *Accused prisoners whose cases are referred to an IA are entitled to be legally represented at the hearing, if they wish. Young prisoners must be encouraged to make use of the advocacy service, if they are not otherwise represented.*

2.30 Output 8: Adjudication punishments are fair, safe and proportionate to the charge. Prisoners understand the outcome of the adjudication and the review process, if necessary

2.31 If the charge against the prisoner is proved the IA should consider the appropriate punishment(s), taking into account the seriousness of the offence, any punishment guidelines issued by the Senior District Judge in relation to that type of offence, the prisoner's previous disciplinary record, the likely effect of the punishment on the prisoner, and any mitigation the prisoner may offer. *Any punishment must be in accord with the punishments listed in the Prison or YOI Rules, and proportionate to the offence. The punishment must be recorded on the record of hearing and explained to the prisoner, along with the means by which the prisoner may request a review of the punishment (Annex A paragraphs 3.2- 3.17).*

Service Element: Post hearing administration

2.32 Output 9: All relevant departments are aware of and, where necessary, act on the outcome of the hearing

2.33 If the prisoner receives a punishment of additional days, staff responsible for sentence calculation must be informed and make any necessary adjustment to the prisoner's release date. Staff responsible for offender management must be informed of this adjustment and take account of it when making arrangements for the prisoner's release.

2.34 Staff responsible for prisoners' monies must be informed of any punishment of stoppage of earnings or forfeiture of the privilege of access to private cash, and act accordingly. Wing staff must be informed of any other forfeiture of privileges.

2.35 If the outcome of the hearing (e.g., a severe punishment) is thought to raise safer custody concerns, the appropriate staff must be informed to aid management of the impact on a prisoner's risk of self-harm. If the offence involved violence, fire setting, or was racially or homophobicly motivated the cell sharing risk assessment may need to be reviewed (see PSI 9/2011).

Service Element: Remission of additional days

2.36 Output 10: Eligible prisoners are able to apply for remission of additional days

2.37 A system must be in place allowing eligible prisoners to apply for remission of additional days (see Annex A paragraphs 3.18- 3.29)

Service Element: Minor reports (young offenders)

2.38 Output 11: A minor report system for young offenders is in place at the discretion of the Governor

2.39 In establishments holding young offenders the Governor may choose to operate a minor reports system (see Annex A paragraphs 2.155-164).

Annex A

Adjudication Procedures

This annex complements and expands on the mandatory requirements of the Prisoner Discipline Specification set out in the main body of this PSI.

Contents

Section 1 Before the Adjudication

The Prison Rules 1999 and the Young Offender Institution Rules 2000

1.1 The Prison Rules (PRs) and the Young Offender Institution Rules (YOI Rs) are statutory instruments (i.e., law) made by the Secretary of State under power given to him by section 47 of the Prison Act 1952, and set out the basics of how establishments are to be run, including disciplinary procedures. Amendments to the Rules may be made from time to time, with the approval of Parliament.

Adjudications

1.2 Adjudications (including a special form of hearing known as Minor Reports) are the procedure whereby offences against the Prison or YOI Rules alleged to have been committed by prisoners or young offenders (YOs) are dealt with. The adjudication system sets out how prisoners or YOs are charged with offences, the procedure for inquiring into the charge to determine the accused prisoner/YO's guilt or innocence, including their right to a defence, the punishments for those found guilty, and their right to apply for a review. Adjudications, along with the separate Incentives and Earned Privileges (IEP) scheme, contribute to maintaining order and control, and a safe environment, within establishments.

Authority to adjudicate

1.3 Under Prison Rule 81 / YOI Rule 85 Governors may delegate the conduct of adjudications and related duties (such as considering requests for restoration of additional days) to any other officer of the prison or YOI. In practice this means delegation to any operational member of staff at managerial level who has passed the relevant authorised training course, have suitable operational experience, and have been certified by the Governor as competent to carry out adjudication duties. In establishments operating a minor reports system these hearings may be delegated to trained and competent Supervising Officers. In contracted prisons Directors may delegate adjudications to suitably trained and operationally experienced members of staff, senior enough to be left in charge of the establishment in the Director's absence. Minor reports may be delegated to suitably trained and operationally experienced managers designated by the Governor.

1.4 Controllers of contracted prisons retain the authority to conduct adjudications, but are not expected to do so routinely.

1.5 Independent adjudicators (IAs) are District Judges or Deputy District Judges approved by the Lord Chancellor for the purpose of enquiring into charges referred to them. Their training is a matter for the Senior District Judge (Chief Magistrate) at the City of Westminster Magistrates' Court.

1.6 Adjudications are inquisitorial rather than adversarial – i.e., the role of the adjudicator is to inquire impartially into the facts of the case, hearing evidence from the reporting officer, the accused prisoner and any witnesses, and taking into account any written or other physical evidence (e.g., witness statements, MDT reports, CCTV recordings, items alleged to have

been found, etc). The adjudicator then weighs up all the evidence and decides whether or not the charge has been proved beyond reasonable doubt, and if proved, the appropriate punishment. The adjudicator will dismiss the charge if not satisfied that it has been proved beyond reasonable doubt.

1.7 Adjudications are not a competition between two opposing sides, so there should not normally be any need for legal representation of the reporting officer (who is a witness, not a prosecutor) at the hearing.

1.8 When considering requests for legal representation for prisoners at governor hearings the 'Tarrant Principles' are applied (see paragraph 2.10). Prisoners are entitled to be legally represented at hearings by independent adjudicators.

Laying charges

1.9 A disciplinary charge will normally be laid by the member of the establishment staff who witnessed or discovered the alleged offence (the 'Reporting Officer'), but if that person is unavailable another member of staff may lay it on their behalf. In these circumstances the report of the alleged incident will be hearsay evidence – see paragraph 2.34. The Adjudication Liaison Officer or line manager should be consulted for guidance on laying charges. See main PSI text paragraph 2.2 for guidance on timing of charging. In this context a 'member of the establishment staff' includes any governor, prison officer or OSG, and any other directly employed officer of the prison, anyone seconded from within NOMS, or anyone on a long term contract to provide services at the prison (e.g., probation staff, teachers, healthcare professionals etc). In contracted out establishments it includes the Director, Controller, and Prisoner Custody Officers. If an alleged offence is discovered by someone on a short term contract or temporarily employed (e.g. an agency nurse), who is unfamiliar with the Prison or YOI Rules and adjudication procedures, good practice would be for that person to inform an officer, who should then issue the Notice of Report. The officer's report will be hearsay evidence (paragraph 2.34), and the temporary employee should be called as a witness at the adjudication hearing, to provide direct evidence in support of the charge.

1.10 Charges must be in accord with those listed in paragraph 51 of the Prison Rules or paragraph 55 of the Young Offender Institution (YOI) Rules. The YOI Rules apply to prisoners who have been convicted and sentenced to custody in a young offender institution, while they are held in a YOI, and to adult (over 21) female prisoners held in a YOI. In all other cases (adult prisoners held in prison and young offenders not yet sentenced) the Prison Rules apply. The table below shows which Rules to apply for charging and punishments, according to prisoners' age and gender, and the type of accommodation they are held in.

Status of accused	Designation of accommodation	Rules applicable to charging	Rules applicable to punishment
Adult, male & female	Prison	PR 51	PR 55
Adult (21 or over) female	YOI	YOI R 55	YOI R 65
YO (under 21) sentenced to YOI	YOI	YOI R 55	YOI R 60
YO (u 21) convicted but unsentenced	Prison	PR 51	PR 57
YO (u 21) on remand (unconvicted)	Prison	PR 51	PR 57

PR = Prison Rules
YOI R = Young Offender Institution Rules
YOI = Young Offender Institution

YO = young offender

1.11 Where an offence is alleged to have taken place in a courtroom (including a room within an establishment operating at the time as a court via a video link), while the court was sitting, no charges are to be laid; it will be for the court to deal with the allegation. If an alleged offence occurs elsewhere within the court building, when the prisoner is in the custody of prison staff or escort contractors, the Rules under which a charge may be laid will be those applicable to the establishment the prisoner has been brought from (before appearing in court), or taken to (after the court appearance).

1.12 An offence is 'discovered' when an incident or action is witnessed by a member of staff, or other evidence indicating that it has occurred comes to light (see further under individual charges). The charge is laid when the completed notice of report is handed to the prisoner. This should normally be done at least two hours before the hearing is scheduled so that the accused has sufficient time to prepare a defence (see guidance in paragraph 2.8).

1.13 It would not normally be appropriate to lay disciplinary charges where the prisoner's actions were related to self-harm or preparations for it (but see below, where the act endangers others' health and safety). Such acts are more suitably dealt with through safer custody procedures than the disciplinary system.

1.14 If a prisoner is charged with more than one offence arising from a single incident each charge should be recorded separately with appropriate Prison or YOI Rule references, although this may be done on a single notice of report form. If a prisoner is charged with a number of offences arising from separate incidents, each charge should be laid on a separate notice of report form. The adjudications on related charges may be combined into a single hearing (with separate findings for each charge). Adjudications on unrelated charges against the same prisoner may be heard in sequence by the same adjudicator (unless the evidence heard in one case makes the adjudicator not de novo for another case).

1.15 If more than one prisoner is charged in connection with a single incident, each prisoner should be issued with an individual notice of report, but the adjudications may be heard together so that all the accused prisoners hear the same evidence, with the findings and any punishments reserved until the hearing has been completed in respect of each prisoner. Alternatively, the adjudicator may decide to part hear each case separately, adjourning and switching from one to another in stages, to build up a complete picture of the incident. Again, the findings and any punishments should be reserved until all the hearings are completed. If the prisoners are found guilty the adjudicator must ensure that the evidence supports that finding for each individual prisoner, and that any punishment is appropriate for that particular prisoner.

Wording of charges

1.16 The wording of charges should reflect the wording of the Rule(s) under which they are laid (amending masculine pronouns to feminine, or plural, as necessary). The following are examples, which should be adapted as appropriate:

1.17 <u>PR 51 (1), YOI 55 (1) commits any assault</u>

'At (time) on (date) in (place) you assaulted (name) by punching him.'

1.18 PR 51 (1A), YOI 55 (2) commits any racially aggravated assault

'At (time) on (date) in (place) you assaulted (name) by punching him, whilst shouting "you black bastard".'

1.19 Assaults may be witnessed by a member of staff, or be discovered when reported to a member of staff by the alleged victim or other witness.

1.20 An assault involves unlawful force applied to another person, and is therefore not a suitable charge when a prisoner is alleged to have harmed a prison dog. In such circumstances a charge of intentionally obstructing an officer in the execution of his duties (e.g., a dog handler using a dog to conduct a search) may be appropriate.

1.21 Where there is doubt about whether an alleged assault was racially motivated the prisoner may be charged with both assault and racially aggravated assault. The adjudicator will then decide whether the racial offence is proved beyond reasonable doubt and, if so, dismiss the non-racial charge, or if not so satisfied will dismiss the racial charge and proceed to inquire into the non-racial charge.

1.22 See paragraph 1.97 on attempted assault.

1.23 PR 51 (2), YOI R 55 (3) detains any person against his will

'At (time) (or 'Between (time) and (time)') on (date) in (place) you detained (name) against his will.'

1.24 PR 51 (3), YOI R 55 (4) denies access to any part of the prison / young offender institution to any officer or any person (other than a prisoner / inmate) who is at the prison / young offender institution for the purpose of working there

'At (time) (or 'Between (time) and (time)') on (date) in (place) you denied access to (part of prison / YOI) to (name), an officer of the prison / YOI (or 'a person who was at the prison / YOI for the purpose of working there') by barricading your door.'

1.25 A 'detains' charge is intended to deal with a hostage taker, but where collusion with the 'victim' is suspected a 'denies access' charge may be appropriate additionally or alternatively, where the incident also involved a refusal to allow staff to enter a cell or other part of the establishment.

1.26 PR 51 (4), YOI R 55 (5) fights with any person

'At (time) on (date) in (place) you were fighting with (name)'

1.27 A fight involves two or more persons assaulting each other by inflicting unlawful force. But the force will not be unlawful if the accused only acted in self-defence in response to an assault.

1.28 If, as a result of evidence given during the hearing, it appears that one prisoner acted in self-defence rather than a fight, the fight charge may be dismissed against both of the accused and an assault charge laid against the prisoner shown to be the aggressor. The 48 hour time limit for laying the assault charge begins when that offence is 'discovered' during the fight charge hearing; a fresh adjudicator who is de novo will hear this charge.

1.29 PR 51 (5), YOI R 55 (6) intentionally endangers the health or personal safety of others or, by his conduct, is reckless whether such health or personal safety is endangered

'At (time) on (date) in (place) you intentionally endangered (or 'by your conduct you recklessly endangered') the health or personal safety of (name(s)) by throwing a can of corrosive fluid to the ground.'

1.30 This offence can encompass a range of actions or omissions by prisoners that are intended to cause harm to others (other than assaults or fights), or where the prisoner is careless as to whether harm may result.

1.31 This charge may be appropriate in the case of a dirty protest, in addition to a charge under PR 51 (17) / YOI 55 (18). A prisoner found in possession of a container of (possibly) adulterated urine, probably with the intention of spoiling a MDT, could be charged under this Rule, but a charge under PR 51 (6) / YOI 55 (7), or PR 51 (25)(a) / YOI R 55 (29)(a) may be more appropriate.

1.32 Although prisoners should not normally be charged with a disciplinary offence for acts of self-harm, or preparation for self-harm, a charge under PR 51 (5) / YOI R 55 (6) may exceptionally be appropriate where the prisoner's actions also intentionally or recklessly endangered others, for example staring a fire (or in that example a charge under PR 51 (16) / YOI R 55 (17).

1.33 PR 51 (6), YOI R 55 (7) intentionally obstructs an officer in the execution of his duty, or any person (other than a prisoner / inmate) who is at the prison / young offender institution for the purpose of working there, in the performance of his work

'At (time) on (date) in (place) you intentionally obstructed (name), an officer of the prison / YOI, in the execution of his or her duty (or 'a person who was at the prison / YOI for the purpose of working there, in the performance of his or her work') by placing your foot in the door.'

1.34 This might be an appropriate charge when a prisoner adulterates an MDT sample (obstructing an officer whose duty is to conduct the MDT), as an alternative to disobeying an order to comply with the MDT process by providing an unadulterated sample.

1.35 PR 51 (7), YOI R 55 (8) escapes or absconds from prison / a young offender institution or from legal custody

'At (time) (or 'between (time) and (time)) on (date) in (place) you escaped / absconded from HMP / HMYOI (name) (or 'from an escort').

1.36 There is no offence in law of 'absconding' from prison, only of 'escaping' either with or without the use of force. But for adjudication purposes an escape may be defined as a prisoner leaving prison custody without lawful authority by overcoming a physical security restraint such as that provided by fences, locks, bolts and bars, a secure vehicle, or handcuffs (see paragraph 1.11 for escapes from courtrooms ('dock jumpers')). An abscond is where a prisoner leaves prison custody without lawful authority but without overcoming a physical security restraint

1.37 An escape is 'discovered' (for the purposes of charging with a disciplinary offence) when the prisoner is returned to prison custody, or when someone taken into custody is identified as an escaper. The 48 hours time limit for laying a charge begins at that point. The charge is to be laid by the establishment from which the escape / abscond occurred, so if a prisoner is returned to custody in a different establishment, that establishment must inform the former location and obtain relevant documentation as soon as possible. If the prisoner is returned to custody by the police, a disciplinary charge may still be laid. However, if the police then confirm that the prisoner is being prosecuted for the escape, the adjudicator will dismiss the charge in order to avoid double jeopardy.

1.38 PR 51 (8), YOI R 55 (9) fails to comply with any condition upon which he is / was temporarily released under rule 9 / rule 5 of these rules

'At (time) (or 'between (time) and (time)') on (date) in (place), having been temporarily released, you failed to comply with the condition that you should (quote condition)'.

1.39 This is the appropriate charge when a prisoner fails to return from ROTL (release on temporary licence) on time, or fails to comply with a restriction or requirement in the licence (e.g., not to contact a named person, or to attend an arranged appointment, etc). The prisoner cannot be charged under this rule for misbehaviour that was not specifically prohibited by a licence condition. But criminal behaviour while on licence could lead to a prosecution.

1.40 See below for prisoners who are intoxicated on return to the establishment, or who have taken controlled drugs while on licence.

1.41 PR 51 (9), YOI R 55 (10) is found with any substance in his urine which demonstrates that a controlled drug has, whether in prison or while on temporary release under rule 9 / 5, been administered to him by himself or by another person (but subject to rule 52 / 56)

'Between (date) and (date) you had a substance in your urine which demonstrated that (name of controlled drug) has, whether in prison or on temporary release under Prison Rule 9 / Young Offender Institution Rule 5, been administered to you by yourself or by another person between the dates of (date) and (time and date).'

1.42 This charge should be laid following a positive result from a Mandatory Drug Test (MDT) (not a compact or voluntary drug test failure – see PSI 31/2009), with separate charges being laid for each controlled drug indicated in the test result. Full details of MDT procedures are set out in PSO 3601. The offence is 'discovered', and the 48 hours time limit for charging normally begins, when the MDT result arrives at the establishment from the laboratory (**not** when the fax or email is first noticed). But if the MDT test result indicates that an opiate or amphetamine has been taken, and the prisoner has been receiving prescribed medication, the Governor/Director may delay charging until the result of a confirmation test is received (see chapter 7 of PSO 3601). If the confirmation test indicates that a different drug to that originally identified was taken, the original charge will be dismissed and a new charge, naming the drug that the test has now identified, laid within 48 hours of the confirmation test being received. If the confirmation test indicates that a non-controlled drug, such as medication (not prescribed to the accused prisoner), rather than a controlled drug was taken, a charge of unauthorised possession may be appropriate (since the prisoner will have previously been in possession of the medication when it was taken – see paragraphs 2.69 - 2.71).

1.43 Regardless of his/her plea, if a MDT test result indicates that a prisoner has taken opiates or amphetamines a confirmation test will be requested. If the MDT test result indicates another drug has been taken **and** the prisoner pleads not guilty or equivocates, a confirmation test will be requested.

