



PRISONER DISCIPLINE PROCEDURES (ADJUDICATIONS)	
This instruction applies to: -	Reference: -
Prisons	<b>PSI 05/2018</b>
Re-Issue Date	Effective Date
13/05/2024 (Revision)	01/02/2019
Issued on the authority of	Operational Policy Sub-board
For action by (Who is this Instruction for)	<p>All staff responsible for the development and publication of policy and instructions (<i>Double click in box, as appropriate</i>)</p> <p><input type="checkbox"/> HMPPS HQ</p> <p><input checked="" type="checkbox"/> Public Sector Prisons</p> <p><input checked="" type="checkbox"/> Contracted Prisons*</p> <p><input type="checkbox"/> National Probation Service (NPS)</p> <p><input type="checkbox"/> Community Rehabilitation Companies (CRCs)</p> <p><input checked="" type="checkbox"/> HMPPS Immigration Removal Centres (IRCs)</p> <p><input type="checkbox"/> Other Providers of Probation and Community Services</p> <p><input checked="" type="checkbox"/> Governors</p> <p><input type="checkbox"/> Heads of Groups</p> <p><b>* If this box is marked, then in this document the term Governor also applies to Directors of Contracted Prisons</b></p>
Instruction type	Service Specification for Prisoner Discipline and Segregation Legal compliance
For information	All staff in prisons who have contact with prisoners, staff in HMPPS headquarters who deal with adjudication appeals
Provide a summary of the policy aim and the reason for its development / revision	<p><b>13 May 2024:</b> This PSI only applies where a prisoner has been charged and/or an adjudication hearing has begun before 31<sup>st</sup> May 2024. For adjudications begun on or after 31<sup>st</sup> May 2024, these must be completed in compliance with the <a href="#">Adjudications Policy Framework</a>.</p> <p><b>03 May 2023:</b></p> <ul style="list-style-type: none"> <li>Following the Prison and Young Offender Institution (Adjudication) (Amendment) Rules 2023 (the Amendment Rules 2023), the Independent Adjudicator now has the power to consider the seriousness of cases and where appropriate refer them back to the governor to either inquire into or review to consider for a police referral, PR 53A and 54(3) and YOI R 58A and 59(3) have been amended.</li> <li>Changes are effective from 04 April 2023.</li> <li>Forms IA1 and IA3 have been amended – see <a href="#">Annex F</a></li> </ul> <p>Other minor updates have also been made. Please see the table of amendments at <a href="#">Annex G</a> for all changes.</p> <p><b>11 August 2022:</b></p> <ul style="list-style-type: none"> <li>Guidance is provided on virtual Independent Adjudications including arranging virtual Independent Adjudication hearings and mandatory requirements on laptop security. Forms are added to <a href="#">Annex F</a></li> <li>Following the Prisons (Substance Testing) Act 2021 which gives HMPPS the ability to adjudicate when prisoners test positive for additional substances introduced by the Act, the following Prison and YOI Rules have been amended: PR 51 (9), YOI R 55 (10); PR 51 (24) / YOI R 55 (27); Rules 52 / 56 (see <a href="#">Annex G</a> Table of Amendments).</li> </ul>

- This makes amendments to paragraph 8.2 of the MDT PSO
- Minor updates have been made to remove the requirement to consider the cost-effectiveness of referral to the Independent Adjudicator to allow greater focus on the merits of the case at para 2.32 [Annex A](#).
- The example given in the race charge has been amended.
- Updated case law is included in [Annex E](#)
- Updated guidance on Governors needing to provide reasons for referral to the Independent Adjudicator, otherwise they risk charges being dismissed
- [Annex I](#) (Preparing for Virtual Hearings Guidance) and [Annex J](#) (Independent Adjudicators entering prison establishments) have been added
- The DIS3 form preliminaries have been amended to reflect the policy in [Annex A](#) para 2.8 (that a prisoner should be asked if they would like legal advice or representation before taking a plea). This revised form replaces the DIS3 form previously in use. Old DIS3 forms should be taken out of circulation, with effect from 11/09/2022.

Please see table of amendments at [Annex G](#) for all changes.

**15 April 2021:**

- A new Easy Read version of the DIS2 form has been introduced to help prisoners to better understand the adjudications process.
- The DIS2 form has been updated to include a reference to virtual independent adjudications and how to apply for a review or restoration of added days so that the whole process is in one document for prisoners.
- Minor updates have also been made to the DIS9 form to reflect the DIS2 wording on restoration of added days.
- [Annex H](#) now provides the Chief Magistrate's Guidelines so that prisoners can access these as required. These Guidelines were previously sent to prisons when they were last updated in April 2015 and are now being included in PSI 05/2018 for ease of reference.

**13 January 2020:** A minor update has been made to Paragraph 1.111 to reflect the example behaviour principles contained in [Annex A](#) of the new [Incentives Policy Framework](#) (IPF) The IPF cancels and replaces PSI 30/2013 Incentives and Earned Privileges and 11/2011 Incentives and Earned Privileges on 13 January 2020.

**15 May 2019:** Appropriate Handling of Crimes Protocol now replaced by the Crime in Prison Referral Agreement. Updated references to the Release on Temporary Licence (ROTL) Policy Framework and Women's Policy Framework, which have replaced corresponding PSIs.

This instruction replaces and consolidates PSI 47/2011 Prisoner Discipline Procedures and PSI 31/2013 Recovery of Monies for Damage to Prisons and Prison Property. It provides essential policy updates to support front line staff in undertaking effective adjudications. This is an interim PSI ahead of a forthcoming Policy Framework following a wider review of the current system of disciplining prisoners to support Prison Reform. The adjudication paperwork and training for adjudicators and staff will also be refreshed and updated.

**Contact**

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<b>Associated documents</b>	<p><a href="#">PSO 1700 Segregation and Reviewing and Authorising: Continuing Segregation and Temporary Confinement in Special Accommodation (2015)</a></p> <p><a href="#">PSO 3601 Mandatory Drug Testing</a></p> <p><a href="#">PSO 4600 Unconvicted, Unsented and Civil Prisoners</a></p> <p><a href="#">Women's Policy Framework</a></p> <p><a href="#">PSI 31/2009 Compact Based Drug Testing</a></p> <p><a href="#">PSI 12/2011 Prisoner Property</a></p> <p><a href="#">PSI 30/2011 Instructions on Handling Mobile Phones and SIM Card Seizures</a></p> <p><a href="#">PSI 32/2011 Ensuring Equality</a></p> <p><a href="#">PSI 64/2011 Safer Custody</a></p> <p><a href="#">PSI 75/2011 Residential Services</a></p> <p><a href="#">PSI 52/2011 Immigration, Repatriation and Removal Services</a></p> <p><a href="#">PSI 01/2012 Managing Prisoner Finance</a></p> <p><a href="#">PSI 08/2012 Care &amp; Management of Young People</a></p> <p><a href="#">PSI 31/2013 Recovery of Monies for Damage to Prisons &amp; Prison Property</a></p> <p><a href="#">PSI 37 2013 HMPPS Finance Manual</a></p> <p><a href="#">PSI 23/2014 Prison-NOMIS</a></p> <p><a href="#">Sentence Calculation Policy Framework: determinate sentenced prisoners</a></p> <p><a href="#">PSI 07/2015 Early Days in Custody</a></p> <p><a href="#">Release on Temporary Licence Policy Framework</a></p> <p><a href="#">PSI 16/2015 Adult Safeguarding in Prisons</a></p> <p><a href="#">PSI 20/2015 Cell Sharing Risk Assessment</a></p> <p><a href="#">PSI 21/2015 Unauthorised Possession within Prison of Knives and Offensive Weapons</a></p> <p><a href="#">PSI 27/2015 Open Source Research</a></p> <p><a href="#">PSI 05/2016 Faith and Pastoral Care for Prisoners</a></p> <p><a href="#">PSI 08/2016 Dealing with Evidence</a></p> <p><a href="#">PSI 04/2017 Body Worn Video Camera</a></p> <p><a href="#">PSI 04/2018 Records, Information Management and Retention Policy Archiving, Retention and Disposal</a></p> <p><a href="#">Incentives Policy Framework</a></p> <p><a href="#">PSI 37/2015 – H&amp;S Arrangements for Risk Assessment</a></p> <p><a href="#">Building Bridges: A Positive Behaviour Framework for the Children and Young People Secure Estate</a></p> <p>HMPPS/Police/Crown Prosecution Service - <a href="#">Crime in Prison Referral Agreement</a></p>
<p><b>Replaces the following documents which are hereby cancelled:</b></p> <ul style="list-style-type: none"> <li>• PSI 47/2011 Prison Discipline Procedures (except in respect of adjudications begun prior to the effective date of this PSI).</li> <li>• PSI 31/2013 - Recovery of Monies for Damage to Prisons and Prison Property</li> </ul>	
<p><b>Audit/monitoring:</b> Governors are required to regularly review the conduct of adjudications within their establishments to ensure that the required outcomes are being achieved. Governors are also required to hold regular meetings with staff who conduct adjudications, to review local statistics on rates and trends in offending, levels of punishment, referrals to the Police and Independent Adjudicators, remission (restoration) of additional days, quashed and mitigated cases, and any protected characteristics under the Equality Act 2010 of charged and punished prisoners. In addition, HMPPS will have a corporate audit programme that will audit against the requirements to an extent and at a frequency determined from time to time through the appropriate governance.</p>	
<p><b>Introduces amendments to the following documents:</b> <i>Copies held on the HMPPS Intranet/EQUIP will be amended; hard copies must be amended or cross referenced locally.</i></p>	
<p><b>Notes:</b> <i>All mandatory actions throughout this instruction are in italics and must be strictly adhered to.</i></p>	

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## 1. EXECUTIVE SUMMARY

### Update 03/05/2023:

- Following the Amendment Rules 2023, charges referred to the independent adjudicator can now be referred back to the governor to inquire into themselves or to review for police referral. This ensures that cases are not dismissed and there is no resource impact involved with this change.
- Information and instructions can be found at paragraphs 2.34a-2.34b [Annex A](#).
- [Annex I](#) (Preparing for Virtual Hearings Guidance) has been updated to reflect the Amendment Rules 2023.
- A flowchart outlining the new process has been added to the link available in [Annex D](#).
- The IA1 and IA3 forms have been amended to reflect the changes to the Prison Rules.

The opportunity has also been taken to make minor changes and updates to the PSI, including guidance on smoking cessation equipment and ROTL failures. A list of changes can be found in [Annex G](#).

- 1.1 The publication of PSI 05/2018 and the accompanying annexes, consolidates all instructions on prisoner discipline procedures issued through senior leader bulletins since 2011. It is also an opportunity to reflect updates to other policies that relate to adjudications, as well as relevant case law. It also brings together the policy on recovering money for damages to prisons and prison property and adjudications into one document. This PSI is the first stage of a phased approach to reviewing adjudications in prison, which will include improved forms, updated training and a new evidence-based policy framework that incorporates crimes in prison and adjudications.
- 1.2 The instructions and guidance in this PSI have been amended to provide greater clarity on the adjudications process. The supporting flow chart has been simplified to assist staff in navigating the adjudication process and referrals to the police and independent adjudicators (IAs) in [Annex D](#). A number of key changes have also been introduced to speed up the process, including the removal of mandatory consultation with the Adjudication Liaison Officer (ALO), changes to the guidance on adjournments timescales and the principles of natural justice. New or amended guidance has been listed in a table of amendments in [Annex G](#) for ease of reference.