1.44 Under PR 50 (3) / YOI R 53 (3) an officer is required to inform the prisoner that a refusal to provide a sample for a MDT may lead to a disciplinary charge. Rules 52 / 56 explain the defences to this charge – see paragraphs 2.62 and 2.63.

1.45 PR 51 (10), YOI R 55 (11) is intoxicated as a consequence of consuming any alcoholic beverage (but subject to rule 52A / 56A)

'At (time observed by reporting officer) you were seen to be intoxicated (briefly describe circumstances)'

1.46 This charge is appropriate when a prisoner's behaviour clearly indicates intoxication, as opposed to having drunk a small amount of alcohol.

1.47 A prisoner who returns from ROTL showing signs of intoxication may be charged under this rule. If the licence included a requirement not to drink alcohol while temporarily released a charge under rule 51 (8) / 55 (9) may also be appropriate.

1.48 Rules 52A / 56A explain the defences to this charge – see paragraphs 2.64 and 2.65.

1.49 PR 51 (11), YOI R 55 (12) consumes any alcoholic beverage whether or not provided to him by another person (but subject to rule 52A / 56A

'At (time observed by reporting officer) you were believed to have consumed an alcoholic beverage'

1.50 This charge is appropriate when a prisoner's behaviour indicates alcohol has been drunk, but not enough to cause intoxication justifying a charge under rule 51 (10) / 55 (11), or when the prisoner is seen to drink something that the reporting officer believes contains alcohol (see below for evidence that a liquid may be alcoholic).

1.51 PR 50B / YOI R 54A describe compulsory testing for alcohol. NOMS Security Group should be consulted for further details of this procedure.

1.52 PR 51 (12) / YOI R (13) has in his possession (a) any unauthorised article; or (b) a greater quantity of any article than he is authorised to have

'At (time) (or 'between (time) and (time)) on (date) in (place) you had in your possession an unauthorised article, namely a mobile phone (or 'a greater quantity of (article) than you were authorised to have, namely (number/quantity of article)'.

1.53 If a prisoner is found in possession of a substance suspected of being a controlled drug, the charge may be worded as "possession of an unauthorised article, namely a white powder" etc, **not** as "possession of an article believed to be a controlled drug", since this belief cannot be proved (unless there is enough of the substance to make a laboratory test practical without destroying the evidence). See under PR 51 (24) / YOI R 55 (27) (paragraphs 1.89 - 90) for an exception to this guidance.

1.54 If a prisoner is found in possession of more than one allegedly unauthorised article, a single charge listing the items may be laid – but if it later turns out that some of the items were authorised there is a risk that the whole charge may be dismissed or quashed on review. It is safer to lay separate charges for each item individually, so that if one charge is dismissed the others may still proceed.

1.55 A prisoner charged with possession of illicit alcohol ('hooch') may dispute the alcoholic nature of the liquid without scientific evidence, comparable to a drug confirmation test. Since no such test is available within prisons it would be preferable to phrase the charge as 'you had in your possession an unauthorised article, namely a fermenting liquid.' The nature of the liquid should be recorded soon after its discovery. A liquid may reasonably be described as fermenting from its frothy appearance or smell. It is not necessary to prove that the liquid is alcoholic, only that the prisoner is not authorised to have it in possession. If there is a large quantity of fermenting liquid that would be difficult (or potentially dangerous) to store, the reporting officer should include information about the quantity and nature of the liquid in the evidence, supported by photographic evidence and a small sample. The rest of the liquid may then be disposed of.

1.56 A mobile phone or SIM card found in a prisoner's possession will be sent either to the police, or to the National Dog and Technical Support Group (NDTSG) for analysis. A photograph of the items should first be taken to be produced as evidence at the adjudication. Further guidance on this procedure is in paragraphs 2.4 and 2.27-30 of PSI 30/2011 Instructions on Handling Mobile Phones and SIM Card Seizures. See also paragraphs 2.24-26 of PSI 51/2010 Dealing with Evidence.

1.57 PR 51 (13) / YOI R 55 (14) sells or delivers to any person any unauthorised article

'At (time) on (date) in (place) you delivered an unauthorised article, namely (e.g., a SIM card) to (name).'

1.58 This charge is appropriate where the article is by its nature unauthorised (e.g. drugs), or not authorised to be in the possession of the giver. It is not necessary to show which of the two methods of passing, selling or delivering, was used.

1.59 PR 51 (14) / YOI R 55 (15) sells or, without permission, delivers to any person any article which he is allowed to have only for his own use

'At (time) on (date) in (place) you sold (or 'delivered without permission') (e.g., a radio) which you were allowed to have only for your own use to (name).'

1.60 This charge is appropriate where the article is permitted to be in the possession of the giver, but not to be passed on without permission.

1.61 PR 51 (15) / YOI R 55 (16) takes improperly any article belonging to another person or to a prison / young offender institution

'At (time) (or 'between (time) and (time)') on (date) in (place) you took improperly (article) belonging to (name of person or establishment).'

1.62 This charge is appropriate whenever a prisoner, without permission, takes anything that does not belong to him or her. If the prisoner attempts to gain control of an article, but is unsuccessful, a charge under PR 51 (25) (a) / YOI R 55 (29) (a) will be more appropriate. If a prisoner improperly obtains something other than a physical article (e.g., abuse of the PIN phone system) a charge under PR 51 (26) / YOI R 55 (23) may be appropriate.

1.63 PR 51 (16) / YOI R 55 (17) intentionally or recklessly sets fire to any part of a prison / young offender institution or any other property, whether or not his own

'At (time) on (date) in (place) you intentionally (or 'recklessly') set fire to (part of the prison / YOI) (or (an item of property)).'

1.64 See paragraph 1.32 for fires started in connection with self-harm.

1.65 PR 51 (17) / YOI R 55 (18) destroys or damages any part of a prison / young offender institution or any other property, other than his own

'At (time) on (date) in (place) you destroyed (or 'damaged') a (part of prison/YOI) (or (an item of property) belonging to HMP / YOI (name of establishment) (or 'belonging to (name of person)')

1.66 This charge may be appropriate in the case of a dirty protest, in addition to a charge under PR 51 (5) / YOI 55 (6).

1.67 PR 51 (17A) / YOI R 55 (19) causes racially aggravated damage to, or destruction of, any part of a prison / young offender institution or any other property, other than his own

'At (time) on (date) in (place) you damaged (or 'destroyed'') a (part of prison/YOI) (or (an item of property) belonging to HMP / YOI (name of establishment) (or 'belonging to (name of person)') while demonstrating (or 'motivated, partly or wholly, by') hostility towards a member or members of a racial group.'

1.68 An example of a racially aggravated charge might be "….you damaged a radio belonging to (name) which was playing Indian music, whilst shouting "bloody Paki music."'

1.69 Where there is doubt about whether an accused prisoner's actions were racially motivated the prisoner may be charged with both the racially aggravated and non-racial versions of the offence. The adjudicator will then decide whether the racial offence is proved beyond reasonable doubt and, if so, dismiss the non-racial charge, or if not so satisfied will dismiss the racial charge and proceed to inquire into the non-racial charge.

1.70 PR 51 (18) /YOI R 55 (20) absents himself from any place (where) he is required to be or is present at any place where he is not authorised to be

'At (time) on (date) you were absent from (place) where you were required to be (or 'you were in (place) where you were not authorised to be')'.

1.71 This charge can apply to incidents within the establishment, or outside where the prisoner is escorted, or briefly goes outside an open prison, with the intention of returning shortly (e.g., visiting a nearby shop). But if the prisoner has no intention of returning, PR 51 (7) / YOI 55 (8) will apply.

1.72 PR 51 (19) / YOI R 55 (21) is disrespectful to any officer, or any person (other than a prisoner / an inmate) who is at the prison / young offender institution for the purpose of working there, or any person visiting a prison / young offender institution

'At (time) on (date) in (place) you were disrespectful to Officer (name) (or 'to (name), who was (reason for being at the prison, e.g., a teacher, probation officer, IMB member, visitor, etc), by (briefly describe how disrespect was demonstrated).'

1.73 The disrespect may be spoken or written, or involve physical acts or gestures.

1.74 PR 51 (20) / YOI R 55 (22) uses threatening, abusive or insulting words or behaviour

'At (time) on (date) in (place) you used threatening (or 'abusive' or 'insulting') words or behaviour towards (name), by saying (quote words used) (or briefly describe behaviour)'

1.75 It is not always necessary to name an individual at whom the words or behaviour were directed.

1.76 There is no Rule specifically prohibiting sexual acts between prisoners, but if they are observed by someone who finds (or could potentially find) their behaviour offensive, a charge under PR 51 (20) / YOI R 55 (22) may be appropriate, particularly if the act occurred in a public or semi-public place within the establishment, or if the prisoners were 'caught in the act' during a cell search. But if two prisoners sharing a cell are in a relationship and engage in sexual activity during the night when they have a reasonable expectation of privacy, a disciplinary charge may not be appropriate.

1.77 PR 51 (20A) / YOI R 55 (23) uses threatening, abusive or insulting racist words or behaviour

'At (time) on (date) in (place) you used threatening (or 'abusive' or 'insulting') racist words or behaviour towards (name), by saying (quote words used) (or briefly describe behaviour)'

1.78 The difference between this and the previous charge is that the words or behaviour were motivated (partly or wholly) by hostility to a member or members of a racial group.

1.79 Note paragraph 6.24 of PSO 2800: "The use of the term 'racist' is not in itself racist language. A verbal accusation of racism by a prisoner against a member of staff is therefore unlikely in itself to constitute a racist incident."

1.80 Where there is doubt about whether an accused prisoner's actions were racially motivated the prisoner may be charged with both the racially aggravated and non-racial versions of the offence. The adjudicator will then decide whether the racial offence is proved beyond reasonable doubt and, if so, dismiss the non-racial charge, or if not so satisfied will dismiss the racial charge and proceed to inquire into the non-racial charge.

1.81 PR 51 (21) / YOI 55 (24) intentionally fails to work properly or, being required to work, refuses to do so

'At (time) on (date) in (place) you intentionally failed to work properly, by (briefly describe what the prisoner did or didn't do) (or, 'At (time) on (date) in (place), being required to work in (place) (or 'as a cleaner' etc) you refused to do so.'

1.82 The charge must make clear whether the prisoner did some work, but intentionally failed to do it properly, or refused to work at all.

1.83 This charge is appropriate when the prisoner refuses to work after arriving at the workplace. A refusal to go to the workplace may be charged under PR 51 (18) or (22) / YOI R 55 (20) or (25).

1.84 PR 51 (22) / YOI R 55 (25) disobeys any lawful order

'At (time) on (date) in (place) you disobeyed a lawful order to (briefly describe what the prisoner was ordered to do, or stop doing).'

1.85 An order is lawful if it is reasonable and the member of staff giving it is authorised to do so in the execution of his or her duties.

1.86 A prisoner who adulterates a MDT sample may be charged with disobeying a lawful order to provide an unadulterated sample, or with intentionally obstructing an officer in the execution of his duty to conduct an MDT. A prisoner who refuses to provide any sample may be charged with disobeying a lawful order to comply with the MDT process (see above under PR 51 (9) / YOI R 10).

1.87 PR 51 (23) / YOI R 55 (26) disobeys or fails to comply with any rule or regulation applying to him

'At (time) on (date) in (place) you disobeyed (or 'failed to comply') with the rule (or 'regulation') requiring you to (briefly describe what the rule or regulation required the prisoner / inmate to do (or not do).'

1.88 'Rule or regulation' can mean the requirements of the Prison or YOI Rules, or a local regulation applicable to that particular establishment or wing etc. Reasonable steps must have been taken to make prisoners aware of any local rules, such as notices on wings, information given during induction, training programmes for prisoners' jobs etc. The local rule or regulation must be lawful (see definition under PR 51 (22) / YOI R 55 (25) above).

1.89 PR 51 (24) / YOI R 55 (27) receives any controlled drug, or, without the consent of an officer, any other article, during the course of a visit (not being an interview such as is mentioned in rule 38 /16)

'At (time) on (date) during the course of your visit you received an article believed to be a controlled drug (or 'an article, namely (describe article), without the consent of an officer.')

1.90 'During the course of a visit' means the period from when the prisoner and visitor first meet until the visitor leaves the visits area. If the alleged article is found after the visit but not in the visits or post-visits searching area, or there is any other reason to doubt that it was received during the visit, a charge under PR 51 (12)(a) / YOI R 55 (13)(a) may be more appropriate. But CCTV evidence may support a charge under PR 51 (24) / YOI R 55 (27).

1.91 'Rule 38 /16' refers to visits from the prisoner's legal advisers.

1.92 PR 51 (24A) / YOI R 55 (28) displays, attaches or draws on any part of a prison / young offender institution, or on any other property, threatening, abusive or insulting racist words, drawings, symbols or other material

'At (time) on (date) in (place) you displayed, attached or drew threatening, abusive or racist words, drawings, symbols or other material aimed towards (name of person or group), namely by writing graffiti saying (quote words written) (or 'by drawing a picture/symbol (describe image)').

1.93 The words etc will be racist if motivated (partly or wholly) by hostility to a member or members of a racial group.

1.94 There is no non-racial equivalent to this charge. If a prisoner displays, attaches or draws material which is threatening, abusive or insulting, but without the racial element, a charge under PR 51 (20) or (17) / YOI R 55 (22) or (18) may be appropriate.

1.95 PR 51 (25) / YOI R 55 (29) (a) attempts to commit, (b) incites another prisoner / inmate to commit, or (c) assists another prisoner / inmate to commit or to attempt to commit, any of the foregoing offences

1.96 The charge must specify whether (a), (b) or (c) applies, and refer to the relevant paragraph number of the 'foregoing offence'. For example:

'At (time) on (date) in (place) you attempted to escape from HMP (name of establishment) by climbing the fence (etc), contrary to Prison Rules 51 (25)(a) and 51 (7).'

Or, 'At (time) on (date) in (place) you incited (name of another prisoner) to assault (name of intended victim) by saying (quote words used), contrary to Prison Rules 51 (25)(b) and 51 (1).'

Or, 'At (time) on (date) in (place) you incited (names) to disobey a lawful order to leave the exercise yard, contrary to Prison Rules 51 (25)(b) and 51 (22)'.

Or, 'At (time) on (date) in (place) you assisted (name) to construct a barricade so as to deny access to his cell, contrary to Prison Rules 51 (25) (c) and 51 (3).'

1.97 Since 'any of the foregoing offences' includes 'commits any assault', a charge of attempting to commit an assault may be appropriate under the Prison or YOI Rules if, for example, a prisoner tries to punch someone but the intended victim sidesteps before the punch connects, or a prisoner throws a missile at someone but misses. However, some independent adjudicators have been unwilling to accept such charges, pointing out that under the criminal law an action that causes fear in the victim is regarded as an assault, even if no unlawful force was actually applied. In such circumstances a charge of using threatening behaviour may be more suitable than attempted assault.

Pre-hearing procedures

Segregation

1.98 If there is a significant risk of collusion or intimidation in the period between laying the charge and the governor's initial determination at the opening of the hearing whether to refer the case to an independent adjudicator, the accused prisoner may be segregated under Prison Rule 53 (4) / YOI Rule 58 (4). An Initial Segregation Health Screen is to be completed and taken into account – for further details see PSO 1700.

1.99 If the hearing is adjourned and it is considered desirable for the accused prisoner to remain in segregation until the hearing is resumed, Prison Rule 45 / YOI Rule 49 will then apply.

1.100 There will be no need for an Initial Segregation Health Screen for a prisoner placed in the Segregation Unit simply to await a hearing on the day of the adjudication unless held there for more than four hours.

Accused prisoners' fitness for hearing

1.101 A list of prisoners due for adjudication should be forwarded to the Healthcare Unit in time for any medical concerns to be drawn to the adjudicator's attention before the start of the hearing. If Healthcare staff consider it likely that a punishment of cellular confinement may be imposed if the prisoner is found guilty they may prepare an Initial Segregation Health Screen in advance (provided there is time to do so properly), but there is no need to complete ISHSs for all prisoners ahead of hearings. If an ISHS is required, when a punishment of cellular confinement is being considered, but has not been completed before the hearing the adjudicator will either adjourn until it is completed, or ensure it is done within two hours of imposing the punishment.

1.102 It is the adjudicator's responsibility to be satisfied that the accused prisoner is physically and mentally fit to face the hearing and any subsequent punishment, and if there are any doubts about this Healthcare staff should be asked to advise. Similarly, the adjudicator should consult Healthcare if the prisoner's mental or physical health may have been a relevant issue at the time of the alleged offence (e.g., if the prisoner's actions may have been caused by mental illness or the effects of medication, or if the prisoner raises other health issues in defence, for example being too unwell to work or comply with an order, or medical reasons for failing to provide a MDT sample. See paragraph 2.54 on recklessly endangering health and safety). Any medical concerns, advice given, and the adjudicator's decision and reasons must be recorded on the record of hearing. If there are no medical concerns a note should be made to this effect.

1.103 If prisoners have any disability or communication or language difficulty that may impair their ability to understand and participate in the hearing, adjudicators should consider what help may be provided for them, and adjourn as necessary for this to be arranged.

Section 2 During the Adjudication

Hearing room layout

2.1 Hearings should be conducted in a private room set aside for the purpose, in an atmosphere that is generally relaxed, while still formal enough to emphasise the importance of the proceedings. Governors should assess the level of risk the prisoner presents to the adjudicator and other staff and witnesses, and assign escort staff accordingly. Those staff chosen for escort duties will play no part in the proceedings either as reporting officer or witnesses, and will not act in any way that could be perceived as intimidating or obstructive towards the accused prisoner or any witness. At least two escort staff should be present at all IA hearings (other than those conducted via video link).

2.2 The hearing room should normally include seating and tables for the adjudicator, the accused prisoner and any legal representative or McKenzie friend, the escort, and for the reporting officer or other witness. The accused prisoner should be provided with writing materials to take notes. A copy of this PSI should be available for reference. The accused prisoner's core record (F2050) and previous disciplinary record should **not** be present in the room.

Hearings in prisoner's absence

2.3 If a prisoner refuses to attend a hearing, or the adjudicator refuses to allow attendance, for example, on the grounds of disruptive behaviour or an ongoing dirty protest, the prisoner should be warned that the hearing will proceed in his or her absence. If during the course of the hearing the adjudicator is satisfied that the prisoner has ceased to be disruptive, has expressed a wish to attend or is in a suitable condition to attend then attendance will be allowed. The prisoner will be informed of the outcome at the end of the hearing.

2.4 If a prisoner is unable to attend a hearing through illness or court appearances, the adjudicator may open the hearing and adjourn it until the prisoner is available. Healthcare may be asked to advise when the prisoner is likely to be fit enough to attend, and the adjudicator should take this into account when deciding whether it would be fair to continue (natural justice).

Hearing procedures - preliminaries

2.5 The accused prisoner and escort should enter the hearing room ahead of the reporting officer and witnesses, and leave the room after the reporting officer and witnesses, to avoid any suggestion that evidence may have been given to the adjudicator when the prisoner was not present. Only one witness should be in the room at a time, except when the reporting officer wishes to question a witness (when they will necessarily both be in the room at the same time). The reporting officer's role as a witness giving evidence is clearly separate from any role in questioning another witness. The adjudicator will ensure that the reporting officer and other witnesses do not give evidence simultaneously.

2.6 The adjudicator is required to make a complete record of the hearing on form DIS3. This need not be a word for word account, but must record all salient points and reasons for decisions. Clarity and legibility are important, since the DIS3 will be relied on in any subsequent review (including judicial review), and a case may stand or fall based on the information recorded.

2.7 The adjudicator will confirm that the charge has been properly laid in accord with the Prison or YOI Rules, and that time limits in relation to laying the charge and opening the hearing have been met. If an error is discovered in the adjudication paperwork the adjudicator will decide whether it would result in any unfairness or injustice to the accused prisoner to

continue with the hearing. The prisoner should be informed of any errors and offered an opportunity to make representations as to why it might be unfair or unjust to continue with the hearing. Minor errors are likely to be insignificant, but more serious errors may lead to the charge not being proceeded with – see paragraphs 2.40 and 2.62.

2.8 The adjudicator will then

- Confirm the accused prisoner's identity
- Read out the charge, and confirm that the charge as recorded on the DIS1 is identical to that on the DIS3
- Confirm that the prisoner understands the meaning of the charge and, if not, explain it
- Confirm that the prisoner generally understands the adjudication procedure
- Ask whether the prisoner wants to obtain legal advice before proceeding further, and if so, what steps have been taken to contact an adviser. If the prisoner requests more time to obtain legal advice the adjudicator should adjourn the hearing to allow this (it is for the adjudicator to decide how long the adjournment should be for, but two weeks will normally be enough)
- Confirm that the prisoner received the notice of report at least two hours before the opening of the hearing, unless the hearing is being resumed after a previous adjournment and the prisoner confirms that less than two hours has been enough time to prepare for the hearing
- Confirm that any written witness statements already provided for the hearing have been copied to the prisoner and any legal representative (if there is one, at this stage)
- Confirm that the prisoner has had sufficient time to prepare a defence. If not, ask the prisoner how much more time will be needed and consider adjourning as necessary
- Ask whether the prisoner has prepared a written statement, and if so, ensure that it is attached to the record of hearing. The statement will be read out when the prisoner comes to give evidence, or at the mitigation stage
- In IA cases prisoners are entitled to legal representation if they wish, and an adjournment should normally be granted to allow time to arrange this. In cases heard by governors, any request for legal representation or a McKenzie friend (see paragraph 2.10) should be considered under the 'Tarrant Principles' laid down by the Divisional Court in 1984 – see paragraphs 2.10-11. If the governor agrees to allow legal representation a suitable adjournment should be granted to arrange this
- If the prisoner does not want legal advice or representation, or when this has been obtained (or representation refused) and the adjourned hearing is resumed, the adjudicator should ask whether the prisoner pleas guilty or not guilty to the charge. If the prisoner equivocates or refuses to plea a not guilty plea should be recorded
- Ask whether the prisoner wishes to call any witnesses, and if so note their names and briefly outline the nature of the evidence they are expected to give (see paragraphs 2.30 and 2.37 on whether witnesses will be called)

Disclosure of adjudication papers

2.9 If the prisoner's legal representatives (i.e., solicitors who attend the hearing to put the prisoner's case on his or her behalf) request copies of the adjudication papers (DIS 1, written statements, etc) these should be provided at no cost (except any where disclosure would put someone at serious risk of harm, or where a medical report could identify someone other than the patient who has provided information). If legal advisers (i.e., 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 accused prisoner can ask for them and then, if desired, send them on to the advisers at personal expense. If CCTV recordings form part of the evidence to be presented at the hearing they will not be copied to anyone, but arrangements should be made for the accused prisoner and any legal advisers or representatives to view the evidence at the prison. Failure to allow such evidence to be viewed is likely to lead to any guilty finding being quashed.

Tarrant Principles

2.10 An accused prisoner may request legal representation or a McKenzie friend at a hearing. A McKenzie friend is a person who attends the hearing to advise and support, but may not normally actively 'represent' the accused prisoner by addressing the adjudicator or questioning witnesses. The McKenzie friend may be a member of the public, another prisoner or a solicitor acting in a personal capacity as a friend, (i.e., without claiming legal aid). A McKenzie friend may be allowed to attend (if agreed), even if legal representation is refused. When a request has been made, adjudicators (governors) will consider each of the following criteria and record their reasons for either refusing or allowing representation or a friend:

- The seriousness of the charge and the potential penalty

Adjudicators should use their own judgment and knowledge of the local punishment guidelines to decide how serious a charge and potential penalty are. A penalty at or near the maximum will not necessarily mean that representation must be granted. Prisoners sometimes claim that any finding of guilt at adjudication is necessarily serious as it will influence a future Parole Board decision on release or progress to a lower category prison, but this is hypothetical. Adjudicators should only consider the seriousness of the charge and potential punishment resulting from the current adjudication, and should disregard any possible effect on the Parole Board, who will, in any case, base their decision on a range of risk factors, not just on one adjudication.

- Whether any points of law are likely to arise

This means unusual or particularly difficult questions of legal interpretation, such as the exact definition of an offence within the Prison or YOI Rules, or the effects of a recent court judgment, not merely that a solicitor may refer to the relevant Rule. In such cases, which are likely to be rare, a qualified legal representative may be more suitable than a McKenzie friend.

- The capacity of particular prisoners to present their own case

Prisoners who are unable to follow the proceedings or to present a written or oral defence due to language or learning difficulties, and particularly those who may have mental health problems, may need help from a friend or representative. Adjudicators will base their decision on the individual circumstances of each case (assuming they have not already decided that the prisoner is unfit to continue with the adjudication because of mental health problems – see paragraph 1.102 above)

- Procedural difficulties

This relates to any special difficulties prisoners might have in presenting their case, such as in questioning expert or other witnesses. The circumstances in each case will vary, but where questioning witnesses is at issue a qualified legal representative will be preferable to a McKenzie friend, who may only advise, not question.

- The need for reasonable speed

Adjudicators should balance the inevitable delay while a legal representative prepares a case, including consulting the accused prisoner and interviewing potential witnesses, with the overriding necessity to ensure natural justice. A McKenzie friend may take less time to prepare, but there is still likely to be some delay.

- The need for fairness

If one prisoner among a group jointly charged in connection with the same incident is granted legal representation or a McKenzie friend, the others in the group may need to be treated the same. If a prisoner is granted help for one charge, the same help should be given for other charges against that prisoner arising from the same incident.

2.11 Any other reason(s) put forward by the prisoner should also be taken into account and decided on its merits. For McKenzie friends, the adjudicator should also decide whether the person proposed is suitable.

2.12 If the prisoner is granted legal representation for a hearing by a governor the adjudicator should consider whether the Treasury Solicitor should be asked to arrange representation for NOMS. This is likely to be extremely rare, and should only happen when difficult points of law or procedure are expected to arise, that the adjudicator will need legal advice on. Any legal representative appearing for NOMS will only advise, not present the case against the prisoner.

2.13 Prisoners' legal advisers or representatives should be granted facilities to interview the accused prisoner and, if they are willing, other witnesses. Similar facilities may be granted to McKenzie friends, as far as possible (there may be limits on this if, for example, the friend is another prisoner).

2.14 Any arrangements made under the above two paragraphs should be made by staff unconnected with the adjudication.

2.15 Adjudicators are not required to respond to points raised in correspondence from legal advisers or representatives, unless they choose to, and may suggest in their reply that any concerns are raised during the hearing.

Adjournments

2.16 If it is not possible to complete a hearing for any reason it should be adjourned until a later date. It is for adjudicators to decide how long the period of adjournment should be, and whether further adjournments should be allowed if the case can still not proceed to a conclusion when the hearing resumes. There is no fixed limit on how long adjournments may go on, but if the case remains unresolved six weeks after it began the adjudicator should consider whether natural justice is being compromised. If the adjudicator decides it would be unfair to continue hearing the charge it should either be dismissed, or recorded as 'not proceeded with'. If the adjudicator decides it would not be unfair to continue the reasons for this decision should be recorded and the case should resume. Further consideration should be given to the natural justice issue whenever any further adjournments are requested.

Referral to the police

2.17 Guidance on reporting crime in prison to the police will be published later. In the meantime, advice should be sought from NOMS Security Group. Guidance on dealing with evidence is in PSI 51/2010.

2.18 In situations where a serious criminal offence appears to have occurred the police should be contacted immediately it is discovered. All serious assaults on staff or prisoners must be referred to the police for investigation in accordance with the NOMS policy of zero tolerance to violence (see paragraph 2.23). In other cases the decision to refer the charge to them will be made during the adjudication. Disciplinary charges should be laid in the normal way within 48 hours of the incident, and an adjudication opened on the following day. After the opening procedures have been completed the adjudicator should consider whether the charge against the prisoner is serious enough to be referred to the police for further investigation, and possible prosecution in the courts. The decision on referral to the police is for the adjudicator, taking account of the individual circumstances of the case [subject to forthcoming reporting crime guidance]. If the charge is referred the adjudication hearing must be adjourned until the outcome of any police investigation is known. The case should not be referred to an independent adjudicator at this stage, since the 28 days time limit for an IA to open a hearing may expire before the police/Crown Prosecution Service reach a decision. The prisoner should be kept informed of any progress at suitable intervals. If a prosecution goes ahead, the adjudication will not proceed (since it would be double jeopardy for the prisoner to be punished – or acquitted – by a court, and then face a further adjudication punishment). If the prisoner is not prosecuted in a court the adjudication may then resume, provided the delay in reaching a decision on prosecution has not made it unfair to proceed (natural justice), or the adjudication would rely on the same evidence that was known to the CPS, which they had decided would not support a prosecution.

2.19 Where the charge is escape or abscond the adjudicator will confirm whether the prisoner is being, or has already been, prosecuted for the same offence. If so, it would be double jeopardy to continue with the adjudication for that charge.

Referral to an independent adjudicator

2.20 The most serious disciplinary offences will normally be referred to the police, as in paragraph 2.18, and prosecuted in the courts rather than adjudicated. But if the case is not referred, or no prosecution follows and the adjudication resumes, the adjudicator should then consider whether to refer the case to an independent adjudicator. If the prisoner is eligible for additional days (see paragraphs 2.149 – 2.152), and the adjudicator considers that the offence is serious enough to merit this punishment if the prisoner is found guilty, the case should be referred (paragraph 2.23). If the prisoner is not eligible for additional days the case should not normally be referred, since the IA can only give the same punishments as the governor.

2.21 Following the High Court judgment in *Smith* [2009] EWCH 109 (see Annex D), the Prison and YOI Rules were amended in 2011 to allow a charge against a prisoner who is not eligible for additional days to be referred to an independent adjudicator, where the governor determines that it is "necessary or expedient" for an IA to inquire into it. The prisoner will then be entitled to legal representation, but will still not be eligible for additional days. This is intended to apply only in **exceptional** cases where the charge against the prisoner is very serious (such as a serious assault), but for some reason it is not being prosecuted in the courts. Governors should continue to deal with the great majority of cases. The amended rules also clarify that cases where determinate and indeterminate sentence prisoners are jointly charged (for example, with fighting) may both be referred to an IA for the cases to be heard together.

2.22 If one of a group of related offences by the same prisoner is referred to an IA, the other charges should also be referred.

2.23 The test for seriousness (paragraph 2.20) is whether the offence poses a very serious risk to order and control of the establishment, or the safety of those within it. Governors/Directors should also bear in mind that IAs are an expensive resource, as is the legal aid that prisoners may claim for representation at IA hearings. Each case must be assessed on its merits, but the following offers some guidance:

- Serious assaults should always be referred, e.g. those where the injuries include broken bones, broken skin, or serious bruising, and
  - those where the assault was pre-planned rather than spontaneous,
  - those where the alleged offender has a previous history of violence during the current period in custody,
  - the victim's role within the establishment (e.g. staff), their vulnerability, and the location of the incident, will also be factors,
  - a racially motivated assault is more likely to be referred than a non-racial one.

- Offences of detaining or denying access may be referred if they go beyond simple obstruction, perhaps to conceal a more serious violent or drug related offence

- A fight charge might be appropriately referred in view of its location, the numbers involved, and the extent of any injuries

- Endangering health and safety offences might be referred if there is evidence of intent rather than recklessness, or where the risk to others was serious. Fire setting charges, irrespective of the level of damage or the prisoners' history should always be referred.

- An escape, if not prosecuted, might be referred in view of the level of physical security that was overcome by the prisoner, any injuries to other people, and any damage to property

- MDT failures or other drug-related offences should not automatically be referred, but referral may be appropriate if Class A or a large quantity of other drugs is involved, or if the establishment has a local drugs problem it wants to deter. MDT refusals and drug smuggling will normally be referred

- Referral of possession of unauthorised article cases will depend on the nature and quantity of the item(s). Lethal weapons, Class A drugs, large quantities of other drugs, or mobile phones will usually be referred. Similar criteria apply to selling or delivering, or taking improperly

- Threatening, abusive or insulting words or behaviour may be referred if racially aggravated, but not normally otherwise

- Refusal to obey lawful orders relating to MDT or searching, or other control issues, will normally be referred

- Attempts, incites or assists charges may be referred if the "foregoing charge" would have been referred (but see paragraph 1.97 on attempted assault)

2.24 Once a charge has been referred to an IA it cannot be referred back to a governor or director – the IA will deal with it, unless the IA considers the referral to have been unlawful

(i.e., not referred in accordance with the Prison or YOI Rules), when the IA may decide not to proceed. If the prisoner is not eligible for additional days, or the IA does not consider them to be an appropriate punishment, any of the other punishments available in the Rules may be imposed, if the charge is proved.

2.25 IAs are bound by the Prison and YOI Rules, but are independent of NOMS and need not comply with this PSI – although we hope they will be guided by it.

Arranging IA hearings

2.26 If the case is referred to an IA the hearing must be arranged within 28 days of referral – the day of referral counts as day one of the 28. Prison staff should notify the Chief Magistrate's Office (CMO) of new referrals using form IA1, which should be emailed to gl-ind.adjudication@hmcts.gsi.gov.uk or else faxed to 01264 887396. If the accused prisoner is transferred to another establishment before the independent adjudication is completed the governors of the sending and receiving prisons will decide whether to return the prisoner to the sending prison for the IA hearing (if an IA's attendance has been arranged, or if the case is part heard), or whether the reporting officer and witnesses should attend the receiving prison to give evidence at a hearing to be arranged there. Alternatively, if agreed, the IA should be asked to dismiss the charges. The CMO must be informed on form IA3 if the hearing is to go ahead at the receiving prison after a transfer.

2.27 On completion of an IA hearing the CMO should be notified of the outcome using form IA2.

Hearing procedures - witnesses

2.28 If the case is not prosecuted and not referred to an IA, the adjudicator (governor) will continue with the hearing and investigation of the charge.

2.29 The adjudicator should hear the evidence of the reporting officer, and ask whether the accused prisoner wishes to question the officer about that evidence. The adjudicator may also ask questions. If the prisoner wishes to question a reporting officer who is not present, or not available via a video link, the hearing is to be adjourned until the officer is available. If the prisoner does not wish to question a reporting officer who is not present the officer's written evidence in the notice of report may be accepted.

2.30 Other witnesses may be called in support of the charge, if the adjudicator agrees their evidence is relevant, and may be questioned by the prisoner, adjudicator or reporting officer. Written evidence may be accepted in the absence of the witness as above if the prisoner has no questions.

2.31 Physical evidence such as items allegedly found during a search etc, MDT reports, photographs or CCTV recordings may be introduced, and should be described on the record of hearing. See paragraph 2.68 below, and paragraph 2.29 of PSI 30/2011 on evidence obtained through mobile phone and SIM card interrogations.

2.32 Prison staff may be required to appear as witnesses and give evidence as part of their duties. Prisoner witnesses may be required to attend the hearing (without any loss of pay), but cannot be compelled to give evidence. Other people may be invited to attend, but cannot be compelled to do so. Any request for the attendance of an MDT laboratory scientist must be referred to Security Group at NOMS HQ. In respect of MDT, adjudicators should exercise caution in seeking the advice of medical professionals such as prison doctors, nurses and pharmacists, or manufacturers of medication. Whilst such professionals will be qualified and knowledgeable concerning the effect of various substances on the human body, and can comment on the type, amount and frequency of a medication prescribed to a prisoner, they often do not have specific knowledge concerning the compounds present or absent in urine when such substances are consumed. They are

even less likely to have specific knowledge on the methodologies and techniques used by the MDT laboratory to identify these compounds. It follows that if scientific advice is needed, it should usually first be sought from the MDT laboratory. Adjudicators should establish the level of specific expertise held by those witnesses offering scientific evidence to MDT hearings, and attach weight to their evidence accordingly.

2.33 Questioning of witnesses must be relevant to the current charge, and the adjudicator should intervene if questions stray into other irrelevant areas or are abusive. Adjudicators should assist accused prisoners who have difficulty in framing relevant questions, and ask their own questions as necessary to clarify any points. Adjudicators must use their own judgment about whether to accept evidence where there may have been collusion between witnesses, or coercion to give or retract statements.