### Background

- 1.3 This instruction provides guidance to prison staff on adjudication procedures, including Minor Reports, and handling the recovery of monies from prisoners to pay for any damage they cause to prisons or prison property. *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 [PSI 47/2011](#). Adjudications begun on or after the effective date must be completed in compliance with this PSI.*
- 1.4 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 Annexes [A](#), [B](#) and [C](#) of this PSI. 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.
- 1.5 *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.*
- 1.6 Bias, unconscious or otherwise, has consequences, not just in our daily interactions, but in matters of importance to those in our care. We deliver our services fairly and respond to individual needs insisting on respectful and decent behaviour from staff, and prisoners. We

recognise that discrimination, harassment, victimisation and bullying can nevertheless occur. Governors will take appropriate action through adjudication reviews whenever we discover them. We make daily decisions based on our own understanding of what, to us, is the correct outcome. There is a duty for all staff not to be biased or have the appearance of bias when dealing with any prisoner. These decisions may have a detrimental impact on individuals with a protected characteristic. *As part of HMPPS' responsibility under the Public Sector Equality Duty, due regard must be given, when exercising functions, to the need to eliminate discrimination, promote equality of opportunity and foster good relations. See [PSI 32/2011 Ensuring Equality](#).*

#### Desired outcomes

- 1.7 *The use of authority in the establishment is proportionate, lawful and fair.*
- 1.8 *A safe, ordered, decent and secure prison is maintained.*
- 1.9 *Prisoners understand the consequences of their behaviour – they also consider and address the negative aspects of their behaviour as a result.*
- 1.10 *Where a prisoner causes damage to prisons or to prison property, and has subsequently been found guilty, adjudicators or IAs require the prisoner to pay compensation for the damage caused.*

#### Application

- 1.11 This policy applies to all staff who have contact with prisoners and who carry out adjudication procedures.
- 1.12 *Finance staff must be familiar with the financial aspects involved in the recovery of monies from prisoners in relation to damage to prisons and prison property, including updating Prison-NOMIS and the prisoner's core record (F2050) to reflect the terms of the debt and any balance owed.*
- 1.13 *Prisoners must also be made aware of the updated policy and Governors must ensure that sufficient copies are available for consultation and in the library.*
- 1.14 IAs hear cases to exercise their powers independent of the Prison Service. They are bound by the Prison and YOI Rules, but are not legally bound to comply with this PSI – although we hope they will be guided by it. Care should be taken not to compromise their independence. *Prison staff must not offer comments on the offence or the offender to the IA prior to the hearing as it could lead to the IA disqualifying themselves from hearing the case.*
- 1.15 This PSI also applies to immigration detainees and foreign national prisoners held within the prison estate. It equally applies to young people and young adults accommodated within the Youth Secure Estate and young adults when in the adult estate.

#### Mandatory actions

- 1.16 *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 this instruction, appointing suitable staff and arranging authorised training as necessary. All staff employed on these duties must be familiar with the mandatory instructions, the relevant parts of the specification and the supporting guidance provided in the Annexes to this instruction.*
- 1.17 *Adequate reasons for all significant decisions must be noted clearly and legibly, 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.*

#### Resource Impact

- 1.18 Governors will need to ensure that old policy documents are replaced and staff are briefed on the new instructions and guidance - also prisoners should be informed of the new policy document and given access on request – *a copy must be placed in the library*. Prisoner induction materials will also need to be updated. The adjudications training courses for new staff, adjudicators and ALOs will be updated in due course.

(signed)

**Phil Copple**



## 2. OPERATIONAL INSTRUCTIONS

### Key Outcome and Service Elements

- 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 (see [Annex A](#), paragraph 1.11 for further guidance on discovery of offence). If a prisoner is transferred before a charge can be laid the sending prison must 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 must not be extended for reasons such as absence of the reporting officer or the prisoner's attendance at court (which are not uncommon occurrences within prison), but only for exceptional reasons. For Governor cases, 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 (YOI) Rules do not expressly permit this practice and the legal position remains untested. Where a case is referred to an IA see paragraphs 2.31 – 2.37. 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). See [Annex A](#) paragraph 1.1 for further guidance on who can lay the charge.*
- 2.3 *Establishments must have an Adjudication Liaison Officer (ALO), who has passed the ALO training provided by Training Services, and whose role is, when requested, to advise staff on whether a disciplinary charge might be an appropriate response to an incident involving a prisoner, and if so what charge to lay. It is no longer mandatory to consult the ALO before a charge/adjudication is to be proceeded with. Staff can consult the ALO or a competent manager experienced in adjudications for further advice and instructions as necessary (see 2.11 below). Governors must ensure that decisions on whether a charge is laid are exercised fairly, consistently across cases and without discrimination or bias through regular audit of adjudications - see [Annex A](#), paragraph 3.32.*
- 2.4 *Adjudications, including opening and adjourning hearings, must be conducted by Operational Manager grades at a minimum level of Band 7, or equivalent in contracted prisons. Adjudicating governors must have suitable operational experience and pass the Adjudications training provided by Training Services, or the 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 /operational Band 4s who have passed the Minor Reports course.*
- 2.5 *Adjudicators must inquire into reports of alleged disciplinary offences by prisoners under the Prison or 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. The prisoner has the right to present their case, call witnesses and, in an adjudicator hearing, request legal representation or, in an IA hearing, have legal representation.*

- 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, or that it is necessary or expedient for some other reason to be inquired into by an IA, the adjudicator must refer the charge to an IA (District Judge or Deputy District Judge) for the IA to inquire into it. If the disciplinary offence involves conduct which also constitutes a criminal offence under the general criminal law, and the adjudicator considers that internal disciplinary procedures are insufficient to deal with it, the adjudicator must refer the charge to the Police (see paragraphs 2.23- 2.27 in [Annex A](#)).*
- 2.8b *Following the Amendment Rules 2023, where the IA considers that the charge is not so serious that additional days could be awarded for the offence if the prisoner is found guilty, or does not consider it to be necessary or expedient for some other reason for the charge to be inquired into by the IA, the IA will refer the charge and any associated charge back to the governor for them to inquire into, and inform the prisoner who has been charged that the charge has been referred back to the governor for inquiry. A charge inquired into by the governor following this may not be referred back to the IA.*
- 2.8c *Where the IA considers that alternative action (police referral) should be taken by the governor, the IA will refer the charge and any associated charge back to the governor for review and inform the prisoner who has been charged that it has been referred back to the governor for review. This can happen at any time up to and before punishment has been imposed. Where the IA has referred a charge back to the governor for review, the governor must review the charge and may take such action as the governor considers appropriate, or refer the charge back to the IA. Where the governor refers a charge back to the IA, the governor must inform the prisoner that the matter has been referred back to the IA. The IA may not refer the charge back to the governor, and the adjudicator must either inquire into the charge, or if the prisoner has already been found guilty, impose a punishment.*
- 2.8d *If neither paragraph 2.8b nor 2.8c applies, the IA must inquire into the charge.*
- 2.9 *The threat of punishment must not form part of the prison strategy for dealing with acts of self-harm or attempted self-harm. Such acts are better managed through safer custody procedures than the disciplinary process. Staff should be alert to prisoner safety and welfare issues throughout the adjudication process, from charging through to hearing and punishment.*

## **Service Element 1: Placing the prisoner on report**

### **2.10 Output 1: Alleged offences against Prison Rules are reported**

- 2.11 *If a member of staff reporting an alleged disciplinary offence is unsure if the correct disciplinary charge is being laid, they must consult a competent manager (see paragraph 3.6 for definition) or the prison ALO for further guidance or advice as necessary before making a charge against a prisoner. Any charge must accord with the offences listed in the Prison or YOI Rules.*

- 2.12 *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. The reporting officer must sign and date the notice of report.*
- 2.13 *Save in exceptional circumstances, the notice of report must be issued to the prisoner as soon as possible and within 48 hours of the discovery of the alleged and a copy retained in the prisoner's personal record. The time and date of issue must be recorded and Prison-NOMIS must be updated as appropriate. The time and date the case is to be heard by must also be recorded clearly.*
- 2.14 See [Annex A](#) for further details on charging.

## **Service Element 2: Initial Documentation (Once prisoner is placed on report)**

- 2.15 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**
- 2.16 *The notice of report must describe the incident which led to the charge in enough detail to enable the accused prisoner to understand what is alleged and be able to discuss their account of the event during the adjudication. The prisoner must be given a written (and, if necessary, oral) explanation of the adjudication procedure, so that they understand what will happen to them, by issuing the Prisoner Adjudication Information Sheet and Prisoner's Statement - Form DIS2, and this must be recorded with their response on the notice of report. Use of an interpreter and/or extra support provided for identified learning needs must be employed where necessary to ensure that the prisoner fully understands the charge and process. The prisoner must be allowed at least two hours before the initial 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.*
- 2.17 *If, during the initial hearing, the accused prisoner requests an opportunity to consult a solicitor for legal advice before the hearing, the adjudicator must adjourn the hearing for a sufficient time to allow the prisoner to consult a legal adviser. 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 an adjournment is refused the reasons must be recorded on the record of hearing and how and why this decision was made and explained to the prisoner. If agreed, 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). The period of adjournment will be dependent on the individual facts of the case, the prison regime, the prisoner's ability to access facilities to do so, such as a telephone, any protected characteristics which might mean they require additional time or support, such as a learning disability and any other exceptional circumstances that may be relevant. Following the Amendment Rules 2023, the right to legal representation is rescinded if the charge is referred back to the governor by the IA and inquired into by the governor.*
- 2.18 *If, when the hearing resumes, the prisoner requests a further adjournment to consult their solicitor the adjudicator should consider whether this is justified, and may either grant a further adjournment or refuse it (taking account of the grounds stated in paragraph 2.17 above). If a further adjournment is refused the reasons must be recorded on the record of hearing and how and why this decision was made explained to the prisoner.*
- 2.19 *Closed Circuit TV (CCTV)/Body Worn Video Camera (BWVC) footage or pin phone recordings forming part of the evidence in an adjudication must not be copied or sent to anyone. Arrangements must be made for the accused prisoners and legal advisors or representative 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. However, if the risk of disclosing the information to the prisoner and their lawyer is not acceptable or appropriate for security or operational reasons then it cannot be used as evidence to support an adjudication. For further information see [Annex A](#) section 2.11 - 2.13. Consideration must also be given to a request for disclosure of information contained in any intelligence report which has been used to reach a decision in the interest of transparency and procedural fairness. *The test of relevance/bearing must be satisfied and, if it is, the material must be provided to the prisoner and/or legal representative on the appropriate dissemination form.*

- 2.20 Young persons or vulnerable prisoners, who may lack experience of adjudications, should be encouraged to request help from an advocate. *Every young person must have access to the Independent Monitoring Board (IMB) and the Advocacy Service. Governors conducting adjudications on young people or young adults must give due regard to the age, maturity and individual circumstances of each young person/adult involved.*
- 2.21 *If the accused prisoner requests for legal representation or a McKenzie friend to be present at the hearing the adjudicator must consider this request under the 'Tarrant Principles' (see [Annex A](#) 2.14-19). If the request is refused the consideration and reasons for refusal must be recorded on the record of hearing, and how and why this decision was made explained to the prisoner.*
- 2.22 *Where a case is not being investigated by the Police, if the prisoner requests copies of documentation relevant to the adjudication in order to forward them to a legal adviser, a copy of all adjudication paperwork, including witness statements, requested by a prisoner or their solicitor must be provided free of charge without delay (except where, for example, any disclosure would put someone at serious risk of harm, compromises national or prison security or where a medical report or intelligence could identify someone other than the patient who has provided information). See [Annex A](#) paragraph 2.9-2.10 for further guidance on disclosure of adjudication papers.*

### **Service Elements 3, 4 and 5: Prison Manager Adjudication Administration, Schedule and Conduct Hearing**

- 2.23 **Output 3: Hearings are scheduled within correct timescales and staff and prisoners are aware of their requirement to attend scheduled adjudication hearings**
- 2.24 *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](#) paragraphs 2.3-2.4 for further guidance).*
- 2.25 **Output 4: Prisoners have access to further information and receive necessary support during the hearing**
- 2.26 *The adjudicator must confirm during the hearing that the accused prisoner understands the adjudication proceedings and provide any necessary further 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.*
- 2.27 *The accused must be physically and mentally fit to face the hearing and reasonable adjustments need to be put in place for prisoners with a disability. Any medical concerns, action taken, advice given, and the adjudicator's decision and reasons must be noted on the*

record of hearing. If there are no medical concerns a note must be made to this effect. See [Annex A](#) paragraphs 1.14 - 1.26 for further guidance.