Hearsay evidence

2.34 First hand evidence from someone who was present when the alleged incident took place is preferable to hearsay, where a witness reports what has been heard from someone else, but such evidence may be accepted provided this is fair to the accused prisoner. See paragraph 1.9 on evidence from temporary staff. However, where a prisoner has told someone about an incident (hearsay), but refuses to give first hand evidence at the hearing, this may cast doubt on their credibility. If the accused prisoner pleads not guilty and wishes to dispute the hearsay evidence, the adjudicator must assess whether, in the absence of a first-hand witness, it would be fair to accept the evidence. If not, it must be disregarded. It would not be safe to find the prisoner guilty solely on the basis of disputed hearsay evidence.

2.35 MDT confirmation test result reports are acceptable as evidence, even though the laboratory scientist who performed the test is not present at the hearing.

Circumstantial evidence

2.36 Circumstantial evidence (i.e., indirect evidence that an accused prisoner may have committed an offence) may be taken into account, but is unlikely to be sufficient to prove a charge on its own. For example, if a reporting officer gives evidence that something was undamaged when checked and it was then found to be damaged shortly after the accused prisoner was seen going to the area, this would support, but not necessarily prove, a charge of causing damage, if the prisoner was not actually seen to damage the article. The adjudicator would still need to be satisfied that all the evidence taken together proved the charge beyond reasonable doubt to find the prisoner guilty.

Prisoner's defence

2.37 The adjudicator should invite the accused prisoner to offer a defence to the charge, whether by a written or oral statement, and to explain his or her actions or comment on the evidence. (See paragraph 2.108 for mitigation after a charge is proved). If the prisoner wishes to call witnesses the adjudicator should ask for an outline of the evidence they are expected to give. Witnesses on behalf of the prisoner should normally be allowed to give evidence, unless the adjudicator considers the evidence unlikely to be relevant, or that it will only confirm what has already been established as true. Prisoners should not be allowed to prolong proceedings unnecessarily by calling an excessive number of witnesses. If the adjudicator decides to refuse to allow a witness to be called the reasons for this must be fully recorded on the record of hearing, and must be on proper grounds, not merely administrative convenience or because the adjudicator already believes the accused prisoner is guilty.

2.38 Witnesses who have completed their evidence should not have any opportunity to discuss the case with those waiting to give evidence.

2.39 After hearing all relevant evidence the adjudicator will consider whether the charge against the accused prisoner has been proved beyond reasonable doubt, and,if it is not proved will dismiss the charge (paragraphs 2.43-44 and following).

Charges not proceeded with

2.40 If the hearing has reached a stage where it is not possible to reach a conclusion, or where further delay would be unfair on the grounds of natural justice, the adjudicator may decide that it should not proceed further. Reasons for such a decision, which must be recorded, might include:

- The release of the accused prisoner, or a vital prisoner witness (e.g., the victim of an alleged assault, or a prisoner jointly charged with fighting with the accused prisoner)
- The non-attendance of another material witness (e.g., a member of the public), either because they refuse to attend, or because attendance has been disallowed for security reasons
- The accused prisoner is mentally or physically unfit to attend, and is unlikely to be fit within a time when it would be fair to proceed
- The notice of report is significantly flawed, and there is no time to issue a revised version within 48 hours of the discovery of the offence
- The notice of report was not issued within 48 hours of the discovery of the offence, or the hearing was opened later than the day, or next working day, after the charge was laid, (or in IA cases, the hearing was not opened within 28 days of referral), and there were no exceptional circumstances
- The hearing has been adjourned for more than six weeks, and the adjudicator is not satisfied that it would nevertheless be fair to continue
- The adjudicator has confirmed that the prisoner is being prosecuted for the offence that is the subject of the adjudication

Evidence of further offences

2.41 If evidence given during the hearing indicates that further offences may have been committed, either by the accused prisoner or another prisoner, charges may be laid in respect of those offences within 48 hours of their discovery. If, during the hearing, it appears that the current charge cannot be sustained but a different offence may have been committed, the original charge may be either dismissed or not proceeded with, and new charges laid, again within 48 hours of the discovery of those offences (e.g. if a fight charge is replaced with an assault charge).

Allegations against staff

2.42 If allegations against a member of staff are made before, or during a hearing, the adjudicator should consider whether the accusations are relevant to the current charge. If they are not relevant the person making them should be advised to make a written statement outside the adjudication, and the accusations may be investigated separately. The hearing may then proceed as normal. If the accusations are or may be relevant to the

adjudication the adjudicator should either investigate them during the course of the hearing, through questioning the accused prisoner and witnesses, or, if this is not practical, adjourn for a separate, full investigation. Any evidence that comes to light as a result of this investigation must either be taken into account during the resumed adjudication and made available to the prisoner, or, if it is not presented as evidence at the hearing, the adjudicator must take no account of it in connection with the adjudication. Adjudicators who become aware of any findings of the investigation that are not presented as evidence may decide that they are no longer de novo, and hand the case over to a different adjudicator.

Proof beyond reasonable doubt

2.43 An adjudicator satisfied beyond reasonable doubt that a charge has been proved will find the prisoner guilty or, if not satisfied, will dismiss the charge.

2.44 In order to be satisfied that the evidence presented at the hearing has established guilt beyond reasonable doubt the adjudicator will take account of the following criteria (for the full wording of each rule see under Wording of Charges, paragraphs 1.16-97). All references to prisoners should be read as including inmates, as appropriate.

Proving individual offences

2.45 PR 51 (1), YOI 55 (1) commits any assault

- Did the accused prisoner apply force to another person, or act in such a way that another person was in fear of force being applied to them?

- Was the force unlawful, i.e. more than was reasonable in the circumstances for self-defence against an assault or to prevent a serious crime?

2.46 Adjudicators should use their own judgment as to what is reasonable, taking account of the accused prisoner's perception of the circumstances, and the difficulty of weighing up the amount of force to use in the heat of the moment. Adjudicators should consider examining use of force statements where force was used against prisoners following an alleged assault. The victim's consent to be injured is not a defence to an assault charge.

2.47 PR 51 (1A), YOI 55 (2) commits any racially aggravated assault

The adjudicator should first consider whether an assault has been committed, according to the criteria above. If so, the adjudicator should then ask:

- At the time of the assault, did the accused prisoner demonstrate hostility towards the victim based on the victim's membership, or presumed membership, of a racial group?

- Or, was the offence motivated partly or wholly by the accused prisoner's hostility towards a racial group of which the victim is a member?

2.48 A racial group is defined according to race, colour, nationality, or ethnic or national origins, and includes association with that group. 'Presumed' means presumed by the accused prisoner. The known or presumed correspondence of membership of a racial group with adherence to a particular religion is immaterial to the definition of 'racially aggravated'.

2.49 See paragraph 1.21 for charges of both assault and racially aggravated assault, and paragraph 2.107 on charges where other 'protected characteristics' under the Equality Act 2010 are a proven motivation for an offence.

2.50 PR 51 (2), YOI R 55 (3) detains any person against his will

- Did the accused prisoner detain the victim, using force or the threat of force, or any item, to curtail the victim's freedom of movement?

- Was such detention against the victim's will? Or was there collusion between the accused prisoner and the 'victim'? An incident may start with collusion, but later turn into genuine detention if the victim changes his or her mind about continuing. The adjudicator should take account of any injuries sustained by the victim during the incident, or any intimidation by the accused prisoner, and any evidence of their relationship before the incident began (e.g., friendship or enmity).

2.51 PR 51 (3), YOI R 55 (4) denies access

- Did the accused prisoner deny access to anywhere? Did the prisoner construct a barricade, or other impediment to access, or use another means of denying access?

- Was the location of the incident part of a prison or young offender institution?

- Was, or were, the person(s) denied access a prison officer (including governors or other prison staff) or anyone else other than a prisoner, who was at the establishment in order to work there?

2.52 PR 51 (4), YOI R 55 (5) fights with any person

- Were all those prisoners charged with the offence engaged in fighting each other in the ordinary sense of the word, i.e., inflicting unlawful force (see paragraph 2.45) on each other? Or was one (or more, if more than two prisoners were involved) only using reasonable force in self-defence? If so, the charge of fighting should be dismissed, and the other prisoner (the aggressor) charged with assault, within 48 hours of the 'discovery' of the assault offence. See paragraph 1.28.

2.53 PR 51 (5), YOI R 55 (6) endangers health or safety

- Was the health or personal safety of at least one person, other than the accused prisoner, endangered? Was there was a definite risk of harm to at least one specific person's health or safety?

- If so, was this danger caused by the accused prisoner's conduct?

- If so, was the accused prisoner intent on causing this danger, or reckless as to whether it would occur?

2.54 Prisoners may be found to have been reckless if they were aware, or foresaw, that their behaviour could endanger someone else's health and safety, but still continued with the behaviour. The test is not whether a reasonable person would have foreseen the risk, only whether the accused prisoner foresaw it. The adjudicator should take into account the prisoner's personal characteristics, including age, maturity, and mental capacity (see paragraph 1.102), when considering whether he or she foresaw the risk. The risk must also be one that it was unreasonable for the prisoner to take in light of the circumstances as the prisoner perceived them to be at the relevant time.

2.55 If a prisoner's actions involved an act of self-harm, or preparation for such an act, it would not normally be appropriate to lay a charge for an alleged disciplinary offence, but this may be done exceptionally if others were endangered (for example, by starting a fire). In such a case the adjudicator should take account of the accused prisoner's state of mind at the time of the incident.

2.56 PR 51 (6), YOI R 55 (7) intentionally obstructs an officer in the execution of his duty

- Did the accused prisoner behave in such a way as to cause an obstruction (whether by means of a physical barrier, or some other behaviour that prevented or impeded an officer or other person from carrying out their duty or work properly, such as providing false information, providing an adulterated sample for a MDT, interfering with a search, etc)?

- Was the person so obstructed an officer, governor, another member of the prison staff, or anyone else, other than a prisoner, who was at the prison in order to work there?

- Was the person obstructed attempting to carry out their duty as an officer of the establishment, or to perform their work?

- Did the accused prisoner intend that his or her behaviour would obstruct the officer or other person in the execution of his or her duty or performance of his or her work?

2.57 PR 51 (7), YOI R 55 (8) escapes or absconds

- At the time of the alleged offence, was the prisoner held in a prison or young offender institution, or in the legal custody of prison staff or escort contractor's staff while on an escorted absence from the establishment, or on an outside working party? A copy of the warrant or other document authorising detention in a prison or YOI, and evidence of the prisoner's release date at the time of the offence should be produced in evidence.

- Did the prisoner escape or abscond from an establishment or legal custody? There is no offence in law of 'absconding' from prison, only of 'escaping' either with or without the use of force. The adjudicator should decide which description best fits the incident (see paragraph 1.36). It would be a defence if the prisoner could produce evidence of authorisation to leave the establishment or the control of the escort, or genuinely believed that such permission had been given.

- Did the prisoner intend to escape/abscond? The adjudicator must be satisfied that the prisoner was aware that he or she was leaving the establishment or legal custody without lawful authority, taking into account any actions leading up to, and following the incident, and any explanation he or she offered when back in custody. The adjudicator must decide whether any defence offered is credible.

2.58 An escape from a courtroom while the court is sitting (e.g., 'dock jumping') is a matter for the court, and no disciplinary charge should be laid in respect of such an incident.

2.59 Before proceeding with a hearing on an escape charge adjudicators should check whether the prisoner is to be/has been prosecuted for the escape, to avoid double jeopardy.

2.60 PR 51 (8), YOI R 55 (9) fails to comply with any condition upon which he is / was temporarily released

- Was a properly authorised temporary release licence issued to the accused prisoner, with clear and unambiguous terms that the prisoner was informed of? The licence, or a copy, should be produced in evidence.

- Did the prisoner fail to comply with any of the conditions in the licence while on temporary release, including the condition relating to the time of return to the establishment?

- What, if any, explanation has the prisoner offered for the failure to comply? Is there any evidence available to either support or refute the prisoner's explanation (e.g., a medical certificate confirming the prisoner was too ill to travel back to the establishment on time, or a news report confirming transport problems outside the prisoner's control)? The adjudicator must decide whether the prisoner's defence is credible or not, and whether the failure to comply was reasonable in the circumstances.

2.61 A charge under this rule must relate only to behaviour that was disallowed by the terms of the licence, and is not being prosecuted in a court. Adjudicators should confirm whether the prisoner faces any criminal charges relating to actions whilst on licence (including a charge of being unlawfully at large, under the Prisoners (Return to Custody) Act 1995).

2.62 PR 51 (9), YOI R 55 (10) is found with any substance in his urine which demonstrates that a controlled drug has…been administered to him

- Has the accused prisoner undergone a Mandatory Drug Test, that was properly conducted according to the procedures described in PSO 3601, with no significant irregularities in the chain of custody or other significant errors, and that has produced a positive result indicating that the prisoner took a controlled drug? The test report and other MDT paperwork should be produced in evidence. The adjudicator must decide whether any errors or irregularities are significant (for example, a misspelt name might not be significant, but a failure to record a name or number at all would be).

- Do the dates referred to in the wording of the charge confirm that the controlled drug was taken at a time when the prisoner was subject to Prison or YOI Rules, including temporary release? The second date in the charge should be the date the sample was collected for the MDT, and the first date (when the drug would have been taken) counted back from the collection date by the minimum waiting period for the drug that tested positive (see PSO 3601, Table 8.1). The table of waiting periods should be available for consultation by the adjudicator and prisoner during the hearing.

- The adjudicator should confirm that the prisoner has not previously been charged for misusing the same drug within a timeframe that could mean that the current charge may relate to the earlier incident of drug-taking.

- Has a confirmation test been obtained, where necessary? (paragraphs 1.42 and 1.43)

- Has the prisoner put forward a defence under PR 52 / YOI R 56, i.e.,

  (a) the controlled drug was lawfully in the prisoner's possession for personal use prior to its administration, or was lawfully supplied and administered to the prisoner by another person

  (b) the controlled drug was administered when the prisoner did not know or have reason to suspect that such a drug was being administered

  (c) the controlled drug was administered to the prisoner under duress, or without consent, when it was not reasonable to resist

2.63 The adjudicator must consider whether any defence put forward by the prisoner is plausible, taking into account any evidence available to support or refute it. If the prisoner does not offer a defence, or the adjudicator does not accept it as credible, there is no need

for further evidence as to the prisoner's knowledge or intent. PSO 3601 paragraphs 4.70-75 gives guidance on conducting MDTs on Muslim prisoners during the month of Ramadan, when they are required to fast during the day. Similar procedures may apply to other religious festivals involving total fasting. If a prisoner (of any religion) states that they were unable to comply with an order to provide a sufficient urine sample because they were undergoing a voluntary fast, other than one required as a religious obligation during a festival, NOMS Security Group should be asked for advice.

2.64 PR 51 (10), YOI R 55 (11) is intoxicated as a consequence of consuming any alcoholic beverage

- Was the accused prisoner intoxicated? The adjudicator should consider whether the evidence indicates that the prisoner had lost self-control, or was merely exuberant but still manageable

- Was the intoxication caused, partly or wholly, by the prisoner having consumed an alcoholic beverage? The adjudicator should consider the reporting officer's and any other witnesses' evidence of the prisoner's behaviour, and any impairment tests (including balance and coordination, ability to pay attention and follow simple instructions, and division of attention between multiple tasks). Is there any evidence that the prisoner's behaviour or impairment may have another cause, e.g. side effects of medication, or any physical or mental illness or disability?

- Is there evidence of the presence of alcohol from a positive breath test? (Such a test can only provide support to impairment testing, and is not in itself proof of intoxication)

- Has the prisoner put forward a defence under PR 52A / YOI R 56A, i.e.,

  (a) the prisoner did not know or had no reason to suspect he or she was consuming alcohol

  (b) the prisoner consumed the alcohol without consent, when it was not reasonable to resist

2.65 The adjudicator must consider whether any defence put forward by the prisoner is plausible, taking into account any evidence available to support or refute it.

2.66 PR 51 (11), YOI R 55 (12) consumes any alcoholic beverage

- Does the evidence of the reporting officer and other witnesses about the accused prisoner's behaviour indicate consumption of an alcoholic beverage? The evidence should be such as would lead a reasonable person to reach this conclusion, although not necessarily indicating intoxication (according to the tests in the previous charge)

- Alternatively, did the reporting officer or another witness see the prisoner consuming something believed to be an alcoholic beverage? This belief may be based on (for example) seeing the prisoner drinking from a bottle or can thought to contain alcohol, or a container containing a fermenting liquid. If available this item should be produced in evidence.

- Has the prisoner put forward a defence under PR 52A / YOI R 56A (see above)?

2.67 The adjudicator must consider whether any defence put forward by the prisoner is plausible, taking into account any evidence available to support or refute it.

2.68 PR 51 (12) / YOI R 55(13) has in his possession (a) any unauthorised article; or (b) a greater quantity of any article than he is authorised to have

The three elements that must be satisfied before this charge is proved beyond reasonable doubt are:

- Presence – the article exists, it is what it is alleged to be, and was found where alleged by the notice of report (or was in the accused prisoner's possession at the material time – see paragraphs 1.42 and 2.71). If the item is no longer available (e.g., a fermenting liquid /'hooch' that has been disposed of, or a mobile phone/ SIM card that has been sent for analysis) a photograph may be accepted as evidence that it existed (see paragraphs 2.27-30 of PSI 30/2011 on photographing mobile phones)

- Knowledge – the accused prisoner knew of the presence of the article and that it was unauthorised or a greater quantity than authorised

- Control – the accused prisoner had sole or joint control over the article at the time it was discovered (or shortly before it was discovered, if it was abandoned, or at the material time). Intelligence gleaned from a mobile phone or SIM card interrogation may be used as evidence to support an adjudication, but only if the risk of disclosing the information is acceptable. See paragraph 2.29 of PSI 30/2011.

2.69 An article will be unauthorised if the prisoner has not been allowed to keep it in possession, under the establishment's local prisoner property rules and IEP scheme. Authorised property should be recorded on the prisoner's property cards or other local record. Similarly, the quantity of an article allowed to be held in possession will be determined by local rules. Prisoners should have been informed of these rules during induction.