**2.28 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**

2.29 *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/s on the prisoner (including any health or welfare impact), any mitigation the prisoner may offer and if the punishment and the location of punishment would have a detrimental impact on any member of staff. Adjudicators must consider the risk factors on an open Assessment, Care in Custody and Teamwork (ACCT) plan or an ACCT closed within the last three months. 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 fully 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 -3.19)*

2.30 *If the charge is dismissed or not proceeded with, this must be recorded and the prisoner informed of the outcome and the reasons for the dismissal.*

**Service Element 6, 7 and 8: Independent Adjudication Administration, Schedule and Conduct Hearing**

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

2.32 *If the prison manager conducting the hearing decides at any stage that the charge should be referred to an IA, the hearing must be adjourned and arrangements made for an IA to hear the case and re-open the hearing within 28 days of the date of referral (in line with Prison Rule 53A). Governors need to provide full reasons for referring the charge to the IA. Under the Amendment Rules 2023, the charge will be sent back by the IA to the governor for them to inquire into if the seriousness test is not met. Care should be taken not to compromise the independence of the IA. The accused prisoner must be informed of the status of the charge throughout the process, including all referrals to the IA from the governor, and all referrals back to the governor from the IA. 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. The hearing can proceed in the prisoner's absence, in the specific circumstances outlined in [Annex A](#) paragraph 2.41. If a prisoner is transferred before the IA hearing, the CMO must be informed on form IA2 if the hearing is to go ahead at the receiving prison after a transfer (see [Annex A](#) paragraph 2.41).*

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

2.34 *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 a disability, learning difficulty or an insufficient command of English. A copy of this instruction must be available for consultation by all parties in the hearing room.*

2.35 *Accused prisoners whose cases are referred to an IA are entitled to be legally represented at the hearing, if they wish. Every young person must have access to the IMB and an Advocacy Service, if they are not otherwise represented.*

**2.36 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**

2.37 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 3.12- 3.19).*

#### **Service Element 9: Post hearing administration**

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

2.39 *If the prisoner receives a punishment of additional days, staff responsible for sentence calculation must be informed and any necessary adjustment to the prisoner's release date must be made within five days of the hearing and the prisoner notified in writing. Staff responsible for offender management must be informed of this adjustment and take account of it when making arrangements for the prisoner's release or when the prisoner is transferred to another establishment. It is important to note that staff responsible for sentence calculations cannot make any adjustments to a prisoner's release date without supporting evidence that additional days have been awarded, (in addition to the entry on Prison NOMIS). The adjudication paperwork must be retained in line with data retention requirements (PSI 04/2018 Records, Information Management and Retention Policy) and provided as evidence. Other acceptable evidence includes an entry on a prisoner's core record or on the calculation sheet where the entry has been initialled and counter initialled along with the existence of a release date notification slip.*

2.40 *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, including awards of compensation payments made against prisoners for damage to prisons and prison property (see paragraphs 2.47-2.50 in this PSI) and act accordingly. Wing staff must be informed of any other forfeiture of privileges.*

2.41 *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 (see [Annex A](#) paragraphs 1.14 – 1.17, and 2.19 in [Annex B](#) for further guidance). The cell sharing risk assessment may need to be reviewed if any indicators of heightened risk become evident during the adjudication process. The indicators are listed in [PSI 20/2015 Cell Sharing Risk Assessment Annex A](#), Paragraph 1.4.*

#### **Service Element 10: Remission (restoration) of additional days**

**2.42 Output 10: Eligible prisoners are able to apply for remission (restoration) of additional days**

2.43 *In line with Prison Rule 61(2) and YOI Rule 64(2) a system must be in place allowing eligible prisoners to apply for remission of additional days on the grounds of good behaviour (see [Annex A](#) paragraphs 3.20- 3.31)*

#### **Service Element 11: Minor reports (young offenders)**

**2.44 Output 11: A minor report system for young offenders (YOs) is in place at the discretion of the Governor**

2.45 In establishments holding young offenders the Governor may choose to operate a minor reports system. *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 (see [Annex A](#) paragraphs 2.80 – 2.89).*

Recovery of monies for damage to prisons and prison property

**2.46 Where a prisoner causes damage to prisons or any other property belonging to a prison, and has subsequently been found guilty, adjudicators require the prisoner to pay compensation for the damage caused.**

2.47 The Prison and YOI Rules require Prison Adjudicators and Independent Adjudicators to impose a requirement that a prisoner pay compensation for the destruction or damage caused to prisons and prison property, and allow Governors and Directors of contracted out prisons to take monies directly from prisoners' Private Cash, Savings and Spend accounts to satisfy the compensation requirement. *Adjudicators must ensure the following:*

- *At the start of the hearing inform the prisoner that, if found guilty, the prisoner will be required to pay compensation for the damage caused and that monies will be recovered from the prisoner's accounts to satisfy the compensation requirement. It is advised that the reason for this compensation rule is explained to them.*
- *Specify the estimated total value of the damage caused. To assist with their deliberations Governors must ensure that Adjudicators are provided with their assessment of the cost of the damage caused (see [Annex C](#) paragraphs 1.11 -12).*
- *Give the prisoner the opportunity to raise any mitigating factors and these must be recorded in the record of hearing.*
- *Specify the total amount to be recovered – there is a presumption that this will be the full value of the damage unless there are sufficiently compelling reasons to make a lesser award, but the amount must not exceed £2000 and never exceed the actual value of the damage caused. Adjudicators must not concern themselves with the process of recovery or attempt to set weekly deductions;*
- *Make it clear that the process of recovery will be determined outside of the adjudication but that a minimum of no less than £5.00 will be left in their accounts after payments towards the damage have been taken;*
- *Explain that the debt will last for a maximum of 2 years from the date of the award or until the prisoner's sentence expiry date, whichever occurs first and regardless of whether or not the full amount has been paid;*
- *Not suspend the compensation award as the recovery of monies is not a punitive award;*
- *Not impose a stoppage of, or deduction from, earnings as a punishment, as this may impede the recovery of monies for the damage caused. However, it will remain open to the Adjudicator to award another punishment(s) for the behaviour as listed in the Prison Rules or YOI Rules such as a loss of privileges.*

- *Recovery must cease on release from prison custody (excluding Release on Temporary Licence (ROTL)) but the amount owing under the compensation requirement will remain outstanding until the two-year time limit expires or until the prisoner reaches their Sentence Expiry Date, whichever occurs first and regardless of whether or not the full amount has been paid.* Therefore, if a prisoner is recalled to custody on a sentence that was being served when the compensation requirement was imposed the balance of the debt can be recovered, provided the time limit has not expired. Similarly, if an unconvicted prisoner is bailed and then returned to custody on the same charge(s), recovery can continue.

2.48 *Recovery of any outstanding debt must continue on transfer from one establishment to another. Recovery must not continue if the prisoner is returned to custody solely on a different charge and sentence.*

2.49 See [Annex C](#) for further detailed guidance on the procedure for recovery of monies.

### **3. POLICY AND STRATEGIC CONTEXT**

#### **The Prison Rules 1999 and the Young Offender Institution Rules 2000**

3.1 The Prison and YOI Rules 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**

3.2 Adjudications (including a special form of hearing known as Minor Reports) are the procedures by which offences against the Prison or YOI Rules allegedly been committed by prisoners or 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.

3.3 The decision whether to lay a disciplinary charge is a discretion, not a duty, and this discretion has to be exercised fairly and be a proportionate response to the offending behaviour. The disciplinary system may not be a suitable tool of punishment for behaviours associated with mental illness, and alternative responses to the behaviour (other than laying a charge) must always be fully considered prior to proceeding with a charge.

3.4 Staff should consider less formal measures in dealing with minor infringements of Prison Rules, such as Five-Minute Intervention (FMI) and informal conflict resolution techniques. Within the youth estate, those less formal mechanisms may include the Custody Support Plan (CUSP) and or engaging the young person in restorative practice via the Conflict Resolution model. The incentives scheme can also be used as a tool to manage low level misconduct by considering patterns of behaviour which could lead to moving down an incentive level.

3.5 Incentive levels are determined by patterns of behaviour, personal progress and engagement with the prison regime and sentence plan targets. Whereas the adjudication process helps to maintain order and discipline within a prison by awarding punishments for breaches of the Rules. There may be occasions when behaviour results in both a disciplinary punishment for a specific act and a review and downgrading of incentive privilege level because a prisoner's behaviour falls significantly below expected standards. Adjudicators should consider requesting a review of any incentives action where a prisoner is found not guilty at an adjudication in relation to the same incident. Each case should be considered on its individual merits and in line with the incentives policy.



## Authority to adjudicate

- 3.6 Under PR 81 / YOI R 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 manager grade at a minimum level of Band 7, or equivalent in contracted prisons. Adjudicating governors must have suitable operational experience and pass the Adjudications training provided by Training Services, or the equivalent training provided for staff of contracted prisons.* In establishments operating a minor reports system these hearings may be delegated to trained and competent Supervising Officers/operational Band 4s. 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.
- 3.7 Controllers of contracted prisons retain the authority to conduct adjudications, but are not expected to do so routinely. IAs are District Judges or Deputy District Judges approved by the Lord Chancellor for the purpose of enquiring into charges referred to them. It is important that they are always treated with respect and courtesy, and addressed by their title and surname, not their first name. Their training is a matter for the Senior District Judge (Chief Magistrate) at the City of Westminster Magistrates' Court.
- 3.8 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, Mandatory Drug Testing (MDT) reports, CCTV/PINphone/Body worn video camera 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, what the appropriate punishment should be. The adjudicator will dismiss the charge if not satisfied that it has been proved beyond reasonable doubt.
- 3.9 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.
- 3.10 When considering requests for legal representation or a McKenzie Friend for prisoners at Governor hearings the 'Tarrant Principles' are applied (see [Annex A](#) paragraph 2.14). Prisoners are entitled to be legally represented at hearings by independent adjudicators.
- 3.11 See [Annex E](#) for significant adjudication case law from European Court judgements and judicial reviews.

## Authority for Independent Adjudicators to consider sufficiency of seriousness of IA referrals and to refer cases back to governors

- 3.11a The Amendment Rules 2023 provide Independent Adjudicators with the power to consider the seriousness of a disciplinary charge referred to them and refer it back to the governor to deal with if the case does not meet the seriousness threshold for referral. In light of this, it is crucial that governors provide their reasoning for their referral to the IA.
- 3.11b The Amendment Rules 2023 provide Independent Adjudicators with the power to refer a charge back to the governor for review for a police referral. This can happen anytime from initial referral up to and before the punishment is imposed. The Amendment Rules also provide for the governor to re-refer cases back to the Independent Adjudicator where a police referral is not being pursued.

### **Authority to recover monies for damage to prisons and prison property**

- 3.12 PR 55AB and YOI R 60AB require adjudicators to impose a requirement for prisoners to pay for destroying or damaging any part of a prison/YOI or any other property belonging to a prison. *The award must be made only following a finding of guilt for a charge under PR 51 (17) or 51 (17A) or YOI R 55 (18) or 55 (19) which involves the destruction of or damage to any part of a prison or prison property, including racially aggravated damage or destruction, and may include the cost of labour to put it right.*
- 3.13 PR 61A and YOI R 64A provide Prison Adjudicators and Independent Adjudicators with the power to take money directly from prisoners' prison accounts to satisfy compensation requirements imposed in relation to damage caused to prison property. The power can be exercised only following a finding of guilt on an adjudication concerning destruction of or damage to prison property and only where the Adjudicator has made a specific award requiring the prisoner to pay for the damage. Furthermore, PR 55B and YOI R 60B allow for the appeal part of the process to encompass the award for recovery of monies for the destruction or damage caused. See [Annex C](#) for further guidance.

## Supporting information on Adjudication procedures

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## 1. **BEFORE THE ADJUDICATION**

### Laying charges

(A full list of Specimen charges, definition of offences and punishments can be found at [Annex B](#)).

- 1.1 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 recorded as "hearsay evidence" – see paragraph 2.49 in this Annex for an explanation. 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 Operational Support Grade (OSG), and any other directly employed officer of the prison, anyone seconded from within HMPPS, 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 2.49 below), and the temporary employee should be called as a witness at the adjudication hearing, to provide direct evidence in support of the charge.
- 1.2 Staff are reminded of the importance of timely completion of paperwork - the charge must be laid as soon as possible and, save in exceptional circumstances, within 48 hours of the discovery of the offence - and the tests that will be applied to investigating and proving the charges in adjudications (see [Annex B](#)). Before laying a charge, staff should check if the prisoner has been assessed as having a low literacy level, a learning difficulty or disability that would make reading or understanding the forms difficult or unlikely. The appropriate support should be provided where necessary, but this should not be a reason to lay a charge outside of the 48-hour time frame. Electronic signatures are permitted provided that there is a defined audit trail which would guard against allegations of tampering.

### Status of accused and Rules applicable

- 1.3 *Charges must be in accordance 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.*

<b>Status of accused</b>	<b>Designation of accommodation</b>	<b>Rules applicable to charging</b>	<b>Rules applicable to punishment</b>
Adult, male & female	Prison	PR 51	PR 55
Adult (21 or over) female	YOI	YOI R 55	YOI R 65
YO (u 21) sentenced to detention in YOI or Secretary of State (SoS) has directed they be held in a YOI	YOI or dual designated YOI/prison	YOI R 55	YOI R 60
YO (u 21) sentenced where SoS has	Prison	PR 51	PR 57

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directed they be held in prison)			
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

YO = Young Offender

### Immigration Detainees and Foreign National Prisoners

- 1.4 Immigration detainees and foreign national prisoners held within the prison estate are subject to Prison Rules not Detention Centre Rules. Immigration detainees are treated as unconvicted prisoners with the same rights and responsibilities as unconvicted prisoners (PSO 4600 'Unconvicted, Unsentenced and Civil Prisoners').
- 1.5 There is no requirement for an unconvicted prisoner to work but they may choose to under Rule 31 - see paragraph 1.8 of [Annex C](#) regarding the recovery of monies for damage to prisons and prison property from this type of prisoner.

### Children and Young Persons

- 1.6 The Children Act 2004 places a duty on key people and bodies to make arrangements to ensure that their functions, and any services that they contract out to others, are discharged with regard to the need to safeguard and promote the welfare of children. In the prisons context, the duty does not give governors any new functions, nor does it over-ride their existing functions. However, it requires them to carry out their existing functions in a way that takes into account the need to safeguard and promote the welfare of children.
- 1.7 All young people should be signposted to the Independent Monitoring Board (IMB) and Advocacy Service to ensure they fully understand, and are able to engage with the adjudication process. Adjudicators must give due regard to the age, maturity and individual circumstances of each young person involved.
- 1.8 Young people must not be given cellular confinement as an adjudication punishment. Where a young person receives a punishment of removal from a wing, the young person should only be removed to a segregation unit in exceptional circumstances. Even in cases where a young person is removed from a wing, there is a strong presumption that they will continue to have unfettered access to other parts of the regime, unless there is an assessed risk which makes their participation in other parts of the regime unsafe.
- 1.9 All adjudications for young people must be consistent with the instructions and principles found in [PSI 08/2012 Care and Management of Young People](#).

### Offences in court rooms

- 1.10 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).

## Annex A

### Discovery of offence

- 1.11 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 guidance under individual charges in [Annex B](#)). The charge is laid when the completed notice of report is handed to the prisoner. *The charge must be laid as soon as possible and, save in exceptional circumstances, within 48 hours of the discovery of the offence.* 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 paragraph 2.8 in this annex).

### Multiple charges and charges with more than one accused

- 1.12 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).
- 1.13 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.*

### Self-harm

- 1.14 HMPPS's response to self-harm or attempted self-harm must be to look to the care of the individual prisoner as its priority. It would not normally be appropriate to lay disciplinary charges where the prisoner's actions were related to self-harm or preparations for it. The threat of punishment must not form part of the prison strategy for dealing with such behaviour. Such acts are better managed through safer custody procedures than the disciplinary process.
- 1.15 A prisoner's challenging or anti-social behaviour may also be a sign of distress or mental ill-health and must not be viewed in isolation as a disciplinary issue. If early signs of distress or tendency to self-harm are overlooked or met with a punitive response, the risk of eventual tragedy may be increased. Because of this, staff should consider whether the behaviour presented is the first manifestation of a potential safer custody issue, and whether taking the prisoner through the disciplinary process is the correct response.
- 1.16 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) - intentionally endangers the health or personal safety of others or, by his/her conduct, is reckless whether such health or personal safety is endangered - may exceptionally be appropriate where the prisoner's actions also intentionally or recklessly endangered others, for example starting a fire. The person managing the incident will need to decide whether it is likely that the prisoner intended to cause injury to others or was reckless about it. If s/he is satisfied about intention or recklessness, a charge may be brought. Otherwise the events could be interpreted as an indication of severe distress which would not warrant a punitive response. For further

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guidance on interpretations of 'intentionally' or 'recklessly, see paragraphs [Annex B](#) paragraphs 1.25-1.31 and 1.87 -1.88.

- 1.17 The adjudicator should then take account of the accused prisoner's state of mind at the time of the incident and *must be aware of the risk factors listed on any open Assessment, Care in Custody and Teamwork (ACCT) plan, or any ACCT that was closed in the three months before the charge was laid - when they are considering the evidence and imposing punishments. Where a prisoner's risk of harm to self comes to light only during an adjudication, the adjudication must, be adjourned for advice from healthcare staff and referral to the ACCT process.* Further information on safer custody procedures can be found in [PSI 64/2011 Safer Custody](#).

### Adult Safeguarding

- 1.18 In line with the guidance in [PSI 16/2015 Adult Safeguarding](#), *Governors must have systems in place to record and respond to reports of suspected instances of abuse or neglect, including protecting complainants / reporters from victimisation.* Definitions of abuse and neglect are provided in PSI 16/2015.
- 1.19 *For abuse and neglect to be prevented, standards of behaviour must be set and maintained for prisoners.* Serious cases of abuse or neglect will be referred to the police in accordance with the Crimes in Prison Referral agreement and where appropriate to the Disclosure and Barring Service.
- 1.20 Other cases will be considered on a case by case basis, but generally the most appropriate charges would be PR 51(1) YOR 55(1) commits any assault, PR 51(20) YOIR 55(22) uses threatening, abusive or insulting words or behaviour or PR 51 (5), YOIR 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. These could deal with the following categories of behaviour:
- **physical abuse** – including any form of assault; withholding food or drink; force-feeding; wrongly administering medicine; failing to provide physical care and aids to living;
  - **emotional or psychological abuse** - including verbal abuse; threatening abandonment or harm; isolating; taking away privacy or other rights; harassment or intimidation; blaming; controlling or humiliation;
  - **financial or material abuse** - including withholding money or possessions; theft of money or property; fraud; intentionally mismanaging finances; borrowing money and not repaying; discriminatory abuse - including verbal harassment or other maltreatment due to a prisoner's protected characteristics (as defined in the Equality Act 2010 and explained in PSI 32/2011 Ensuring Equality).

### Prisoners with disabilities, mental impairments and communication or language difficulties

- 1.21 *If prisoners have any disability, communication or language difficulty that may impair their ability to understand and participate in the hearing, adjudicators must consider what help may be provided for them, and adjourn as necessary for this to be arranged (PSI paragraph 2.27).* For example, if adjudication paperwork needs translating and an interpreter is not readily available the Governor/Director may authorise the use of the central contract arranged via the contracted provider<sup>1</sup>.

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<sup>1</sup> See the relevant Procurement Bulletin here: <https://moj.myhub.sscl.com/finance-and-procurement/purchase-to-pay/procurement-bulletins>



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- 1.22 Account should also be taken of ageing mental conditions, such as dementia and mobility. For example, taking account of dementia when deciding whether it is fair and appropriate to lay a disciplinary charge (this is a discretion not a duty) and, ensuring that the elderly prisoner has the assistance they need to participate in the hearing to ensure fairness, and that the hearing only proceeds if the prisoner is fit to take part.
- 1.23 Prisoners with disabilities such as deafness, and visual or mental impairments may require special facilities. Alternative formats may not always be necessary; for example, a prisoner who is hard of hearing may be able to lip read as long as those taking part in the proceedings ensure that they address the prisoner directly and enunciate clearly.
- 1.24 Alternative formats, which may help those with disabilities include:
- Audio tape format for those who have visual impairments, dyslexia, or a learning disability;
  - British Sign Language (BSL) with a sign language interpreter for those deaf or hard of hearing prisoners who use it. Many prisons have one or more members of staff trained in BSL or interpreters can be located using the CACPD Directory. A portable induction loop may support those using a hearing aid. Further information can be found in [PSI 32/2011 Ensuring Equality](#);
  - Large print or Braille for those prisoners with visual impairment.
- 1.25 It is important to present information about the proceedings in a format that the individual prisoner can understand and to periodically check that they understand what is happening and what is being said.
- 1.26 For further advice on making reasonable adjustments for prisoners with a disability please see [PSI 32/2011 Ensuring Equality](#).

### **Pre-hearing procedures**

#### Segregation

- 1.27 In those cases where there is a significant/real risk of collusion or intimidation in between the period of actually laying a charge and the Governor's initial consideration of whether to refer the case to an IA, the accused prisoner may be segregated under Prison Rule 53 (4) / YOI Rule 58 (4). If held for up to four hours the normal policy procedures which relate to segregation will not apply but if this period is exceeded, then this is segregation and staff must refer to and apply the guidance in [PSO 1700 Segregation](#).
- 1.28 If the hearing is opened and subsequently adjourned and it is decided that the accused prisoner should remain in the segregation unit until the hearing is resumed, Prison Rule 45 / YOI Rule 49 will then apply. *However, if the adjournment exceeds 72 hours (3 days) then the Segregation Review Board must review the decision to segregate in accordance with the policy set out in Reviewing and Authorising Continuing Segregation & Temporary Confinement in Special Accommodation, which part amended PSO 1700.*
- 1.29 There will be no need for an Initial Segregation Health Screen (ISHS) 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.
- 1.30 For guidance on segregating prisoners who are on ACCT, please see Chapter 5 of [PSI 64/2011 Safer Custody](#) and [PSO 1700 Segregation](#).

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### Accused prisoner's fitness for hearing

- 1.31 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. For prisoners who may be considered for a period of cellular confinement upon a guilty finding, Healthcare staff (registered nurse or doctor) should prepare an ISHS in advance (provided there is time to do so properly) and where it hasn't been completed prior to the adjudication, the adjudicator will either adjourn until it is completed or ensure that it is completed within two hours of location in the segregation unit. *In any event prior to deciding whether to impose cellular confinement (including suspended cellular confinement) as a punishment upon a guilty finding, the adjudicator must seek medical advice (via an ISHS), as to whether there are any medical reasons why the punishment is unsuitable and adjudicators must take that advice into account in making that decision (in line with Prison Rule 58/YOI Rule 61(1) and paragraph 2.3 (8) of [PSO 1700 Segregation](#)). See further guidance in [Annex B](#) – Charges and Punishments, paragraphs 2.13-2.24.*
- 1.32 Adjudicators should be satisfied that the accused prisoner is physically and mentally fit in the following circumstances and if there are any doubts about this, Healthcare staff should be asked for advice:
- to face a hearing (fitness to attend hearing)
  - to face the subsequent punishment (health and welfare impact of punishment), - see paragraphs 2.63 and 2.64 in this Annex and paragraph 2.19 in [Annex B](#).
  - if the prisoner's mental and 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 paragraphs 1.25 - 1.31 and 1.87 -1.88 of [Annex B](#) 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 and explained to the prisoner. If there are no medical concerns a note must be made to this effect. See paragraphs 1.14 -1.17 of this Annex for guidance on prisoners who may have self-harmed.*

### Transfers before hearing is commenced or concluded

- 1.33 It is important that cases continue when a prisoner transfers to another prison – the adjudication paperwork should be sent to the receiving prison as soon as possible - see paragraph 2.41 of this Annex for advice on continuing IA hearings. Where a prisoner is moved from an open to a closed prison due to a disciplinary offence, the notice of report or details of the offence should be forwarded to the closed prison, who should lay the charge within 48 hours of discovery.