2.70 A charge under this rule may sometimes be laid in place of a charge under PR 51 (9) / YOI R 55 (10), following a MDT confirmation test showing that a non-controlled drug had been administered. In such cases the three elements may be deemed to have been satisfied at the time the prisoner is alleged to have administered the drug, even though the drug itself is no longer present. See paragraph 1.42.

2.71 If the prisoner puts forward a defence of believing the article to be authorised, or believing that the quantity was within permitted limits (or that there was no limit), the adjudicator should consider whether such a belief was reasonable in the circumstances. Similarly, if another prisoner claims ownership of the article, the adjudicator should consider whether this is plausible, or whether there is collusion between the prisoners, or intimidation by one or the other. This may be difficult to decide where the prisoners share a cell and ownership may be in doubt, or where the prisoner offering to take the blame has been released since the offence was discovered.

2.72 If the notice of report lists a number of allegedly unauthorised articles under a single charge, the adjudicator may find some of them proved to be unauthorised, and others not. But there is then a risk that if the prisoner requests a review the whole finding may be quashed. This risk may be avoided if separate charges are laid in respect of each article, and the adjudicator inquires into each one individually.

2.73 PR 51 (13) / YOI R 55 (14) sells or delivers to any person any unauthorised article

- Did the accused prisoner sell or deliver an article to another person (not necessarily another prisoner)? (It is not necessary to define which method of passing the article, selling or delivering, was used)
- Was the article unauthorised?

2.74 If the prisoner puts forward a defence of believing the article to be authorised, or that its disposal was allowed in that way, the adjudicator should consider whether such a belief was reasonable in the circumstances.

2.75 PR 51 (14) / YOI R 55 (15) sells or, without permission, delivers to any person any article which he is allowed to have only for his own use

- Did the accused prisoner sell or, without the permission of an officer or other person authorised to give permission, deliver an article to another person (not necessarily another prisoner)?
- Was the article only authorised for the accused prisoner's own use?

2.76 If the prisoner puts forward a defence of believing that permission had been given to deliver the article to another person, or that it was not restricted only to his or her own use, the adjudicator should consider whether such a belief was reasonable in the circumstances.

2.77 PR 51 (15) / YOI R 55 (16) takes improperly any article belonging to another person or to a prison / young offender institution

- Did the accused prisoner take the article?
- Did the article belong to another person, or a prison / YOI?
- Did the accused prisoner have the permission of the owner of the article, or (in the case of prison / YOI property) the permission of a member of staff with authority to give permission, to take the article?

2.78 If the prisoner puts forward a defence of believing he or she owned the article, or had permission to take it, the adjudicator should consider whether such a belief was reasonable in the circumstances.

2.79 PR 51 (16) / YOI R 55 (17) intentionally or recklessly sets fire

- Did the accused prisoner set fire to part of the prison / YOI, or to any property (whether his or her own or someone else's)?
- Did the prisoner intend to start the fire, or was it an act of recklessness? See paragraph 2.54 for the definition of recklessness.

2.80 It would not normally be appropriate to charge a prisoner with this offence if it was done in the context of self-harm, but if others' health and safety is endangered a charge under PR 51 (5) / YOI R 55 (6) may exceptionally be laid (or PR 51 (16) / YOI R 55 (17).

2.81 PR 51 (17) / YOI R 55 (18) destroys or damages any part of a prison / young offender institution or any other property, other than his own

- Did the accused prisoner destroy or damage part of a prison / YOI, or any other property?

- In the case of other property, did it belong to someone other than the accused prisoner?

2.82 In order to find guilt the adjudicator must be satisfied that damage etc was actually caused by the prisoner, not merely that in the prisoner was in possession of a damaged article, or present in a damaged part of the prison / YOI.

2.83 If the prisoner puts forward a defence of believing that permission or a lawful excuse had been given to destroy or damage the part of the prison /YOI property, or that he or she owned the property, the adjudicator should consider whether such a belief was reasonable in the circumstances.

2.84 **This paragraph has been superseded by PSI 31/2013 – Recovery of Monies for Damages to Prisons and Prison Property.**

2.85 PR 51 (17A) / YOI R 55 (19) causes racially aggravated damage to, or destruction of, any part of a prison / young offender institution or any other property, other than his own

The criteria for finding guilt are the same as for the previous charge, with the addition that the adjudicator must be satisfied that the accused prisoner's actions were motivated wholly or partly by hostility towards a member or members of a racial group. See paragraph 2.48.

2.86 See paragraph 1.69 for charges of both the racially aggravated and non-racial versions of the offence.

2.87 PR 51 (18) /YOI R 55 (20) absents himself from any place (where) he is required to be or is present at any place where he is not authorised to be

- Was the accused prisoner aware of the requirement to be in a particular place?

- Was the prisoner absent from that place at the material time?

Or

- Was the accused prisoner present in a particular place, knowing that he or she was not authorised to be there?

2.88 If the prisoner puts forward a defence that he or she was unaware of the requirement to be in a particular place, or believed that the absence from a particular place, or presence in a particular place was authorised, or had another justification for these actions, the adjudicator should consider whether this belief was reasonable in the circumstances.

2.89 PR 51 (19) / YOI R 55 (21) is disrespectful to any officer, or any person

- Did the accused prisoner act in a way which, in the circumstances, was disrespectful in the ordinary meaning of the term? The adjudicator should decide whether the behaviour was disrespectful, in the context of the circumstances in which it occurred.

- Was the disrespect directed towards a prison officer, or any other person (other than a prisoner) who was at the prison / YOI in order to work there, or a visitor to the prison / YOI?

2.90 If the prisoner puts forward a defence that he or she did not believe the act to be disrespectful, or that it was not directed towards an officer, person working at the prison / YOI, or a visitor, the adjudicator should consider whether such a belief was reasonable in the circumstances.

2.91 PR 51 (20) / YOI R 55 (22) uses threatening, abusive or insulting words or behaviour

- Did the accused say anything, or behave in a manner, whether on a single occasion or over a period of time, that was either threatening, abusive or insulting, in the context of the circumstances at the material time? These terms should be given their ordinary meanings, and the adjudicator should consider how a reasonable person at the scene would view the words or behaviour, bearing in mind that what may be rude or annoying is not necessarily abusive or insulting.

2.92 Threatening behaviour may include acts that cause the victim to fear that unlawful force is about to be inflicted on them, where this charge has been laid as an alternative to attempted assault (see paragraph 1.97). Threatening words or behaviour may also include intimidation, or an indication that harm may be done to the victim later.

2.93 PR 51 (20A) / YOI R 55 (23) uses threatening, abusive or insulting racist words or behaviour

The criteria for finding guilt are the same as for the previous charge, with the addition that the adjudicator must be satisfied that the accused prisoner's actions were motivated wholly or partly by hostility towards a member or members of a racial group. See paragraph 2.48.

2.94 PR 51 (21) / YOI 55 (24) intentionally fails to work properly or, being required to work, refuses to do so

Failure to work

- Was the accused prisoner lawfully required to work? (Convicted adult prisoners are required to work in accordance with PR 31, except on recognised religious days – see PR 18. Young offenders may be required to work under YOI Rs 37 and 40; and see YOI R 35)

- Measured against a standard appropriate to the work which the prisoner was required to do, was the work carried out properly?

- Was the prisoner's failure to reach this standard intentional?

2.95 If the prisoner puts forward as a defence the belief that the work was up to the required standard, or that he or she was unaware of the standard required, or that the failure to work properly was unintentional, the adjudicator should consider whether such a belief or explanation was reasonable in the circumstances.

Refusal to work

- Was the accused prisoner lawfully required to work (see above)?

- Did the prisoner refuse to work (whether by stating they would not work, or by declining to do what they were required to do)?

2.96 If the prisoner puts forward as a defence the belief that there was no requirement to work, or any other reason for not working, the adjudicator should consider whether such a belief or explanation was reasonable in the circumstances. If the prisoner claims to have been too ill to work, evidence from Healthcare should be sought.

2.97 PR 51 (22) / YOI R 55 (25) disobeys any lawful order

- Did a member of staff give the accused prisoner a lawful order? An order is lawful if it is reasonable and the member of staff has authority to give it in the execution of his or her duties. It is not necessary for the member of staff to specifically state that they are giving an order, only that they give a clear indication, preferably verbally, to a specific prisoner to do or not do something.

- Did the prisoner understand what he or she was being ordered to do, or not do? Where a prisoner was required to comply with a MDT or a compulsory test for alcohol, was the prisoner informed that refusal to provide a sample might lead to a disciplinary charge (see PRs 50 (3) (b) and 50B (2) (b) / YOI Rs 53 (3) (b) and 54A (2) (b))?

- Did the prisoner disobey the order? 'Disobey' can mean the prisoner refused to comply with the order, or did not comply with it within a reasonable time (even if eventually complying)

2.98 If the prisoner puts forward the defence of not understanding the order or what it required him or her to do, or that the order was not lawful, or any other reason for not obeying, the adjudicator should consider whether this explanation was reasonable in the circumstances.

2.99 PR 51 (23) / YOI R 55 (26) disobeys or fails to comply with any rule or regulation applying to him

- Was there a rule or regulation operating in the prison or YOI?

- Was the rule or regulation lawful, i.e., either a Prison or YOI Rule, a national instruction (Prison Service Order or Instruction), or a local regulation which staff were authorised to impose as part of their duties to keep prisoners in custody and to maintain order, discipline and safety?

- Did the rule or regulation apply to the accused prisoner?

- Was the prisoner aware that the rule or regulation applied to him or her, or had staff taken reasonable steps to make the prisoner aware of it? 'Reasonable steps' may include notices displayed where the prisoner could see them (bearing in mind any language difficulties the prisoner may have had), or information or training given as part of induction or on other occasions, e.g., safety or hygiene regulations relating to the prisoner's employment in a workshop or kitchen etc.

2.100 If the prisoner puts forward a defence of not understanding what was required, did not believe the rule or regulation was personally applicable, or believed that it was not lawful, or any other excuse, the adjudicator should consider whether this explanation was reasonable in the circumstances.

2.101 PR 51 (24) / YOI R 55 (27) receives any controlled drug or any other article, during the course of a visit

- Did the accused prisoner receive a controlled drug or, without the consent of an officer, any other article, during a visit (other than legally privileged material received during a visit from a legal adviser as allowed under PR 38 and 39 /YOI Rule 16 and 17)? If the drug or other article was not found during a search prior to the prisoner entering the visits area, but was found during or shortly after the visit, it may be inferred that the prisoner received it during the course of the visit. CCTV evidence, evidence of staff supervising the visits area, or admissions by visitors may support a finding that the drug or other article was received during the visit. The item may not necessarily be received from a visitor, but if it is received from another prisoner (or other person) the charge may still be proved if it was received during the course of a

visit. If there is doubt about the time at which the article was received, consideration might be given to laying a charge under rule 51(12)/YOI Rule 55(13) instead.

- Was the prisoner aware that the item received was a controlled drug or, if another article, that he or she did not have the consent of an officer to receive it? The prisoner's actions following receipt of the item, i.e., attempting to conceal it, will be relevant in deciding whether he or she was aware that it was a drug or unauthorised item.

2.102 If the prisoner presents a defence of not knowing that the item was a controlled drug, or that he or she did not know that the consent of an officer was needed before receiving any other item, or that the officer had consented, the adjudicator should consider whether such an explanation or belief is reasonable in the circumstances.

2.103 PR 51 (24A) / YOI R 55 (28) displays, attaches or draws on any part of a prison / young offender institution, or on any other property, threatening, abusive or insulting racist words, drawings, symbols or other material

- Did the accused prisoner display, attach or draw on any part of a prison / YOI, or on any other property, the words, drawings, symbols or other material set out in the charge, which a reasonable person at the scene would consider to be threatening, abusive, or insulting, and racist?

- Were the prisoner's actions motivated wholly or partly by hostility towards a member or members of a racial group (see paragraph 2.48)?

2.104 If a prisoner puts forward the defence of believing that the behaviour or material etc was not racially threatening, abusive or insulting, the adjudicator should consider whether this belief was reasonable in the circumstances.

2.105 PR 51 (25) / YOI R 55 (29) (a) attempts to commit, (b) incites another prisoner / inmate to commit, or (c) assists another prisoner / inmate to commit or to attempt to commit, any of the foregoing offences

(a) attempts to commit

- Did the prisoner act in a way that demonstrated preparation to commit any of the foregoing offences, or was the intention to commit any of those offences demonstrated whether or not it may have been possible to succeed? For example, collecting items in preparation for an escape attempt, or climbing part way up the perimeter fence before being stopped. Or concealing an adulterated sample in preparation for obstructing staff conducting a MDT.

(b) incites another prisoner to commit

- Did the accused prisoner seek to persuade one or more other prisoners to commit any of the foregoing offences? It is immaterial whether or not the other prisoner(s) actually did anything in response to the accused prisoner's incitement. The adjudicator only has to consider whether the accused prisoner's actions (whether words, suggestion, persuasion, threats, pressure, or any other form of incitement) were capable of inciting (an)other prisoner(s) to commit an offence, and were communicated to that/those prisoner(s).

(c) assists another prisoner to commit

- Has another prisoner been charged with committing, or attempting to commit, any of the foregoing offences?

- Did the accused prisoner do anything that helped the other prisoner to commit, or attempt to commit, that offence? This means performing an act to help the other prisoner, not merely standing by and letting the other prisoner commit or attempt to commit the offence (for cases of assisting another prisoner to escape or attempting to escape, see section 39 of the Prison Act 1952, as amended by the Offender Management Act 2007 – a person convicted under this section may be sentenced to up to ten years imprisonment)

- Did the accused prisoner intend to help the other prisoner? Did the accused prisoner understand that the other prisoner was committing or attempting to commit an offence?

2.106 If the other prisoner is found not guilty of the charge against him or her, the accused prisoner would have a defence that whatever he or she had allegedly done had not helped the other prisoner to commit a proven offence.

Punishments

2.107 If the charge against the accused prisoner is found to be proved beyond reasonable doubt the adjudicator will then decide the appropriate punishment(s). All establishments are required to publish local punishment guidelines, based on their particular circumstances (e.g., population characteristics, local disciplinary issues) that set out standard punishments, or ranges of punishments, for each offence. The guidelines should provide for more severe punishments where a 'protected characteristic' under the Equality Act 2010 (i.e., age, disability, gender reassignment, marriage and civil partnership, pregnancy and maternity, race, religion or belief, sex and sexual orientation) has been proven to be a motivation for the offence. More than one punishment may be given for an offence, but the total must be proportionate to the offence, and limited to the maximums set out in the Prison or YOI Rules. Adjudicators may decide to go outside the ranges set out in the guidelines in individual cases (but not over the maximums in the Rules), but will record their reasons for this in the record of hearing. No 'unofficial' punishments (i.e., any punishment not sanctioned by the Prison or YOI Rules), nor any 'group' punishments may be given.

2.108 When the adjudicator has decided that the charge is proved the decision should be announced and recorded on the record of hearing. The accused prisoner or legal representative (if any) should be asked whether they have anything to say in mitigation (i.e. any reasons why the punishment should be less severe than the normal punishment for that offence, under the local or IA punishment guidelines). The prisoner may wish to call witnesses in support of the mitigation, and any evidence given in this connection must be recorded.

2.109 The adjudicator will then request a conduct report (DIS6) from wing staff on the prisoner's behaviour during the current sentence, and an adjudication report (DIS5) on his or her disciplinary record. The prisoner will be allowed to question the authors of these reports.

2.110 The adjudicator will then consider appropriate punishment(s), adjourning if necessary, and taking account, among other things, of:

- the circumstances and seriousness of the offence, and its effect on the victim (if any)

- the likely impact on the prisoner (including any health or welfare impact), the prisoner's age, behaviour in custody, and remaining time to release

- the type of establishment and the effect of the offence on local discipline and good order, and the need to deter further similar offences by the prisoner and others

- any guilty plea, ensuring that the prisoner was not pressured into this plea, and that the decision is based on evidence, not just the plea

2.111 The adjudicator will announce the punishment(s), including whether they are suspended, any previously suspended punishments being activated, and whether punishments for more than one charge are to be consecutive or concurrent; at the same time completing the punishment section of the DIS3 including the period a punishment or suspension is to last, the percentage of any earnings to be stopped, and specifying any privileges to be forfeited.

2.112 The adjudicator will then explain the punishment(s) to the prisoner (if necessary), and advise on the procedure and time limits for requesting a review of the decision.

2.113 Adjudicating governors or directors may impose any punishment other than additional days. Independent adjudicators may impose any punishment including additional days. IAs are issued with national guidelines on ranges of additional days by the Senior District Judge (Chief Magistrate).

Suspended punishments

2.114 All punishments (other than prospective additional days – see paragraph 2.153) take effect immediately, unless they are suspended or ordered to follow another punishment consecutively (or when a punishment is changed following a review). Any punishment other than a caution may be suspended for up to six months. An individual punishment may not be partially suspended, but if more than one punishment is given for a single offence some may be activated immediately, and others suspended. If a prisoner is found guilty of a further offence (committed after the offence for which the suspended punishment was imposed) during the period of suspension the adjudicator may choose between the following options:

- Activate the suspended punishment in full
- Activate part of the suspended punishment. The remaining part will then lapse
- Extend the period of suspension by up to a further six months
- Do nothing about the suspended punishment

2.115 Whatever action may be taken about the suspended punishment does not affect any other punishment the adjudicator may impose for the current offence.

2.116 If a prisoner was previously given a punishment of suspended additional days, and commits a further offence during the period of suspension, the adjudicating governor or director may either take no action on the added days and proceed to deal with the case, or may refer the charge to an IA to inquire into it and decide whether to activate the suspended days, if the charge is proved. Only IAs may activate suspended additional days. The time limit for an IA to open a hearing when a case is referred under this paragraph is 28 days, the same as for other referrals.

2.117 Punishments imposed at the same time for separate offences may be concurrent (i.e., served at the same time as each other), or consecutive (one starting as another ends). Concurrent punishments are usually preferable if the offences formed part of the same incident. If consecutive punishments are imposed the total punishment should not be excessive for the offences taken as a whole.