## **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. See [Annex J](#) about ensuring the safety of an IA. 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

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least two escort staff should be present at all IA hearings (other than those conducted via video link).

- 2.2 The hearing room and furniture should be risk assessed to reduce the potential for violence. Good practice is to ensure that furniture is screwed down. The adjudicator should also ensure that the room is accessible for prisoners and others with mobility issues, and the necessary adjustments are made to room layout, when required. The 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 and previous disciplinary record should **not** be present in the room.

### **Hearings in a 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. The prisoner should be given a Refusal to attend governor hearing form (see [Annex F](#)), and be given the opportunity to state their reasons for refusing to attend. If the prisoner refuses to sign the document, the officer should note this on the form, also noting any reasons raised verbally by the prisoner. This should be dated and signed by the officer and a copy saved to present to the governor. 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. *The adjudicator must record the reasons why they concluded that proceeding with the hearing in the absence of the prisoner was just and fair under all the circumstances.*
- 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). *Any actions and reasons must be noted on the record of hearing.*

### **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 should 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 laid properly in accordance 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

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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 paragraph 2.56 in this Annex. Where hearings are proceeding in a prisoner's absence, confirm that the prisoner has been informed and note reasons for absence.

2.8 Upon opening the hearing, the adjudicator will:

- Confirm the accused prisoner's identity and establish fitness
- Check that time limits in relation to laying the charge and opening the hearing have been met in accordance with the Prison or YOI Rules.
- Read out the charge and confirm that the charge as recorded on the DIS1 is identical to that on the DIS3.
- Consider whether the offence falls within the crimes listed on the Mandatory Crime Referral Criteria in [Annex A](#) of the Crime in Prison Referral Agreement (see paragraphs 2.23 – 2.27 in this Annex), or whether the charge is serious enough or there are aggravating factors for a referral to the police. If a case is referred to the police at this stage, a plea must not be taken.
- If not referred to the Police or if the police confirm that no prosecution is to take place, consider whether the charge is so serious that additional days should be awarded if the prisoner is found guilty or that it is necessary or expedient for some other reason for referral to the IA (see paragraphs 2.28 – 2.33 in this Annex).
- If a case has been referred back to the governor by the IA for review, the governor must note the reasoning provided by the IA for a police referral and make a decision on suitability for referral based on the evidence and facts of the case. If it is not suitable for a police referral, the governor may refer back to the IA.

Otherwise proceed with the hearing:

- Confirm that the prisoner understands the meaning of the charge. If not, explain it.
- Check if the prisoner requires any help or assistance such as an interpreter, disability aid. In IA cases prisoners are entitled to legal representation if they wish, and an adjournment should be granted to allow time to arrange this. If the IA refers the case back to the governor for inquiry, the prisoner loses their automatic right to legal representation. In cases heard by governors, any request for legal representation or a McKenzie friend at the hearing (see paragraph 2.14 in this Annex) should be considered under the 'Tarrant Principles' laid down by the Divisional Court in 1984 – see paragraphs 2.14 and 2.15 in this Annex. If the governor agrees to allow legal representation a suitable adjournment should be granted to arrange this. If they wish to consult a solicitor for legal advice before proceeding further, the hearing should be adjourned giving prisoners sufficient time in which to obtain legal advice. Adjournments will be dependent on the individual facts of the case, the prison regime, the ability for the prisoner to access facilities such as a telephone, any protected characteristics which might mean they require additional time or support, such as a learning disability, and any other exceptional circumstances.
- Confirm that the prisoner generally understands the adjudication procedure and that he/she has been given Form DIS2. If not, offer further explanation.

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- 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). If not, consider how much more time will be needed, 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.
- If the prisoner does not want legal advice or representation at the hearing, or when this has been obtained (or representation refused) and the adjourned hearing is resumed, the adjudicator should ask whether the prisoner pleads guilty or not guilty to the charge. If the prisoner equivocates or refuses to plea, a not guilty plea should be recorded.
- 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)
- 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, justifying acceptance or refusal of witnesses (see paragraphs 2.46 and 2.52 in this Annex on whether witnesses will be called).
- For charges in relation to damage caused to the prison or prison property, confirm that the prisoner has been informed that, if found guilty they will be required to pay compensation for the damage caused and that monies will be recovered from their accounts to satisfy the compensation requirement. Then confirm that an assessment of the cost of the damage is attached.

### **Disclosure of adjudication papers**

- 2.9 *Where a case is not being investigated by the Police, a copy of all adjudication paperwork, including witness statements, requested by a prisoner or their legal representative/adviser must be provided without delay (except where any disclosure would put someone at serious risk of harm, compromises national or prison security, or where a medical report or intelligence could identify someone other than the patient who has provided information, see all considerations at 2.09 -2.10) at no cost. In cases where urgent action is required, the paperwork can be scanned/faxed direct to the prisoner's representative or legal adviser. Where a case has been referred to the Police, information must not be disclosed until there is either a decision to prosecute or it has been sent back to the prison for adjudication.*
- 2.10 Information relevant to the disclosure of adjudication papers or the decision to continue segregation may be withheld from the prisoner in certain circumstances, such as:
- in the interests of national security;
  - for the prevention of crime or disorder, including information relevant to prison security;
  - for the protection of a third party who may be put at risk if the information is disclosed;
  - if, on medical or psychiatric grounds, it is felt necessary to withhold information where the mental and or physical health of the prisoner could be impaired;
  - where the source of the information is a victim, and disclosure without their consent would breach any duty of confidence owed to that victim, or would generally prejudice the future supply of such information. If this information is withheld, a 'gist' (i.e. a summary) of the information should be provided. If this is not possible for any of the reasons listed, the evidence cannot be used as evidence to support an adjudication.

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- 2.11 *Closed Circuit TV (CCTV)/Body Worn Video Camera (BWVC) footage or pin phone recordings forming part of the evidence in an adjudication must not be copied or sent to anyone. Arrangements must be made for the accused prisoners and legal advisors or representative 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.*
- 2.12 The reporting officer should prepare a summary of the evidence contained in the CCTV or BWVC footage and identify the persons within it. It is not appropriate for the prisoner to identify themselves in the footage as the evidence may be contested. When viewing evidence of a prisoner's behaviour especially where the prisoner is believed to have taken a substance Adjudicators may consider it too distressing for the prisoner to view and may offer the prisoner the option of declining to view the footage.
- 2.13 If the risk of disclosing CCTV or BWVC evidence to the prisoner and their lawyer is not acceptable or appropriate for security or operational reasons then it cannot be used as evidence to support an adjudication. For further information on the use of body worn video cameras please see [PSI 04/2017 – Body Worn Video Cameras](#). Consideration must be given to the matter of the infringement of “personal rights” under the General Data Protection Regulation (GDPR) where images are captured of not only those subject to the adjudication but anyone who is unrelated to the incident and just happen to be present in the vicinity. This would be applicable to staff, prisoners and any third party and any disclosure could require the consent of the individual concerned or the images to be pixelated.

### **Tarrant Principles**

- 2.14 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 consideration and 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**

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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 1.32 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.

- 2.15 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.
- 2.16 If the prisoner is granted legal representation for a hearing by a governor the adjudicator should consider whether the Government Legal Department should be asked to arrange representation for HMPPS. 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 HMPPS will only advise, not present the case against the prisoner.
- 2.17 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).
- 2.18 Any arrangements made under the above two paragraphs should be made by staff unconnected with the adjudication.
- 2.19 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 and natural justice principles**

- 2.20 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

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go on, adjudicators must decide whether, under all the circumstances, proceeding after a delay would be contrary to the principles of natural justice. Overall, the test is whether the delay has undermined the prisoner's opportunity to properly present his/her own case, however the specific factors that need to be considered in making that decision are:

- The availability of witnesses (which includes an assessment of how significant/important a particular witness might be in the context of a particular case);
- Any deterioration in the quality of the evidence as a result of the passage of time, including physical/tangible evidence, and the memory of key witnesses being weakened;
- Whether the evidence is no longer held/available at all due to the passage of time;
- Any other reason why delay may have caused unfairness, in the sense of having undermined the prisoner's ability to present his own case properly (e.g. in the intervening period, the prisoner has suffered a serious deterioration in his health)

2.21 The application of the principles of natural justice apply to all hearings of disciplinary charges, including independent adjudications. In addition, the effect of *Ezeh and Connors v UK* (2003) is that, where additional days are in contemplation, Article 6 (right to a fair trial) applies. Article 6 additionally requires that a prisoner is entitled to a hearing within "a reasonable time" and what is reasonable will depend on all the circumstances of the case in question.

2.22 If the adjudicator decides it would be unfair to continue hearing the charge it should be recorded as 'not proceeded with' (see paragraph 2.56 in this Annex for further information on charges 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**

2.23 The Crimes in Prison Referral Agreement<sup>2</sup> sets out the principles relating to the referral, investigation and prosecution of crimes committed in prison. In situations where a serious criminal offence appears to have occurred the police should be contacted immediately it is discovered. This Protocol sets out which crimes must be referred to the police. Other crimes are referred to the police where it is determined that the relevant internal disciplinary processes are insufficient to deal with the offence and where circumstances indicate that referral to the police is appropriate or where the victim requests police referral. Where an incident is referred to the police, disciplinary charges should be laid in the normal way within 48 hours of the incident, and an adjudication opened on the following day, unless it is a Sunday or a bank holiday, and adjourned pending police investigation. A plea must not be taken at the beginning of the first hearing. The prison will prepare a prison community impact statement which will be sent to the police to describe the impact the crime has on the prison environment. Where a police referral is made after the governor opens the first hearing, the case should not be referred to an IA at this stage, since the 28-day time limit for an IA to open a hearing may expire before the police/Crown Prosecution Service (CPS) reach a decision. The prisoner should be kept informed of any progress at suitable intervals.

2.23a Where the case was initially investigated by the IA, where a plea was taken from the prisoner before deciding to refer the charge back to the governor for review for police referral (see paragraphs 2.34a-2.34b), this does not prevent a police referral from being made because a guilty plea in an adjudication is not the same as pleading guilty under a police caution.

2.24 Referring a crime to the police does not automatically mean that a full police investigation will take place or that the CPS will be consulted and a criminal prosecution will take place.

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<sup>2</sup> <https://www.gov.uk/government/publications/handling-crimes-in-prison-protocol>



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- 2.25 Where a decision is made that a formal criminal investigation will not take place, the Crime in Prison Single Point of Contact (SPOC) will be informed as soon as practicable and in any case within 10 working days of the referral being made. This will enable any prison adjudication procedures to continue.
- 2.26 As soon as the decision is made by the CPS to prosecute, the adjudication must be dismissed and recorded as 'not proceeded with'. It would be double jeopardy for the prisoner to be punished – or acquitted – by a court, and then face a further adjudication punishment.
- 2.27 Where the prisoner will not face prosecution, the adjudication may then resume, provided the delay in reaching a decision on prosecution has not made it unfair to proceed. If a case is not being pursued by the police or CPS, this is not a sufficient reason alone to dismiss an adjudication. If the CPS has concluded that there is no reasonable prospect of conviction because the evidence is not reliable or credible, it may not be reasonable or fair to continue an adjudication - for example because there are solid reasons for concluding that the proposed prosecution witness evidence lacks integrity, accuracy or consistency. However, the strict rules about the admissibility of evidence in a criminal trial do not apply in the same way in an adjudication hearing and the CPS may have decided not to prosecute for other reasons and therefore, in some cases, it may still be appropriate to go ahead with an adjudication even though the CPS has concluded that there is no realistic prospect of conviction at a criminal trial. Each case should therefore be determined on a case by case basis, considering why a criminal investigation isn't being pursued. Any reasons why a case was not prosecuted should be noted on the record of hearing and if a case is referred to an IA it must be recorded on the referral form (IA1) under additional comments.