Individual punishments

2.118 Caution PR 55 (1) (a) and (2) / YOI R 60 (1) (a) and (3)

A caution will be appropriate when a warning to the prisoner seems sufficient to recognise the offence and discourage its repetition. It may not be suspended, or combined with any other punishment for the same charge, including activation of a suspended punishment.

2.119 Forfeiture for a period not exceeding 42 / 21 days of any of the privileges under rule 8 / 6 – PR 55 (1)(b) / YOI R 60 (1)(b)

This means loss of privileges granted under the local Incentives and Earned Privileges scheme, (or the YJB's Rewards and Sanctions). Adjudicators must specify on the record of hearing which privileges the prisoner is to forfeit, and for how long. The maximum period of forfeiture is 42 days for adults or 21 days for young offenders.

2.120 If the forfeited privileges include a higher rate of pay or access to private cash (e.g. to buy items from the prison shop), and the establishment operates a computer based pay or shop purchasing system, the punishment should be applied as soon as the system allows. Otherwise it should be applied as soon as it is imposed.

2.121 This punishment does not allow prisoners to forfeit anything that must be provided or allowed under the Prison / YOI Rules (i.e., things that are 'statutory' rather than a privilege). Prisoners should be allowed to buy postage stamps and PIN phone credits, and to make calls to maintain family contact or contact legal advisers, unless the offence was linked to abuse of the phone system. Access to the gym under PR 29 /YOI R 41 should not be forfeited, although additional access under IEP may be lost. In-cell televisions may be forfeited, but not normally radios, newspapers, magazines, notebooks, attendance at education, or religious activities. Possession of tobacco and smoking are privileges under Prison Rules 8 and 25 (2), and may be forfeited. Prisoners aged under 18 are not allowed to smoke at all (PSI 9/2007).

2.122 Any review of a prisoner's IEP privilege level must be dealt with separately from the adjudication procedure. An adjudicator may not downgrade a prisoner's IEP level as an adjudication punishment. (Note – legal advice has confirmed that an IEP review following a separate adjudication punishment is not double jeopardy).

2.123 Exclusion from associated work for a period not exceeding 21 days PR 55 (1) (c)

This punishment only applies to adults. It is different to forfeiture of the IEP privilege of time out of cell for association under the previous rule. Prisoners serving this punishment remain on normal location, but may not do any work in association with other prisoners. They should not lose any other privileges (unless a separate punishment under the previous rule has also been imposed), other than those incompatible with the punishment under this rule.

2.124 Removal for a period not exceeding 21 days from any particular activity or activities of the young offender institution, other than education, training courses, work and physical education in accordance with rules 37, 38, 39 ,40 and 41 – YOI R 60 (1) (c)

This punishment only applies to young offenders. The rule itself explains what activities prisoners will continue to take part in. They may be removed from any activity not excluded by the rule.

2.125 Adjudicators should ensure that combining punishments of forfeiture of privileges and exclusion from associated work or activities does not amount to cellular confinement by another name. The combined punishment should be differentiated from CC by being

served on normal location rather than in segregation, and should not exceed the CC maximums of 21 or ten days.

2.126 Extra work outside the normal working week for a period not exceeding 21 days and for not more than two hours on any day – YOI R 60 (1) (d)

Another punishment only applicable to young offenders, which again explains itself. The extra work should be carried out a normal pace.

2.127 Stoppage of or deduction from earnings for a period not exceeding 84 / 42 days PR 55 (10 (d) / YOI R 60 (1) (e)

The adjudicator will specify the percentage of earnings to be lost, up to 100% (less the cost of postage stamps and PIN phone credits, as above), and the number of days this is to continue – maximum 84 days for adults, 42 days for young offenders. The pay to be lost includes gross prison earnings during the period of the punishment (normal pay and performance related or piece rate earnings) but excludes bonuses for exceptional or additional work. The stoppage or deduction should be based on the amount the prisoner actually earned during the period of punishment and not based on average earnings.

2.128 If the establishment uses a computer based pay calculation system the stoppage or deduction should be applied as soon as the system allows. Otherwise it should be applied as soon as the punishment is imposed.

2.129 **This paragraph has been superseded by PSI 31/2013 – Recovery of Monies for Damages to Prisons and Prison Property.**

2.130 Cellular confinement for a period not exceeding 21 days PR 55 (1) (e) and (3)

2.131 In the case of an offence against discipline committed by an inmate who was aged 18 or over at the time of commission of the offence, other than an inmate who is serving the period of detention and training under a detention and training order pursuant to section 100 of the Powers of Criminal Courts (Sentencing) Act 2000, confinement to a cell or room for a period not exceeding ten days – YOI R 60 (1) (f) and (2)

The Prison Rule means an adult prisoner may be given cellular confinement for up to 21 days for a single offence, or consecutive punishments adding up to 21 days for a number of offences arising from a single incident. The YO Rule means that if the inmate was 18 or above at the time of the offence, and is not serving a DTO, a punishment of cellular confinement or confinement to a room for up to ten days for a single offence or consecutive punishments adding up to ten days for a number of offences arising from a single incident may be given.

2.132 If an adult prisoner is serving the maximum punishment of 21 days cellular confinement and is then found guilty of a further offence, another punishment of up to seven days CC may be imposed, bringing the total up to 28 days. If, during this period, the prisoner is found guilty of a third offence, up to another seven days may be imposed, bringing the total up to 35 days.

2.133 In the case of a young offender serving the maximum ten days for a first offence, who is then found guilty of a second and third offence, up to three more days CC may be imposed for each offence, bringing the totals up to 13 then 16 days.

2.134 On each occasion adjudicators should consider whether further cellular confinement will be an effective punishment, and whether an alternative punishment might be more appropriate, particularly if the prisoner is vulnerable. For the fourth or any subsequent

offences the adjudicator will consider alternative punishments as it is not possible to impose further CC while the punishment is still being served.

2.135 If a prisoner appears to be committing offences with the intention of remaining in cellular confinement so as to avoid returning to normal location, the aim should be to address whatever problems the prisoner may have on the wing, rather than continually imposing punishment.

2.136 Whenever the adjudicator is considering imposing a punishment of cellular confinement, including a suspended punishment, arrangements are to be made for a doctor or registered nurse to complete an Initial Segregation Health Screen, or else arrangements will be made for this within two hours of imposing the punishment (see PR 58 / YOI R 61). Further guidance on the segregation process, the ISHS, and on the monitoring of prisoners in CC is in PSO 1700. The adjudicator must take account of any medical advice that CC would not be an appropriate punishment for the prisoner on this occasion (e.g., because the prisoner is vulnerable and liable to self-harm), and should either consider a different punishment, or note on the record of hearing the reasons for deciding nevertheless to impose CC. A further ISHS must be completed if it is decided to activate a suspended punishment of CC (since the change of circumstances may affect a vulnerable prisoner differently to the initial suspended punishment).

2.137 Cellular confinement may be served in an ordinary cell set aside for the purpose, not necessarily in the segregation unit. A bed and bedding, a table, and a chair or stool must be provided and must not be removed as a punishment. There must be access to sanitary facilities at all times. Other furnishings and fittings may be provided at the Governor's or Director's discretion.

2.138 In the case of young offenders any cell or room used for this punishment must be certified as suitable for the purpose - see YOI R 61 (2).

2.139 Prisoners serving cellular confinement will be allowed all normal privileges other than those incompatible with the punishment (unless a separate, concurrent punishment of forfeiture of privileges has also been imposed). Compatible privileges will usually include a reasonable number of personal possessions, books, cell hobbies and activities, entering public competitions, and wearing own clothes and footwear where already allowed. Use of private cash and purchases from the prison shop will also be compatible where deliveries are made direct to the prisoner. Prisoners will continue to be able to correspond, exercise, attend religious services, make applications to the Governor, probation officer, chaplain and IMB, and have access to a phone, unless their attitude or behaviour makes it impractical or undesirable to remove them from the cell. Visits should take place separately from other prisoners.

2.140 Prisoners in cellular confinement must be observed according to the requirements set out in PSO 1700, and the healthcare unit and chaplain must be notified daily of prisoners in CC.

2.141 The day cellular confinement is imposed counts as the first day of punishment, and the prisoner may be returned to normal location at any time during the last day (i.e. the first and last days need not be whole days).

2.142 <u>In the case of a prisoner otherwise entitled to them, forfeiture for any period of the right, under rule 43 (1), to have the articles there mentioned PR 55 (1) (g)</u>

This punishment only applies to unconvicted prisoners who, under PR 43 (1) may pay to be supplied with, and keep in possession, books, newspapers, writing materials, and other means of occupation, other than any that the IMB or Governor object to. They may be punished by forfeiting these items for any period the adjudicator may decide.

2.143 Removal from his wing or living unit for a period of 28 / 21 days PR 55 (1) (h) / YOI R 60 (1) (g)

Removal from wing or unit means that the prisoner or young offender (including people under 18) is relocated to other accommodation within the establishment (i.e., away from friends and familiar surroundings), but otherwise continues to participate, as far as possible, in normal regime activities, in association with other prisoners or inmates. The prisoner should not normally lose any privileges, unless a separate punishment of forfeiture of privileges has been imposed.

2.144 The maximum periods for this punishment are 28 days for adults and 21 days for young offenders, but under 18s are only likely to merit the maximum exceptionally.

2.145 Removal from wing should not normally be served in a segregation unit, but if, exceptionally, no other accommodation is available the normal segregation procedures, including completion of an Initial Segregation Health Screen, must be followed.

Young persons held under the Prison Rules, and adult females held under the YOI Rules

2.146 A young person who commits a disciplinary offence while held on remand (unconvicted, or convicted but not yet sentenced) will be charged under Prison Rule 51 (same as an adult), but if found guilty will be punished under PR 57, i.e. the maximum numbers of days of punishments will be the same as those in YOI R 60.

2.147 An adult (aged 21 or over) female inmate held in a YOI who commits a disciplinary offence will be charged under YOI R 55, but if found guilty will be punished under YOI R 65, i.e. the maximum number of days of punishments will be the same as those in PR 55.

Additional days

2.148 Additional days (i.e., further time to be spent in custody) may only be imposed by Independent Adjudicators (IAs), who are District Judges (magistrates) approved by the Lord Chancellor. Under PR 55A (1) (b) / YOI R 60A (1) (b) additional days may only be imposed on a "short-term", "long-term", or "fixed-term" prisoner, as defined in PR 2 and YOI R 2 and the Criminal Justice Acts (CJA) 1991 and 2003. In effect this means that additional days may only be imposed on prisoners who are serving determinate (i.e., time limited) sentences, but not on prisoners serving indeterminate (i.e., not time limited) sentences.

2.149 Prisoners who are **not** eligible to be punished with additional days include those serving life sentences (as well as detention at Her Majesty's pleasure, custody for life, etc), those Imprisoned or Detained for Public Protection (IPP), those subject to Detention and Training Orders (DTO), and foreign nationals who have completed a determinate sentence and are now held solely under immigration powers (although they may receive other punishments while held subject to Prison or YOI Rules). Those committed to imprisonment for example for default on fines and confiscation orders and contemnors were eligible for additional days under provisions in the CJA 1991 (which continue to apply in respect of prisoners committed to prison before 4 April 2005) but they are not eligible for additional days under the provisions of the CJA 2003.

2.150 Extended sentence prisoners **are** eligible for additional days (PSO 6650, paragraph 11.5.1)

2.151 A PSI on sentence calculation is in preparation, but meanwhile Sentence Calculation Policy (020 3334 5031 or 5045) should be asked for guidance on the application of additional days to prisoners released on licence and subsequently recalled (this does not apply to temporary releases under ROTL).

2.152 IAs may impose any of the punishments that adjudicating governors or directors may impose, and up to 42 additional days on both adult prisoners and young offenders. If a prisoner is found guilty of more than one offence arising from a single incident the IA may impose consecutive punishments of additional days, but the total must not exceed 42 days (PR 55A / YOI R 60A). A punishment of additional days may not extend the period in custody beyond a prisoner's Sentence Expiry Date (SED). If a punishment of additional days is suspended, only an IA may subsequently activate it (see paragraph 2.116).

2.153 If a prisoner or young offender is found guilty of a disciplinary offence while on remand the IA may impose a punishment of prospective additional days, which will become substantive if the prisoner / YO subsequently receives a determinate sentence, or else lapse if he / she receives an indeterminate sentence or is found not guilty of the charge for which he / she was remanded. Prospective additional days may be suspended, and later activated, or remitted, mitigated or quashed, in the same way as substantive additional days.

2.154 Substantive additional days (unless restored, mitigated or quashed – see paragraphs 3.10-3.11) will be taken into account when calculating the prisoner's release date.

Minor Reports

2.155 Minor reports are a form of adjudication used to deal with lesser offences by young prisoners, in those establishments where the Governor or Director has decided to operate the procedure. Since one of the benefits of minor reports is swift justice the system must operate so as to provide for a speedy hearing, within 48 hours of the alleged offence. But all Prison and YOI Rules and safeguards relating to adjudications apply equally to minor reports, and all charges and punishments must be within the Rules. The standard of proof is the same as for other adjudications, beyond reasonable doubt.

2.156 Minor reports may be conducted by Supervising Officers (or the equivalent in contracted prisons) who have delegated authority from the Governor or Director, and who have passed the relevant training course.

2.157 A charge against a prisoner may be heard as a minor report (where the system operates), or as a normal adjudication. But once a case has begun as a minor report it may be not be changed or reheard as a normal adjudication.

2.158 Remand prisoners aged under 21 (unconvicted or unsentenced) held in local prisons or remand centres may be charged with minor report offences under the Prison Rules as follows (see above for full wording of each Rule):

- PR 51 (5) intentionally or recklessly endangers health and safety
- PR 51 (6) intentionally obstructs an officer etc
- PR 51 (17) destroys or damages part of a prison or property (PR 51 (17a) racially aggravated damage is **not** included)
- PR 51 (18) absents himself etc or is present etc
- PR 51 (19) disrespectful to an officer etc
- PR 51 (20) threatening abusive insulting words or behaviour (PR 51 (20A) the racist version of the offence is **not** included)
- PR 51 (21) intentionally fails to work properly, or refuses to work
- PR 51 (22) disobeys any lawful order
- PR 51 (23) disobeys any rule or regulation
- PR 51 (25) attempts, incites or assists (only in relation to offences in this section, i.e. other minor report offences)

2.159 Young offenders (those in YOIs or a part of a prison designated as a YOI) may be charged with minor report offences under the YOI Rules as follows:

- YOI R 55 (6) intentionally or recklessly endangers health and safety
- YOI R 55 (7) intentionally obstructs an officer etc
- YOI R 55 (18) destroys or damages part of YOI or property (YOI R 55 (19) racially aggravated damage is **not** included)
- YOI R 55 (20) absents himself etc or is present etc
- YOI R 55 (21) disrespectful to an officer etc
- YOI R 55 (22) threatening abusive insulting words or behaviour (YOI R 55 (23) the racist version of the offence is **not** included)
- YOI R 55 (24) intentionally fails to work properly, or refuses to work
- YOI R 55 (25) disobeys any lawful order
- YOI R 55 (26) disobeys any rule or regulation
- YOI R 55 (29) attempts, incites or assists (only in relation to offences in this section, i.e. other minor report offences)

2.160 The following procedure is to be followed when conducting a minor report*:*

- The reporting officer completes the minor report sheet in the Minor Report Book
- The wing manager confirms that a charge has been laid under the correct paragraph
- The prisoner is given the notice of report in sufficient time to prepare a defence. This need not be two hours (as with other adjudications), but the adjudicator (Supervising Officer) must be satisfied that the prisoner has had enough time
- The wing manager notifies the relevant officer that a minor report is due for hearing

2.161 Prisoners awaiting a minor report hearing are not be segregated prior to the hearing (since they are only charged with a lesser offence – if segregation **is** thought necessary, it is unlikely that the minor report procedure will be appropriate).

2.162 If the officer hearing the minor report decides that medical advice is needed the hearing should be adjourned, and Healthcare contacted. Particular care should be taken where there are any concerns about the prisoner's mental health.

2.163 The punishments that may be imposed for a proven minor report charge are:

- A caution
- Forfeiture of specified privileges for a maximum of three days
- Stoppage of earnings for a maximum of three days
- Extra work outside the normal working week for a maximum of three days, for not more than two hours on any day (only for those charged under YOI Rules)

2.164 As with other adjudications, these punishments start immediately, and may be reviewed in the same way. A record of the hearing is to be kept in the Minor Report Book, and the outcome noted in the prisoner's core record (F2050). The Governor or Deputy Governor will examine and initial the MRB each week, and chair a review meeting of those authorised to hear minor reports at least every three months. These meetings will review diversity issues and ethnic breakdown data in relation to minor reports, to ensure that no prisoner has been charged or punished for reasons other than their behaviour*.*

Interrupted or delayed punishments

2.165 A period spent in hospital or prison healthcare will count as part of a punishment period, even if the punishment is not applicable in that location (e.g., loss of privileges may not be enforceable if access to TV is available in the hospital). Attendance at court or organised work will also count towards the punishment period. If a punishment is interrupted while the prisoner is on bail or unlawfully at large, the balance of the punishment, other than cellular confinement, should be served when the prisoner returns to custody in connection with the same legal proceedings. If a period of cellular confinement is interrupted the remainder of it will lapse. If a punishment is delayed or interrupted for other reasons the adjudicator should assess whether to enforce it (e.g., if the prisoner has become too ill to undergo the punishment etc). If a prisoner is released part-way through a disciplinary punishment, the punishment lapses and cannot be restarted if the prisoner later returns to custody on new criminal charges (including cases where a prisoner's current sentence ends but he or she remains in custody on remand for other offences. Technically the prisoner has been released from the current sentence).

Section 3 After the Adjudication

Post hearing procedures

3.1 The Governor will ensure that any necessary action following the punishment(s) is taken, in relation to calculation of the prisoner's earnings, forfeiture of privileges, recalculation of release date, cell sharing risk assessment review etc, and that this is appropriately recorded (see main PSI text, paragraph 2.35)

Reviews

Flawed cases

3.2 If a prisoner or member of staff believes an adjudication or minor report was flawed because it was illegal, unfair, or incorrect procedures were followed, they may draw this to the attention of the Governor or Director. If the Governor agrees that the adjudication was significantly flawed the punishment may be remitted or the finding set aside, where the adjudication was conducted by a governor (PR 61 (2) / YOI R 64 (2)). If it was conducted by an independent adjudicator the prisoner should be advised to forward a request for a review to the Senior District Judge, as in paragraph 3.10 (since the Prison/YOI Rules do not provide any other avenue for reviewing IA cases).

Termination of punishment

3.3 A Governor or Director may terminate or mitigate any partly served punishment other than additional days either on medical advice, or where it appears that the punishment has had the desired effect and the prisoner is unlikely to repeat the offence.

Review of adjudications heard by governors or directors - Prisoner Casework Unit

3.4 If a prisoner wishes an adjudication conducted by a governor or director, or a minor report, to be formally reviewed, they, or a legal adviser, should complete a form DIS8 within six weeks of the end of the hearing, and forward it to the Governor. If the prisoner is currently serving a punishment of cellular confinement the Governor will "fast-track" the request, i.e. scan and email it, along with the record of hearing (DIS3), a copy of the notice of report (DIS1), the adjudication record and conduct reports (DIS5 and 6), any mitigation statement, any witness statements or other evidence considered at the hearing, and a note requesting urgent consideration, to the Prisoner Casework Unit (PCU) at the functional mailbox:

prisonercasework@noms.gsi.gov.uk. If the prisoner is not currently serving CC the papers should still be scanned and emailed (faxes are no longer accepted).

3.5 PCU will consider the review request and make a recommendation to a Deputy Director of Custody, or the Director of High Security. The DDC/DHS may decide to uphold the adjudicator's decision, or mitigate the punishment (i.e., reduce it to something less severe), or quash the finding of guilt and the punishment entirely (PR 61 (1) / YOI R 64 (1). BCU will then write to the prisoner and Governor informing them of the DDC/DHS's decision. If a punishment of CC is quashed or replaced by a different punishment it is for the Governor to ensure that the prisoner is returned to normal location immediately. If CC is to continue but the number of days is reduced the new end date will be put into effect so that the prisoner does not serve longer in CC than the amended punishment allows. If a punishment of stoppage of earnings is quashed or mitigated the Governor will ensure that the loss of money is recalculated in line with the amended punishment, and any money now owed to the prisoner is paid. No other compensation is available for quashed or mitigated punishments.

3.6 If a prisoner writes to an MP or special interest group, who then takes up the case, it will be reviewed by PCU in the same way as if the prisoner had submitted a DIS8.

Disclosure of adjudication papers (after conclusion of hearing)

3.7 See paragraph 2.9.

Prison and Probation Ombudsman

3.8 A prisoner who is not satisfied with the outcome of the review may ask the Prison and Probation Ombudsman to look into the case. The Ombudsman may make a recommendation to NOMS which although not binding will usually be accepted.

3.9 Any prisoner still not satisfied may apply for a judicial review – see paragraph 3.14.

Review of independent adjudications – Chief Magistrate's Office

3.10 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** DIS 8) 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.

If the prisoner is serving a punishment of cellular confinement, or has been given additional days close to his or her release date, the papers should be "fast-tracked", "i.e. scanned to: GL-Ind.Adjudication@hmcts.gsi.gov.uk or faxed to 01264 887396.

3.11 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.

3.12 There is no provision in the Prison or YOI Rules for anyone other than the accused prisoner or his or her legal adviser to contest an adjudicator's or independent adjudicator's findings, or the punishment imposed. If a member of staff is dissatisfied with the outcome of an

adjudication their only outlet is to put their views to the Governor, for him or her to consider whether to raise the issue with the adjudicator or, through the Senior District Judge, with the IA.

3.13 The Ombudsman's remit does not extend to judicial decisions, including those of IAs (District Judges), so if a prisoner is 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.

Judicial review

3.14 Judicial reviews are handled by NOMS HQ (OSRR policy leads and BCU Operational Litigation Unit - OLU), liaising with the Ministry of Justice Legal Directorate and Treasury Solicitors, who in turn liaise with the prisoner's legal advisers or representatives and the courts, and instruct counsel. Governors/Directors should cooperate with any requests for copies of adjudication papers and witness statements. The prisoner will not normally be required to attend court. More guidance about judicial reviews is available on the Ministry of Justice Intranet under Legal Services, or on the MoJ website, or from OLU.

3.15 Judicial reviews are generally based on one or more of the following grounds:

- Ultra vires – the adjudicator acted outside the powers given to him or her by the Prison / YOI Rules
- Breach of the rules of natural justice – the adjudication was unfair because the adjudicator was biased, or the accused prisoner did not have an opportunity to present a case ('audi alteram partem' – hear the other side)
- Legitimate expectation – the adjudication was not conducted in the way, or the prisoner was not treated, as the prisoner was entitled to expect
- Inadequate reasons – the adjudicator did not give proper reasons for the decision(s)
- Fettering discretion – the adjudicator did not exercise discretion fairly, or did not have an open mind about the circumstances of the case
- Unreasonableness – the adjudicator's decision was irrational - no authority properly directing itself on the law and acting reasonably could have reached such a decision (e.g., relevant issues were ignored or irrelevant ones given weight, the wrong test was applied in reaching a finding, or a punishment was indefensibly severe)
- Breach of a right under the European Convention on Human Rights – usually Article 6 (right to a fair trial) – mostly raised in IA cases

3.16 Adjudicators can make a judicial review less likely to succeed if they always ensure that a full record of the hearing is noted on the DIS 3, with clear, legible, and adequate reasons for all significant decisions, especially in relation to the calling of witnesses, granting or refusing legal representation (governor cases), reasons for granting or refusing adjournments, finding guilt beyond reasonable doubt, and appropriate punishments.

3.17 Judicial reviews can take many months to reach a conclusion, as the case progresses through the courts, in some cases even as far as the Supreme Court. When a final decision is reached the prisoner and his legal representatives will be informed. If the prisoner is successful the court may order the adjudication to be quashed.

Remission (or Restoration) of additional days

3.18 A prisoner who has not had a further finding of guilt at an adjudication for six months (four months for young offenders) since the date of the offence (not the date of the adjudication) for which additional days were imposed may apply for some of the days to be remitted (known within establishments as 'Restoration of Remission' – ROR). Up to 2006 the six/four months period related to further findings of guilt for which more additional days were the punishment; since January 2006 the period has related to **any** punishment imposed at an adjudication since the additional days. If the offence occurred between two dates (such as MDT cases) the earlier date should be taken as the date of the offence.

3.19 A prisoner / young offender may make a further application for remission of additional days six / four months after the date a previous application was submitted, if there have been no further findings of guilt in that period, and if less than the normal maximum of 50% of the days were remitted on the previous occasion.

3.20 The six / four months period may be made up of time spent in a prison or YOI, special hospital (if transferred there from a prison or YOI), community home, youth centre , police custody under Operation Safeguard or while assisting police enquiries, or while released on temporary licence under PR 9 / YOI R 5. Time spent unlawfully at large does not count (in any case a prisoner who was UAL during the six / four months period is likely to have a finding of guilt for escape or ROTL failure, or a conviction). A prisoner transferred on restricted terms from a prison in England or Wales to a prison in Scotland (where additional days are not imposed) may apply six or four months after their last adjudication for additional days imposed prior to the transfer to be remitted. The Governor of the English or Welsh prison should obtain reports on the prisoner from the Scottish prison, and consider the application in the normal way.

3.21 Additional days are taken into account when release dates are calculated, so have been served before release. A prisoner who is released on licence and subsequently recalled to custody is therefore not eligible for restoration of any additional days incurred before release. Additional days imposed after recall may be remitted in the normal way.

3.22 As the remission of additional days is an administrative rather than a judicial task, decisions are made by Governors or Directors, who are familiar with the prisoner, rather than IAs (using authority given to the Governor under PR 61 (2) / YOI R 64 (2)).

3.23 Governors/Directors should ensure that all prisoners are aware of the remission procedure and have access to the application form DIS 9.

3.24 When an application is received it should be logged and then forwarded to wing staff, to complete sections 2-6 of form DIS 9 giving details of the offence that resulted in additional days, previous applications for remission, and the prisoner's behaviour, including any further findings of guilt. The wing officer should consult other staff who have knowledge of the prisoner. If the prisoner spent half or more of the six/four months period before the application in another establishment a similar report should be requested from that establishment. It is not necessary to seek the views of the IA who imposed the additional days.

3.25 The report will normally be disclosed to the prisoner (other than any security-sensitive information), and must be accurate and unbiased, if not entirely objective. It should record any positive evidence of the prisoner's constructive attitude and seeking opportunities for work, education and other regime activities, and response to any release on licence. Any negative comments must also be supported by evidence. The report must only relate to the prisoner's behaviour since being in custody, and must not refer to previous criminal history.

3.26 The Governor should consider the application within one month of its submission, taking account of factors up to the time of consideration. If the prisoner wishes to make oral

representations in support of the application or to comment on the wing report this should be allowed, and the author of the report should attend (if practicable) to respond to the prisoner's questions or comments, or to amplify the report.

3.27 Applications from prisoners currently in hospital should be considered when they return to prison, or occasionally through correspondence or by visiting the hospital.

3.28 Factors the Governor should take into account when considering applications include:

- Has the prisoner taken a constructive approach towards imprisonment, e.g., sought and made the most of opportunities for work, education, PE, and other regime activities? Has the prisoner repaid the trust received when e.g. granted temporary release on licence?

- Has the prisoner shown a genuine change of attitude, whether or not this has been demonstrated through participation in regime activities? Avoiding trouble does not necessarily prove such a change, although for some prisoners this would be a significant achievement

- In view of the nature of the original offence for which additional days were given, does the prisoner's constructive approach and significant change of attitude deserve to be rewarded by remission of additional days, and if so, by how many days? Remission is normally limited to a maximum of 50% of additional days, whether remitted on one or more occasions, but in very exceptional circumstances Governors/Directors may remit more than 50%, up to 100% of the days (that is, additional days imposed before 2 October 2000 or since 7 October 2002 – days imposed between those dates were all remitted in 2002).

3.29 Any remitted days are to be logged, and the prisoner's release date recalculated. Prisoners may be informed orally immediately of the Governor's decision, and in all cases will be given a written decision, with reasons, in sections 7-8 of form DIS 9 within seven days of the consideration. The form will show the prisoner's recalculated release date and, if applicable, when he or she will next be eligible to apply for further remission (i.e., six/four months from the date of the latest application).

Management oversight

3.30 Governors are required to regularly review the conduct of adjudications within their establishments to ensure that the outcomes required by the Adjudications Specification are being achieved, and that the mandatory instructions in this PSI are being followed. In particular they are to monitor adjudications to ensure they are fair, lawful, and just, that punishments are normally within locally published guidelines and proportionate, and that no prisoner is charged or punished for any reason other than their disciplinary behaviour. The Governor will hold regular meetings of staff who conduct adjudications to discuss these issues, and to review local statistics on rates and trends in offending, levels of punishment, restoration of additional days, quashed and mitigated cases, and the ethnic or other social breakdown of charged and punished prisoners. See also paragraph 2.164 for similar monitoring of minor reports, in establishments where they operate.

Retention of records

3.31 All adjudication records are to be retained for the periods specified in PSO 9025 and beyond that if necessary where any review, Ombudsman's investigation or court case is ongoing.

Further advice

3.32 OSSR operate an Adjudications enquiry service which can be accessed through the Functional Mailbox:
Operational_policy1@Justice.gsi.gov.uk

Abbreviations

ADAs	Additional Days Awarded
ALO	Adjudication Liaison Officer
BCU	Briefing and Casework Unit
CC	Cellular Confinement
CCTV	Closed Circuit Television
CMO	Chief Magistrate's Office
CPS	Crown Prosecution Service
DDC	Deputy Director of Custody (formerly Regional Custodial Service Manager)
DJ	District Judge = Independent adjudicator
DDJ	Deputy District Judge
DHS	Director of High Security
DTO	Detention and Training Order
IA	Independent Adjudicator
IEP	Incentives and Earned Privileges
IMB	Independent Monitoring Board
ISHS	Initial Segregation Health Screen
JR	Judicial Review
LOA	Loss of Association
LOE	Loss of Earnings = Stoppage of Earnings
LOP	Loss of Privileges
MDT	Mandatory Drug Test
MRB	Minor Reports Book
NDJ	Nominated District Judge
NDTSG	National Dog and Technical Support Unit
OLU	Operational Litigation Unit
OSRR	Offender Safety, Rights and Responsibilities Group
PAS	Police Advisers Section
PCU	Prisoner Casework Unit
PPO	Prison and Probation Ombudsman
PR	Prison Rules
RCSM	Regional Custodial Services Manager (formerly Area Manager) now Deputy Director of Custody
RFU/W	Removal From Unit/Wing
ROR	Restoration of Remission = Restoration of Additional Days
ROTL	Release on Temporary Licence
SED	Sentence Expiry Date
SDJ	Senior District Judge = Chief Magistrate
SOE	Stoppage of Earnings
UAL	Unlawfully at Large
YJB	Youth Justice Board
YO	Young Offender
YOI R	Young Offender Institution Rules
YP	Young Person/Prisoner

Annex B

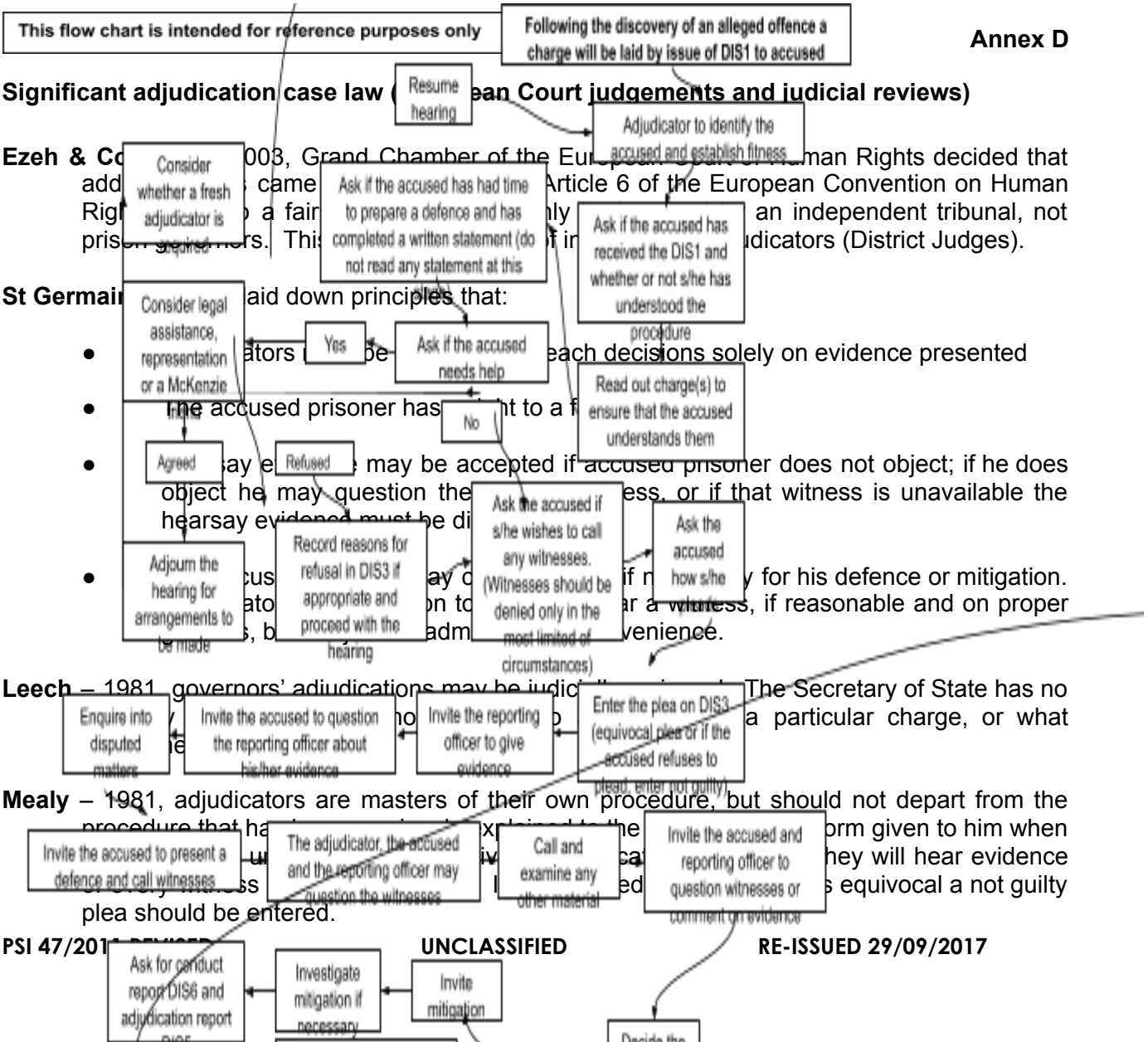
Table of adjudication forms

New form		Purpose	Old form

DIS 1	Form - DIS1.pdf	Notice of report	F1127 A & B
DIS 2	Form - DIS2.pdf	Prisoner adjudication information sheet and prisoner's statement	F1127 C
DIS 3	Form - DIS3.pdf	Record of adjudication hearing	F256
DIS 4	Form - DIS4.pdf	Record of hearing continuation sheet	F256 A
DIS 5	Form - DIS5.pdf	Adjudication report	F256 B
DIS 6	Form - DIS6.pdf	Conduct report for adjudicator	F256 C
DIS 7	Form - DIS7.pdf	Adjudication result	F256 D/1 & 2
		Request for legal representation (Tarrant Principles) Now incorporated in DIS 3	F256 E
DIS 8	Form - DIS8.pdf	Request for a review of an adjudication heard by a Governor or Director	ADJ 1
DIS 9	Form - DIS9.pdf	Application for remission of additional days	F2129 A, B & C
IA 1	Form - IA1.pdf	New referral to the Independent Adjudicator	No change

IA 2	Form - IA2.pdf	Prisoner transfers (IA cases)	No change
IA 3	Form - IA3.pdf	Outcome of adjudications conducted by an independent adjudicator	No change
IA 4	Form - IA4.pdf	Request for a review of an adjudication punishment heard by an IA	No equivalent
MR 1	Form - MR1.pdf	Notice of minor report	MR Book (Still to be used)

Annex C
Basic Adjudication Procedure



Annex D

Significant adjudication case law (ean Court judgements and judicial reviews)

Ezeh & Co 003, Grand Chamber of the Eu man Rights decided that add came Article 6 of the European Convention on Human Righ a fair nly an independent tribunal, not pris ors. This f in udicators (District Judges).