### **Referral to an Independent Adjudicator**

- 2.28 The most serious disciplinary offences will normally be referred to the police, as in paragraph 2.23 in this Annex, 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 IA. If the prisoner is eligible for additional days (see paragraphs 2.72 – 2.77 in this Annex), 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 (see paragraph 2.32 in this Annex). 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.
- 2.29 Following the High Court judgment in *Smith* [2009] EWHC 109 (see [Annex E](#)), the Prison and YOI Rules were amended in 2011 to allow for a charge against a prisoner who is not eligible for additional days to be referred to an IA, 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.
- 2.30 If one of a group of related offences by the same prisoner is referred to an IA, the other charges will also be referred. Similarly, if one of a group of related offences by the same prisoner is referred back to the governor by the IA (see paragraphs 2.34a-2.34b), the other charges will also be referred back.

### Reasons for referral to the IA

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- 2.31 *The adjudicator must state their reasons for referral on the record of hearing (DIS3), as giving no reasons or quoting 'seriousness of the offence' alone will mean the case is sent back and cannot be re-referred to the IA for consideration of added days (see paragraph 2.34b) for example, if a Governor referred a case that was simply a charge of disobeying an Officer, with no other aggravating features. This means that serious rule breaking cannot be given added days by the governor who will have to hear the adjudication and does not assure victims that proper justice has been done. Adjudicators should also not use printed stamps with blanket reasons for referral to the IA. Adjudicators must not rely on the fact that a matter has been previously referred to the police or the facts of the case to justify referral to the IA. The reasoning must demonstrate why the test for seriousness below has been met. This may include factors such as: what happened, impact on the regime, any injuries, if the disobedience is repeated, or risk to security, order and control, or safety. Care should be taken not to compromise their independence; staff must not discuss individual cases with the IA.*
- 2.32 The test for seriousness (see paragraph 2.28 in this Annex) is whether the offence poses a very serious risk to order and control of the establishment, or the safety of those within it. Each case will 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,
  - 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
  - An offence motivated by a protected characteristic under the Equality Act 2010 (i.e., Age, Race, Disability, Religion or Belief, Gender, Gender reassignment, Sexual Orientation, Marriage and Civil Partnership, Pregnancy and Maternity) is an aggravating factor and may merit referral
  - Hostage incidents where the victim has declined police involvement
  - 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

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- 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 there are aggravating factors 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 [Annex B](#) Charges and Punishments, paragraph 1.154 on attempted assault)

2.33 This paragraph has been deleted following the Amendment Rules 2023.

2.34 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.

### Referrals back to governor from the IA

2.34a Following a charge being referred to the IA, the IA will consider the reasons the governor has given for the referral (as outlined above in the seriousness test in paragraph 2.31) or any other reason why it would be appropriate for the IA to consider it (as per paragraph 2.29) and may:

- i. Refer the case back to the governor to hear the case instead where the justification for referral is insufficient or they do not agree with the seriousness of the charge. The governor must re-open the hearing as soon as possible and inform the prisoner of the IA’s decision and proceed with the hearing. In this circumstance, the governor cannot re-refer cases back to the IA. The prisoner will lose their automatic right to legal representation once the IA has referred their case to be inquired into by the governor.
- ii. Refer the case back to the governor to review for a police referral where they consider the charge warrants a greater punishment than additional days. However, there will be cases where the victim decides they want a police referral and the governor must make this referral. This can happen at any time during the IA hearing up to the finding of guilt and before a punishment is imposed. The governor must re-open the hearing as soon as possible, considering the evidence and witnesses available and decide whether a police referral is the most appropriate action.
  - If the governor decides to refer the case to the police, the procedures in paragraph 2.23-2.27 must be followed and the governor has one final option to re-refer back to the IA to conclude the case, where the police do not take it forward, considering the principles of natural justice. The IA cannot refer it back to the governor again.
  - If the governor decides not to refer the case to the police, the governor can refer it back to the IA to conclude the case. The IA cannot refer it back to the governor again.

2.34b The IA and governor will record and explain their reasons for any referrals between them in the DIS 3 and notify the prisoner at the hearing of their decisions. Any related charges from the same incident will also be referred back. Staff must also ensure that any referrals back to the governor or IA are clearly documented in the IA1 and IA3 forms for the information of the Chief Magistrate’s Office and a note made on the prisoner’s record.

2.35-2.39 (These paragraphs are now included in [Annex J](#).)

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### Arranging IA hearings

- 2.40a All Independent Adjudications will take place virtually using the laptops provided for this purpose to each prison (guidance on preparing for virtual hearings is provided at [Annex I](#)), unless the IA deems a hearing should be held face-to-face in the interests of justice. Staff have responsibility for the security of the laptop for virtual Independent Adjudications:
- *It must never be left alone in a prisoner's possession*
  - *It must be accounted for at the end of each session*
  - *It must be locked away in a secure area when not in use*
- 2.40b In certain circumstances, the IA may exercise their discretion and consider that the hearing should take place in person in the interests of justice to ensure common law fairness and compliance with Article 6. The IA will inform the prison of their decision and the hearing will be adjourned for the CMO and the prison to arrange for a case to be heard in person (see [Annex J](#) for the protocol and guidance on arranging in person hearings). If one charge is being heard in person on a particular day, it may be appropriate for the other charges listed on that day to also be heard in person. The CMO will liaise with the IA and the prison to determine the most appropriate procedure for this on a case-by-case basis. Where a hearing does take place in person, legal representatives should be informed and given the opportunity to attend the prison.
- 2.40c *If the case is referred to an IA for the first time, the hearing must be arranged within 28 days of referral – the day of referral counts as day one of the 28.* If the case has been re-referred to the IA after the governor has reviewed the case (see paragraphs 2.34b-2.34d), then the hearing should be arranged as soon as possible to ensure fairness to the prisoner accused. For all referrals, prison staff should notify the Chief Magistrate's Office (CMO) as soon as possible using form IA1, which should then be emailed to: [gl-ind.adjudication@justice.gov.uk](mailto:gl-ind.adjudication@justice.gov.uk). Prisons should not add on new referrals to a virtual IA hearing list without making the initial referral to the CMO. *The reason for all referrals must be recorded on the DIS 3. Any accompanying victim personal statement and Prison Community Impact Statement where there was a Police referral should be discussed with the police on a case by case basis and depending on the views of the police and the victim, should also be sent to the CMO with any prison damage impact assessment.* Wherever possible, reporting officers should make themselves available to attend the IA hearing to give evidence if required, to avoid cases being dismissed. The CMO will confirm the date and time of the hearing in a Booking Letter.
- 2.40d It is important that all paperwork is emailed to the IA as soon as possible but at least 48 hours before the hearing (excluding weekends and bank holidays). Otherwise, the hearing will be cancelled and rescheduling the hearing may mean the 28-day deadline for the first hearing is exceeded and will be dismissed. The IA's contact information can be found on the Booking Letter provided by the CMO. The virtual invitation/link must be sent to the IA and the legal representative, where relevant, as soon as possible but at least 24 hours (excluding weekends and bank holidays) before the hearing.
- 2.40e Before any IA hearing, prisoners should be handed IA5 (Prisoner Independent Adjudication Information Form – formerly Template C) (see [Annex F](#)) which informs them of their IA hearing, and asks them to provide details of their legal representative, so that the prison can make the necessary arrangements.
- 2.41a If a case has been referred to the IA and the prisoner is then transferred to another establishment, governors of the sending and receiving prisons should make use of their virtual adjudication laptops, to arrange for the prisoner, reporting officer and witnesses to attend the hearing (and provide evidence) virtually, as appropriate. The relevant paperwork should be emailed from the sending prison to the receiving prison, who will subsequently arrange the hearing and inform all parties. *Prisons must inform the CMO (gl-*

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*ind.adjudication@justice.gov.uk*) by completing the IA2 (transfer form) as soon as possible, clearly stating the receiving establishment that the hearing will take place at. IAs will consider whether an in-person hearing is required and record their justification for this, having regard to the need to ensure common law fairness and compliance with Article 6, on the facts of each individual case. In these cases, the governors of the sending and receiving prisons will decide whether to return the prisoner to the sending prison for the IA hearing, or whether the reporting officer and witnesses should attend the receiving prison to give evidence at a hearing to be arranged there. Arrangements can continue to be made for the reporting officer or other witnesses to appear virtually at the hearing.

- 2.41b In some cases, it may no longer be deemed suitable to continue with the adjudication that has already been referred to the IA. In this case, a governor can withdraw a referral so that it does not have to go back before the IA to be dismissed. The governor should directly contact the CMO to withdraw the referral, clearly stating the reasons behind this decision. Please note that if a charge is withdrawn, the Governor cannot deal with this matter within the establishment.

### IA hearings in a prisoner's absence

- 2.42 If a prisoner refuses to leave his cell and attend the IA hearing, staff should inform the prisoner that the IA may proceed in their absence and sentence them to added days. The prisoner should be given a Refusal to attend IA hearing form (see [Annex F](#)), and be given the opportunity to state their reasons for refusing to attend. If the prisoner refuses to sign the document, the officer should note this on the form, also noting any reasons raised verbally by the prisoner. This should be dated and signed by the officer and a copy saved to present to the IA. If the prisoner still refuses to attend, staff should inform the IA who will record the reasons why the prisoner has refused to attend and the source of that information, together with the reasons why they concluded that proceeding with the hearing in the absence of the prisoner was just and fair under all the circumstances, on the adjudication record.
- 2.43 On completion of an IA hearing the CMO should be notified of the outcome using form IA3. The completed form should be emailed to [gl-ind.adjudication@Justice.gov.uk](mailto:gl-ind.adjudication@Justice.gov.uk) within 24 hours. This form must include all IA cases heard and the outcomes, including whether the case was adjourned. Prisons do not need to send new referral forms for adjourned cases. However for cases that are being re-referred to the IA under the Amendment Rules 2023, a new IA1 form must be sent to the CMO.

### **Hearing procedures - witnesses**

- 2.44 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.

### Reporting Officer

- 2.45 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. *Due to the limited capacity for visual identification and assessment of the person, teleconferencing must not be used.*

### Other witnesses

- 2.46 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

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no questions. In such cases, the Record of Hearing should record that the adjudicator has considered the witness's appearance to be unnecessary. If the prisoner wishes to question a witness who is not present, arrangements can be made for the witness to appear on video link if the adjudicator considers this appropriate. *Physical evidence such as items allegedly found during a search, MDT reports, photographs or CCTV/PINphone/BWVC recordings may be introduced, and must be described on the record of hearing.* See paragraph 2.29 of PSI 30/2011 [Instructions on Handling Mobile Phones and SIM Card Seizures](#) obtained through mobile phone and SIM card interrogations and [PSI 04/2017 Body Worn Video Cameras](#) on the use of body worn video camera footage.