St Germai aid down principles that:

- ators be each decisions solely on evidence presented
- The accused prisoner has ht to a f
- ay e may be accepted if accused prisoner does not object; if he does object he may question the ess, or if that witness is unavailable the hearsay evidence must be di
- cus ay c if n y for his defence or mitigation. ato on t ar a witness, if reasonable and on proper s, b adm venience.

Leech – 1981, governors' adjudications may be judic The Secretary of State has no y no p a particular charge, or what he

Mealy – 1981, adjudicators are masters of their own procedure, but should not depart from the procedure that ha xplained to the orm given to him when u iv ca hey will hear evidence of the ly witness l ed s equivocal a not guilty plea should be entered.

Fox-Taylor – 1982, if staff know the identity of a witness who may help the accused prisoner's defence they have a duty to disclose that information, so that the prisoner has a chance to call the witness; otherwise the adjudication is likely to be overturned as unfair (even though it wasn't the adjudicator's fault).

Davies – 1982, prisoner was charged with possession of cannabis found in a jacket. He said the jacket belonged to another prisoner whose identity he knew, but refused to name him or call him as a witness. Staff had no duty to investigate who that other prisoner may be.

Tarrant – 1984, the judgment set out the 'Tarrant Principles' governors use to decide whether a prisoner may be legally represented at a hearing (governor hearings only; in IA cases the prisoner is entitled to be legally represented, so Tarrant does not apply). The judgment also confirmed that the accused prisoner may question witnesses directly (unless that is abused), and that the standard of proof in prison disciplinary proceedings is the criminal law standard of proof beyond reasonable doubt.

King – 1984, a possession charge where an item is found in a shared cell depends on the accused prisoner having some control of the item as well as knowledge.

Smith – 1986, the Prison Rules do not allow an adjudicator to reduce a charge (eg, from assault to fighting) during a hearing (but current practice is that a charge may be dismissed, and the prisoner recharged with a lesser offence, if not out of time).

Lee – 1987, an adjudicator is entitled, after considering expert evidence, to decide whether an accused prisoner is fit for adjudication; and the adjudicator should dismiss the charge if, having heard the evidence, he is satisfied on medical grounds that the prisoner could not be held responsible for his actions at the time of the alleged offence.

Keenan – 2001, ECHR ruled that Articles 3 (torture, inhuman or degrading treatment) and 13 (effective remedy against violations of rights and freedoms) has been violated, following the suicide of a prisoner given 28 additional days and segregated, only nine days before his release date. This led to the instigation of "fast-track" reviews for prisoners given cellular confinement, or added days shortly before their release date. "Fast-track" means adjudication papers are faxed to BCU or CMO rather than posted.

Al-Hassan & Carroll – 2005, a governor who was involved in the incident that led to the charge against the prisoner should not conduct the adjudication hearing, to avoid any perception of bias (in this case the governor was present and knew the background when a more senior governor ordered the prisoners to undergo a squat search, which they refused).

Tangney – 2005, the prisoner claimed that common law entitled him to a hearing by an IA, even though he was a lifer. The court rejected this, since for Article 6 (right to a fair trial) to apply three criteria had to be satisfied: (i) the classification of the offence in domestic law; (ii) the nature of the offence; and (iii) the severity and nature of the punishment. Article 6 could not be engaged since as a lifer the prisoner was not eligible for added days, and any other punishment he might get would not be serious enough to satisfy (iii).

This case has since been superseded by **Shevon Smith**:

Shevon Smith – January 2009, Smith was another lifer whose case was referred to the police after he seriously assaulted a female prison officer. When the police/CPS decided not to prosecute he said his case should go to an IA. The judge said that in exceptional cases, where there was no prosecution, a serious charge could go to an IA, even though the prisoner was not eligible for added days (possibly added days could extend the life sentence tariff, if it had not already expired, but this is doubtful). An amendment to the Prison and YOI Rules, in force from 26 September 2011, now allows **exceptional** referral of lifers to an IA, in serious cases where there is no prosecution, but these cases are likely

to be rare, especially once Police Advisers and Security Group issue new guidance on reporting crime in prisons and, it is anticipated, more prosecutions follow.

John Haase – December 2007, the prisoner wanted IA cases to have independent prosecutors, which would have meant setting up a new system and recruiting presenting officers to represent NOMS in adjudications – later toned down to mean an officer not involved in the case should present it. The prisoner lost the case – independent prosecutors are not necessary for a fair hearing.

'M'– February 2010, the judge said adjudicators should be proactive in persuading young/vulnerable prisoners to seek representation (eg, an advocate) in IA cases (the JR was supported by the Howard League).

Benjamin King – October 2010 – The prisoner claimed that the punishment of cellular confinement breached his civil rights under Article 6. The prisoner lost, but if he had won and all 23,000 cellular confinement cases had had to go to IAs it would have doubled their workload and cost NOMS another £600,000.

'G' and another – October 2003 – this was not an adjudication case, but is relevant as it replaced an earlier case (Caldwell, 1982) which defined the test for recklessness. Under 'G' a person is reckless if:

(i) he is aware of a risk; and
(ii) in the circumstances as he perceives them, it is unreasonable to take that risk.

This definition is relevant to charges under Prison Rule 51 (5) and (16), and YOI Rule 55 (6) and (17).

Index

Note: numbered references to paragraphs in the main text of the PSI are prefixed by *'psi'* and shown in italics; other numbered references are to paragraphs in Annex A.

HQ policy

Equality Impact Assessment – Annex

Policy	Prisoner Discipline Procedures - Adjudications
Policy lead	Roy Donno
Group	Offender Safety, Rights and Responsibilities
Directorate	National Operational Services

What is an Equality Impact Assessment (EIA)?

An EIA is a systematic appraisal of the (actual or potential) effects of a function or policy on different groups of people. It is conducted to ensure compliance with public duties on equality issues (which in some areas go beyond a requirement to eliminate discrimination and encompass a duty to promote equality), but more importantly to ensure effective policy making that meets the needs of all groups.

Like all other public bodies, the National Offender Management Service is required by law to conduct impact assessments of all functions and policies that are considered relevant to the public duties and to publish the results.

An Equality Impact Assessment must be completed when developing a new function, policy or practice, or when revising an existing one.

*In this context a **function** is any activity of the Prison Service, a **policy** is any prescription about how such a function is carried out, for instance an order, instruction or manual, and a **practice** is the way in which something is done, including key decisions and common practice in areas not covered by formal policy*.

If you are completing this document as part of the OPG process, you must complete and return it together with the final Business case for OPG approval and publication alongside the PC/PSI/PSO.

Your Equalities team

It is important that all policies are informed by the knowledge of the impact of equalities issues accumulated across the organisation. Early in the policy development process, and before commencing the EIA, please contact the relevant equalities team to discuss the issues arising in your policy area.

- HR issues – Staff Diversity and Equality Team – 020 7217 6090 or frank.colyer@noms.gsi.gov.uk
- Service delivery issues relating to gender and younger offenders – Women and Young People's Group – 020 7217 5048 or matthew.armer@noms.gsi.gov.uk
- All other service delivery issues – Race and Equalities Action Group – 020 7217 2521 or REAG@noms.gsi.gov.uk

The EIA process

The EIA has been constructed as a two-stage process in order to reduce the amount of work involved where a policy proves not to be relevant to any of the equalities issues.

The initial screening tool should be completed in all cases, but duplication of material between it and the full EIA should be avoided. For instance, where relevance to an equalities issue is self-evident or quickly identified this can be briefly noted on the initial screening and detailed consideration of that issue reserved for the full EIA.

Further guidance on this will be given by the relevant equalities team.

Stage 1 – initial screening

The first stage of conducting an EIA is to screen the policy to determine its relevance to the various equalities issues. This will indicate whether or not a full impact assessment is required and which issues should be considered in it. The equalities issues that you should consider in completing this screening are:

- Race
- Gender
- Gender identity
- Disability
- Religion or belief
- Sexual orientation
- Age (including younger and older offenders).

Aims

What are the aims of the policy?

To ensure that adjudication procedures are carried out lawfully, fairly and justly, and contribute to the maintenance of order, control, discipline and a safe environment in prisons by investigating offences and punishing those responsible.

Effects

What effects will the policy have on staff, offenders or other stakeholders?

Offenders will be aware of the disciplinary offences with which they may be charged, the procedures for inquiring into charges, and the penalties for those found guilty. They will be treated fairly and justly, including having an opportunity to defend themselves, and to request reviews of decisions. Staff will benefit from working in safe and ordered environment. Other stakeholders will be confident that disciplinary offences are properly dealt with.

Evidence

Is there any existing evidence of this policy area being relevant to any equalities issue?

Identify existing sources of information about the operation and outcomes of the policy, such as operational feedback (including local monitoring and impact assessments)/Inspectorate and other relevant reports/complaints and litigation/relevant research publications etc. Does any of this evidence point towards relevance to any of the equalities issues?

The Offender Management Caseload Statistics, and the draft Annual Equalities Report give data on adjudications for male and female prisoners and ethnic groups. Inspectorate, IMB, and PPO reports comment on adjudication procedures (no relevant equalities comments). The Howard League has made representations about more 'age appropriate' young offender adjudications, and advocacy for YOs. Articles in Prison Service Journal September 2010 indicated that BME prisoners are less disproportionately treated in formal and structured adjudications than in discretionary processes such as use of force, segregation, and IEP, although the Equalities Report showed higher rates of charging and use of cellular confinement for black prisoners.

Stakeholders and feedback

Describe the target group for the policy and list any other interested parties. What contact have you had with these groups?

Operational managers who conduct adjudications, Supervising Officers conducting minor reports. Directors of contracted prisons. Chief Magistrate and independent adjudicators (who are not bound by the policy, but guided by it). BCU (reviews of adjudications), Treasury Solicitors and Legal Advisers (judicial reviews). PPO (some reviews). Contact via Adjudication Helpline & email. Annual meeting with CM, and IAs' conference. Liaison with TSols, BCU and MoJ Legal Advisers on JRs.

Do you have any feedback from stakeholders, particularly from groups representative of the various issues, that this policy is relevant to them?

Prisoners' legal advisers may contact about ongoing cases. The Howard League takes an interest in making adjudication procedures appropriate for young offenders. GALIPS was interested in introducing specifically homophobic offences, but has not pursued this.

Impact

Could the policy have a differential impact on staff, prisoners, visitors or other stakeholders on the basis of any of the equalities issues?

Potentially staff laying charges and adjudicators deciding on guilt and punishment could treat different groups of prisoners, or individuals, more or less severely for reasons other than their behaviour.

Local discretion

Does the policy allow local discretion in the way in which it is implemented? If so, what safeguards are there to prevent inconsistent outcomes and/or differential treatment of different groups of people?

Adjudication procedures are laid down within the policy, based on Prison and YOI Rules, and verdicts and punishments are subject to review by BCU or the Chief Magistrate, the PPO (governor cases only), and judicial review by the courts. Prisoners may be legally advised, and represented in IA cases. Governors are required to hold regular meetings to review adjudications within their prison, including the appropriateness and proportionality of punishments, adherence to local punishment guidelines (set and published by Governors), and any disproportionate impact in terms of race (or other) equality issues. Experienced Adjudication Liaison Officers must be appointed to advise on charges, or alternatives such as IEP. Performance will be monitored via the Specification in future.

Summary of relevance to equalities issues

Strand	Yes/No	Rationale
Race	Yes	The Equalities Report includes evidence of disproportionate charging and punishments of cellular confinement for black prisoners.
Gender (including gender identity)	Yes	The OMCS show that female prisoners have higher rates of offending and punishment than males. We want to unravel whether they are actually more likely to be charged with offences that male prisoners are not. Gender specific standards are relevant, particularly the disproportionate impact of cellular confinement on the risk of self-harm.
Disability	No	Nothing about adjudications in HMI's thematic report on disabled prisoners (2009), and no other evidence that disability is a factor in adjudication outcomes.

Religion or belief	No	No adjudications data in HMI thematic report on Muslim prisoners (2010). NOMS is currently defending a judicial review in which a Muslim prisoner is challenging the lawfulness of being required to provide a urine sample for Mandatory Drug Testing (MDT) whilst fasting voluntarily. We await the outcome to assess the impact on the policy.
Sexual orientation	No	No evidence that sexual orientation is relevant to adjudications (GALIPS did not pursue homophobic offences issue)
Age (younger offenders)	Yes	JR judgment recommended adjudicators to proactively give guidance on advocacy. Howard League interested in more 'age appropriate' procedures, but minor reports system already allows lesser punishments for younger prisoners, if Governor chooses to operate the system. Rules provide for lower maximum punishments for YOs compared to adults, and no cellular confinement for under 18s or DTOs..
Age (older offenders)	No	No evidence that older offenders differentially impacted by this policy.

If you have answered 'Yes' to any of the equalities issues, a full impact assessment must be completed. Please proceed to STAGE 2 of the document.

If you have answered 'No' to all of the equalities issues, a full impact assessment will not be required, and this assessment can be signed off at this stage. You will, however, need to put in place monitoring arrangements to ensure that any future impact on any of the equalities issues is identified.

Monitoring and review arrangements

Describe the systems that you are putting in place to manage the policy and to monitor its operation and outcomes in terms of the various equalities issues.

Prisoner Discipline Specification and new PSI require use of authority in prisons to be proportionate, lawful and fair, and punishments to be fair, safe and proportionate to the charge. Adjudications may be reviewed by BCU or Senior District Judge, PPO (governor cases only), or by courts (JR). Prisoner may seek legal advice/representation. IMB and HMIP reports include may comments on conduct of adjudications and prisoners' perceptions. Governors/Directors must regularly review local punishment guidelines, conduct and outcomes of adjudications/minor reviews, analyse trends, and discuss with adjudicators. See paragraphs 2.165 and 3.31 of PSI. Annual OMCS and Equalities Report include ethnic and gender breakdowns of adjudications.

State when a review will take place and how it will be conducted.

See full assessment.

	Name and signature	Date
Policy lead	Roy Donno	
Head of group	Pat Baskerville	

Stage 2 – full Equality Impact Assessment

Where relevance to one or more equalities issues has been identified during the Initial Screening, a full equality impact assessment must be carried out.

This involves the collection of monitoring data and other relevant information and consultation with stakeholders with a view to producing a full account of the relevant equalities issues and an action plan to address them.

Summary of issues identified during initial screening

Briefly identify which equalities issues you will be considering and the results of the initial screening.

Disproportionate charging and cellular confinement punishments for black prisoners. Higher rates of charging and punishment for female prisoners.

Management and monitoring

Describe the systems in place to manage the policy and to monitor its operation and outcomes.

Comment on the adequacy of the systems and note any improvements that you will make to them. Include a description of and/or extracts from recent monitoring results and provide analysis of them.

Monitoring and review arrangements as described in stage 1. Equalities Report indicates black prisoners more likely to be charged and punished with cellular confinement, if found guilty, although data also shows almost identical rates of dismissal of charges against white and black prisoners. Governors to be reminded to include discussion of equalities issues in regular review meetings, and to address as necessary locally.

Evidence

If you have not already done so in Stage 1, identify other sources of information about the operation and outcomes of the policy, such as operational feedback (including local monitoring and impact assessments)/inspectorate and other relevant reports/complaints and litigation/relevant research publications etc.

Summarise and discuss recent relevant evidence from these sources.

As described in stage 1.

Consultation

If you have not already done so in Stage 1, identify the target group and other interested parties.

Explain how you have involved stakeholders, both generally in the development of the policy and specifically how groups representative of the relevant equalities issues (including 'hard-to-reach groups') have been engaged as part of the EIA process.

Capture main points of feedback from them.

Specifications, Benchmarking and Costing team visits to prisons to develop Discipline Specification, and discussions with OSRR policy leads. Wide consultation with stakeholders on draft PSI. Guidance on equalities issues already in current PSO, reinforced in new PSI.

Discussion

Consider and compare results from previous sections.

Consider in particular issues of stakeholder confidence and local discretion.

Operational staff need to feel confident that the policy contributes to order and discipline, and prisoners, their legal advisers, outside monitoring bodies, and courts, to acknowledge its fairness and legality. Governors to monitor local operation of policy and take remedial action where it impacts disproportionately on individuals or any group of prisoners.

Conclusion

Summarise and make an overall assessment of the impact of the policy or function on the relevant equalities issues. Identify any adverse impact on any group.

Highlight examples of success and good practice.

Describe the key issues that remain to be addressed.

If properly operated according to guidance in the PSI, particularly in relation to fair, legal and just procedures, appropriate charging, inquiring into evidence, criteria for proving guilt, and proportionate punishments, the policy should not adversely affect any group. But there is scope for local decision making that could impact on particular groups, such as appears to be the case with over-charging black and women prisoners, and higher use of cellular confinement for black prisoners.

Action plan

Issue to be addressed	Action to be taken	Manager responsible	Target date
Over-charging of black prisoners	Monitor published adjudications and equality data, and advise Governors to take local action as necessary	Roy Donno	Ongoing
Over-charging of women prisoners	As above	Roy Donno	Ongoing
High use of cellular confinement for black prisoners	As above	Roy Donno	Ongoing

Publication

Describe the arrangements for making the document available to the various stakeholders.

EIA published with PSI on intranet and website.

Review

Indicate method for reviewing progress on the action plan and proposed date for formal review of the EIA.

Adjudications data in annual OMCS and Equalities Reports to be reviewed when available.

	Name and signature	Date
Policy lead	Roy Donno	
Head of group	Pat Baskerville	