- 2.47 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 a Mandatory Drug Testing (MDT) laboratory scientist must be referred to the Drug Strategy and Delivery Team (HMPPSDrugStrategy@justice.gov.uk). 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 will need to establish the level of specific expertise held by those witnesses offering scientific evidence to MDT hearings, and attach weight to their evidence accordingly.
- 2.48 Questioning of witnesses will need to be relevant to the current charge, and the adjudicator will intervene if questions stray into other irrelevant areas or are abusive. Adjudicators will assist accused prisoners who have difficulty in framing relevant questions, and ask their own questions as necessary to clarify any points. Adjudicators will need to 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**

- 2.49 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 1.1, [Annex A](#) 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 will need to assess whether, in the absence of a first-hand witness, it would be fair to accept the evidence. If not, it would be disregarded. It would not be safe to find the prisoner guilty solely on the basis of disputed hearsay evidence.
- 2.50 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**

- 2.51 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

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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**

- 2.52 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 2.62 in this Annex 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 are normally 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.*
- 2.53 Witnesses who have completed their evidence will not have any opportunity to discuss the case with those waiting to give evidence.
- 2.54 The defence of duress only applies to Prison Rules 51(9), (10) and (11) and YOI Rules 55(10), (11) and (12) as set out in PR 52 and 52A and YOU Rules 56 and 56A – see [Annex B](#) Charges and Punishments. In all other cases arguments based on duress, if considered credible, will only be relevant to mitigation. See [Annex E](#) Case Law, Ryan Wilson vs the Independent Adjudicator and the Secretary of State for Justice - which concurs with this.
- 2.55 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 2.56 and 2.59 - 60 of this Annex).

### **Charges not proceeded with**

- 2.56 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 next day, or, if a Sunday or a bank holiday the 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

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- The hearing has been adjourned 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**

2.57 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**

2.58 If allegations against a member of staff are made before, or during a hearing, the adjudicator will need to consider whether the accusations are relevant to the current charge. If they are not relevant the person making them will need to 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 will need to 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 will either be taken into account during the resumed adjudication and made available to the prisoner at least two hours before the hearing, or, if it is not presented as evidence at the hearing, the adjudicator will need to 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**

- 2.59 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.
- 2.60 In order to be satisfied that the evidence presented at the hearing has established guilt beyond reasonable doubt the adjudicator will take account of criteria provided in [Annex B](#) – Charges and Punishments.

### **Punishments**

2.61 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, race, disability, religion or belief, gender, gender reassignment, sexual orientation marriage and civil partnership, pregnancy and maternity) has been proven to be a motivation for the offence. *More than one punishment may be given for an offence (other than if a caution is given), 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



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punishment not sanctioned by the Prison or YOI Rules), nor any 'group' punishments may be given.

- 2.62 When the adjudicator has decided that the charge is proved the decision will be announced and recorded on the record of hearing. The accused prisoner or legal representative (if any) will 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.*

### Conduct Report and Adjudication Report

- 2.63 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 conduct report should not be completed by the reporting officer. The prisoner will be allowed to question the authors of these reports. Where the adjudication report asks for information about the prisoners' adjudication history, only offences the prisoner committed at the current establishment should be considered.
- 2.64 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. Adjudicators take account of the risk factors listed on an open or recently closed Assessment, Care in Custody and Teamwork (ACCT) plan (within the last three months.)
  - 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
- 2.65 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.
- 2.66 The adjudicator will then explain the punishment(s) to the prisoner (if necessary), hand them the Form DIS7 giving details of the punishments, and advise on the procedure and time limits for requesting a review of the decision.
- 2.67 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**

- 2.68 All punishments (other than prospective additional days – see paragraph 2.77 in this Annex) 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

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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

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

2.70 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.

2.71 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. Please see [Annex B](#) for a list of individual punishments.

### **Additional days**

2.72 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 “fixed-term” prisoner, as defined in PR 2 and YOI R 2 and the Criminal Justice Act (CJA) 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.

2.73 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 but they are not eligible for additional days under the provisions of the CJA 2003.

2.74 This paragraph has been removed in line with the Sentence Calculation Policy Framework.

2.75 Additional days can be awarded to prisoners who are serving a sentence following recall from licence, but they cannot always be actioned for sentence calculation purposes. Chapter 11 of [The Sentence Calculation Policy Framework](#) provides information about how such additional days interact with a sentence on which a recall has been issued and any subsequent sentence that may have been imposed.

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- 2.76 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 2.68 above).

### Unconvicted prisoners and prospective added days

- 2.77 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. In the case of a dual sentence, where a prisoner is serving a period of remand and a sentence at the same time, any added days awarded during this dual period can only be immediate or suspended. The punishment of additional days should be applied to the prisoner as a fixed-term prisoner, and not a prisoner on remand.

### Unconvicted prisoners and suspended sentences

- 2.78 Where a person breaches a suspended sentence and the court activate the sentence in full or in part, the remand time relevant to the offence for which the original suspended sentence was imposed will count as time served towards the term that has been activated. Therefore, any prospective additional days that were awarded during that period of remand will also apply to the activated sentence. Chapter 7 of the Sentence Calculation Policy Framework explains about relevant remand and Chapter 11 of that Framework explains how prospective additional days are linked to the remand period for application purposes.
- 2.79 Substantive additional days (unless restored, mitigated or quashed – see paragraphs 3.12-3.13 and 3.20 – 3.22 in this annex) will be taken into account when calculating the prisoner's release date.

### **Minor Reports**

- 2.80 Minor reports are a form of adjudication used to deal with lesser offences by young people, 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.
- 2.81 Minor reports may be conducted by Supervising Officers/operational band 4 (or the equivalent in contracted prisons) who have delegated authority from the Governor or Director, and who have passed the relevant training course.
- 2.82 A charge against a young person 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.
- 2.83 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):

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- 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)

2.84 Young people, 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)

2.85 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/Band 4) 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

2.86 Prisoners awaiting a minor report hearing are not to 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).

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

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

- A caution

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- 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)

2.89 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**

2.90 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).

## **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, paragraphs 2.39 – 2.42).

### **Reviews/Appeals**

#### **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 of the punishment to the Senior District Judge, as in paragraph 3.12 of this Annex. The Prison/YOI Rules do not provide any other avenue for reviewing IA cases.

#### **Termination of punishment**

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- 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 – HMPPS Prisoner Casework Section**

- 3.4 If a prisoner requests an adjudication conducted by a Governor or Director, or a minor report, to be formally reviewed, they, or a legal adviser, should complete 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 (CC) the establishment will “fast-track” the request as soon as the prisoner submits his appeal by scanning and e-mailing it to the Prisoner Casework functional mailbox: [prisonercasework@justice.gov.uk](mailto:prisonercasework@justice.gov.uk). The e-mail should be marked ‘Urgent’, and attach the correctly formatted documentation (listed at [Annex F](#) Table of Forms), any mitigation statement and any witness statements or other evidence considered at the hearing. If the prisoner is not currently serving CC the papers should still be scanned and e-mailed to the functional mailbox on immediate receipt of the prisoner’s appeal as documentation can only be received electronically (faxes are no longer accepted). Where there is a delay in submitting the appeal, the reasons should be explained.
- 3.5 If any of the documentation is not submitted with the original request (or is not correctly formatted), Prisoner Casework will issue one reminder to the establishment. If it is still not submitted (or correctly formatted) Prisoner Casework will recommend to the relevant Prison Group Director (PGD) that the prisoner’s appeal is upheld (i.e. that the guilty finding is quashed).
- 3.6 On receipt of all documentation, Prisoner Casework will consider the review request. If the appeal is not upheld, Prisoner Casework will respond directly to the establishment to that effect. If Prisoner Casework consider that the appeal should be upheld (i.e. the finding should be quashed or the punishment mitigated), they will submit the relevant documents and recommendation to the PGD, who will make a decision and notify Prisoner Casework of the outcome of the appeal. The PGD can delegate this responsibility to a Band 9 or above (or an operational manager at Band 8 or above), who reports to the PGD and has sufficient experience, knowledge and training to ensure fair, rational and consistent decision making, on ordinary public law principles. Prisoner Casework will then inform the establishment of the outcome of an appeal within 20 working days of receiving the request and for fast track appeals, within 48 hours of receipt of the request.
- 3.7 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.
- 3.8 If a prisoner writes to an MP or special interest group, who then takes up the case, it will be reviewed by Prisoner Casework in the same way as if the prisoner had submitted a DIS8.

### **Disclosure of adjudication papers (after conclusion of hearing)**

- 3.9 A copy of all adjudication paperwork, including witness statements requested by a prisoner or their legal representative/adviser for an appeal, should be provided without delay at no cost (except where any disclosure would put someone at serious risk of harm, compromises national or prison security or where a medical report or intelligence could identify someone other than the patient who has provided information, see all considerations at paragraph 2.9-

## Annex A

2.10). In cases where urgent action is required, consideration should be given to scanning/faxing the paperwork direct to the prisoner's representative or legal adviser.

### **Prison and Probation Ombudsman**

- 3.10 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 HMPPS which although not binding will usually be accepted.
- 3.11 Any prisoner still not satisfied may apply for a judicial review – see paragraph 3.16 of this Annex.

### **Review of independent adjudications – Chief Magistrate's Office**

- 3.12 Prisoners or their legal adviser/representatives requesting a review of an adjudication conducted by an IA 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 or of the imposition of the compensation requirement, whichever is later - Prison Rule 55B (2) and YOI Rule 60 B (2). The Governor will then forward all the adjudication papers (as for governor cases above) to [GL-Ind.Adjudication@justice.gov.uk](mailto:GL-Ind.Adjudication@justice.gov.uk) or:

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@justice.gov.uk](mailto:GL-Ind.Adjudication@justice.gov.uk).

- 3.13 The Senior District Judge delegates review requests to a Nominated District Judge (NDJ), who considers them and writes to the prisoner and Governor, with a copy being sent to the solicitor if they wrote on their behalf, 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.
- 3.14 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.
- 3.15 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**

- 3.16 Judicial Reviews are handled by HMPPS HQ (HMPPS Litigation Team), liaising with policy advisors and the Government Legal Department, 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

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is available on the Ministry of Justice Intranet under Legal Services, or on the MoJ website, or from HMPPS Litigation Team.

3.17 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

3.18 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.

3.19 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 (restoration) of additional days**

3.20 A prisoner who has not had a further finding of guilt at an adjudication for six months (four months for prisoners who were young offenders at time of offence) 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 on the grounds of good behaviour. 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.

3.21 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.



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- 3.22 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.
- 3.23 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.
- 3.24 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)).
- 3.25 Governors/Directors will need to ensure that all prisoners are aware of the remission procedure and have access to the application form DIS 9.
- 3.26 When an application is received it will need to 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 will need to 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 will need to be requested from that establishment. It is not necessary to seek the views of the IA who imposed the additional days.
- 3.27 The report will normally be disclosed to the prisoner (other than any security-sensitive information), and will need to be accurate and unbiased, if not entirely objective. It will 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 will also need to be supported by evidence. The report will only relate to the prisoner's behaviour since being in custody, and will not refer to previous criminal history.
- 3.28 The Governor will 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.
- 3.29 Applications from prisoners currently in hospital will need to be considered when they return to prison, or occasionally through correspondence or by visiting the hospital.
- 3.30 Factors the Governor will need to 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

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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, so where the original punishment is an uneven number of added days, establishments would round down the number of days remitted if a 50% reduction is being granted. However, 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).

3.31 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**

3.32 Governors are required to regularly review the timeliness, conduct, and governance 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. This includes considering the quality of paperwork which supports the entire adjudication process.

3.33 Governors must ensure their adjudications are fair, lawful, and just and that IA and police referrals are appropriate, punishments are proportionate and within locally published guidelines 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. These meetings must also consider the protected characteristic and other social breakdown of charged and punished prisoners. Also, whether charges for disciplinary behaviour, motivated by hostility towards a protected characteristic, are appropriately identified, assessed and receive parity in adjudication punishments. See also paragraph 2.91 in this Annex for similar monitoring of minor reports, in establishments where they operate.

3.34 Local quality assurance reviews should be fed back to adjudicating staff by governors to ensure that shortfalls in the adjudications documentation, enquiry and process are addressed. Where significant flaws are identified, the Governor can remit the punishment or set the finding aside in line with paragraph 3.2 of this Annex.

3.35 As part of a deterrent strategy it is good practice to publicise to prisoners the adjudication outcomes and tariffs, and in particular, incidents which are referred to the police with the outcome of prosecutions.

### **Retention of records**

3.36 All adjudication records, including CCTV/PinPhone/Video evidence are to be retained for the periods specified in [PSI 04/2018](#) Records, Information Management and Retention Policy and beyond that if necessary where any review, Ombudsman's investigation or court case is ongoing. Physical evidence such as items allegedly found during a search, MDT reports, photographs or CCTV/PinPhone/BWVC recordings may be introduced, and must be

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described on the record of hearing if permitted under GDPR and the Data Protection Act 2018.

## **Individual charges, offences and punishments**

### **1. CHARGES AND GUIDANCE FOR PROVING INDIVIDUAL OFFENCES**

- 1.1 The wording of all charges should reflect that of the Rule(s) under which they are laid (amending masculine pronouns to feminine, or plural, as necessary). Examples are provided, and should be adapted as appropriate.
- 1.2 The Prison Rules provide specific offences for racially aggravated assault, damage or use of threatening, abusive or insulting racist words or behaviour. For these offences, it must be established beyond reasonable doubt that the offence was motivated by hostility to race, which is a protected characteristic. If the motivation for an offence is hostility towards any of the other protected characteristics defined by the Equality Act 2010, the charge should be dealt with under alternative charges contained in this annex. Staff must consider whether the motivation of an offence was a protected characteristic from the outset of the investigation into the offence because this can be taken into account at sentencing, in accordance with paragraph 2.61 of [Annex A](#).
- 1.3 Local punishment guidelines should provide for equivalence in punishment where any protected characteristic has been identified as a motivating factor.
- 1.4 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 criteria provided below on both the charge to be laid and the reasons for it.
- 1.5 PR 51 (1), YOI 55 (1) commits any assault**
- ‘At (time) on (date) in (place) you assaulted (name) by punching him.’**
- 1.6 Considerations:
- 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?
- 1.7 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.
- 1.8 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 “(quote racist words used)”.’**
- 1.9 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.
- 1.10 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.

1.11 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.

1.12 See paragraph 1.156 of this Annex on attempted assault.

1.13 Considerations:

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?

1.14 A racial group means any group of people defined by reference to their race, colour, nationality (including citizenship), 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'.

1.15 A religious group means any group of people defined by reference to religious belief or lack of religious belief. Adjudicators must be clear on the distinction between an incident that is racially or religiously aggravated. Where the motivation for the incident is based on hostility towards a religious group, an alternative charge contained within this annex should be applied. See paragraph 2.61 of [Annex A](#) on charges where other protected characteristics under the Equality Act 2010 are a proven motivation for an offence.

**1.16 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.'**

1.17 Considerations:

- 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).

**1.18 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.’

1.19 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.

1.20 Considerations:

- 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?

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

**‘At (time) on (date) in (place) you were fighting with (name)’**

1.22 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.

1.23 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.

1.24 Considerations:

- 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 1.2 in this Annex) 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 as mentioned in paragraph 1.23 above.

**1.25 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.’**

1.26 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.

1.27 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.

1.28 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 starting a fire (or in that example a charge under PR 51 (16) / YOI R 55 (17)).

1.29 Considerations:

- 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?

1.30 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 paragraphs 1.16 - 1.17 of [Annex A](#)), 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.

1.31 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.

**1.32 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.'**

1.33 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.

1.34 Considerations:

- 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?

**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, handcuffs or by the officer escort (see paragraph 1.10 of [Annex A](#) 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 (usually from open conditions).

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 escapee. The 48-hour 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 Considerations:

- 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? 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 above). 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.

1.39 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.



1.40 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.

**1.41 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)’.

1.42 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.

1.42a Failure to return from ROTL on time, or failure to comply with any requirement whilst on ROTL, is ‘discovered’ (for the purposes of charging with a disciplinary offence) when the prisoner has returned to their establishment. The 48-hour time limit for laying a charge begins at that point.

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

1.44 Considerations:

- 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? Was the prisoner on an outside working party?
- 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.

1.45 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).

**1.46 PR 51 (9), YOI R 55 (10) is found with any substance in his urine which demonstrates that a controlled drug, pharmacy medication, prescription only medicine, psychoactive substance or specified substance 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, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance) 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).'**

- 1.47 The Prison and YOI Rules have been amended to reflect the changes made by the Prison (Substance Testing) Act 2021 so that prisoners can be charged with being found with a substance in their urine which demonstrates that a controlled drug, pharmacy medication, prescription only medication, psychoactive substances or specified substances has been administered to them. This allows HMPPS to test for a wider range of substances, as it adopts a broader definition of psychoactive substances and adds definitions of prescription only and pharmacy medicines without having to add a drug to the list of 'specified substances'.
- 1.48 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 'Compact Based Drug Testing'](#)), with separate charges being laid for each drug, medicine or substance indicated in the test result. Full details of MDT procedures are set out in PSO 3601 'Mandatory Drug Testing'. The offence is 'discovered', and the 48-hour 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 Mandatory Drug Testing](#)). 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.
- 1.49 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. See paragraphs 7.14 -7.17 of [PSO 3601 Mandatory Drug Testing](#) for further guidance on screening tests, confirmation tests and pleas.
- 1.50 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 as below.
- 1.51 Considerations:
- Has the accused prisoner undergone a Mandatory Drug Test, that was properly conducted according to the procedures described in [PSO 3601 Mandatory Drug Testing](#), 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, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance? 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 drug, medicine or substance 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, medicine or substance would have been taken) counted back from the collection date by the minimum waiting period for the drug, medicine or substance that tested positive (see [PSO 3601 Mandatory Drug Testing](#), 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, medicine or substance 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? (see paragraphs 1.48 - 1.49 above)
- Has the prisoner put forward a defence under PR 52 / YOI R 56, to show that the controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance:
  - (a) 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) was administered when the prisoner did not know or have reason to suspect that such a drug, medicine or substance was being administered
  - (c) was administered to the prisoner under duress, or without consent, when it was not reasonable to resist

1.52 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 Mandatory Drug Testing](#) 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, HMPPS Operational Security Group should be asked for advice.

**1.53 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)'**

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

1.55 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.

1.56 Rules 52A / 56A explain the defences to this charge as below.

1.57 Considerations:

- 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

1.58 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.

**1.59 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'**

1.60 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).

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

1.62 Considerations:

- 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)?

1.63 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.

**1.64 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)'**

- 1.65 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 1.148 - 149) for an exception to this guidance.
- 1.66 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.
- 1.67 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.
- 1.68 *Prisoners found with in possession of a mobile phone or a SIM card must be placed on report and these items subsequently be sent either to the police, or an approved HMPPS digital forensics capability.* A photograph of the items should first be taken for production as evidence at the adjudication hearing. 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 – 2.26 of [PSI 08/2016 Dealing with Evidence](#).
- 1.69 Considerations:

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 1.48 and 1.72). 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 Instructions on Handling Mobile Phones and SIM Card Seizures](#) 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 Instructions on Handling Mobile Phones and SIM Card Seizures](#).

- 1.70 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 incentives 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.
- 1.71 (This paragraph is obsolete.)
- 1.72 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.
- 1.73 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 inquiries into each one individually.
- 1.74 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).'**
- 1.75 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.
- 1.76 Considerations:
- 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?
- 1.77 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.
- 1.78 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).'**
- 1.79 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.
- 1.80 Considerations:

- 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?

1.81 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.

**1.82 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).'**

1.83 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.

1.84 Considerations:

- 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?

1.85 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.

**1.86 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)).'**

1.87 See paragraph 1.28 for fires started in connection with self-harm.

1.88 Considerations:

- 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 1.30 for the definition of recklessness.

1.89 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)).

**1.90 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)’)**

1.91 This charge may be appropriate in the case of a dirty protest, in addition to a charge under PR 51 (5) / YOI 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 – and, if a prisoner is found guilty of this charge in respect of destroying or damaging the prison or prison property, the adjudicator must require the prisoner to pay compensation for damaging prisons or prison property in accordance with Prison Rule 55AB/YOI Rule 60AB (further guidance on the compensation requirement can be found in [Annex C](#)).

1.92 Considerations:

- 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?

1.93 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.

1.94 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.

1.95 As part of the above charge there is also a separate requirement for the adjudicator to consider imposing a condition for the prisoner, if found guilty of the offence in respect of destroying or damaging the prison or prison property, to be compelled to pay for the cost of making good the damage or the cost of replacement of the property destroyed. This is required under Prison Rule 55AB and YOIB Rule 60AB and further guidance on this is found in [Annex C](#). However, this is not to be seen as a punishment but a way for the prisoner to make good the damage they have caused.

**1.96 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.’

1.97 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.”

1.98 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.



1.99 Considerations:

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. Refer to paragraph 1.14 for the definition of membership of a racial group and 1.15 for the distinction between racial and religious groups.

1.100 See paragraph 1.98 for charges of both the racially aggravated and non-racial versions of the offence.

**1.101 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')'.**

1.102 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.

1.103 Considerations:

- 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?

1.104 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.

**1.105 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).'**

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

1.107 Considerations:

- 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?

1.108 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.

**1.109 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)'**

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

1.111 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.

Alternatively, a response could be considered under [the Incentives Policy Framework](#) which contains an example behaviour expectation noting that prisoners should act with decency at all times remembering prisons/cells are not private dwellings (this includes not engaging in sexual activity).

1.112 Considerations:

- 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.

1.113 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 paragraphs 1.12 and 1.155). Threatening words or behaviour may also include intimidation, or an indication that harm may be done to the victim later.

**1.114 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)'**

1.115 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.

1.116 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.

1.117 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.

1.118 Considerations:

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 1.14 and 1.15 for the definition of a racial group and making the distinction between race or religious hate incidents. As in earlier examples, if the incident is partly or wholly motivated by hostility based on membership or presumed membership of a religious group, an alternative charge should be applied.

**1.119 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.'**

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

1.121 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).

1.122 Considerations:

#### 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?

1.123 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)?

1.124 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.

**1.125 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).’**

1.126 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.

1.127 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).

1.128 Where the governor orders a prisoner to attend court and the prisoner refuses to comply with that order, they should be charged with disobeying a lawful order (the order can be given by a member of staff on behalf of the governor, as per the charge). In many cases it is the governor who is ordered by the court to produce the prisoner and as such they could be charged with contempt of court if the court considers that they failed to comply with a court order. Where it looks likely that a prisoner is going to refuse to attend court, the governor should contact the court as soon as possible so that the court and the governor can decide on the correct approach.

1.129 Considerations:

- 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)

1.130 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.

**1.131 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)).’**

- 1.132 '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).
- 1.133 Further advice is provided below on using PR 51 (22) and (23) / YOI R 55 (25) and (26) in relation to foreign national prisoners or immigration detainees who refuse to comply with Home Office requests for information and unauthorised photographs of prisoners:

#### Foreign National Prisoners (FNPs) and Immigration Detainees - refusal to comply with Home Office requirements

- 1.134 A FNP or immigration detainee who refuses to attend a pre-arranged interview with the Home Office, or who refuses to return a form or provide fingerprints, where it is within their power to do so, is impeding the Home Office from pursuing its inquiries which could have a real impact on the way in which prisoners are managed in custody.
- 1.135 In order to effectively manage and support the rehabilitation of FNPs and immigration detainees, it is necessary for HMPPS to establish whether they will be released into the community in the UK or abroad, so that an appropriate support plan may be put in place and so prison resources (including programmes) can be targeted appropriately. It is therefore necessary for FNPs and immigration detainees to comply with Home Office efforts to establish/confirm their identity, nationality and entitlement to remain in the UK.
- 1.136 In this context a prison officer can give a direct order to a FNP to attend the interview, provide finger prints or return a form, where it is within that prisoner's power to do so. If the prisoner failed to do so then a charge could be laid against the prisoner under either PR 51 (22) / YOI R 55 (25) - disobeys any lawful order or PR 51 (23) / YOI R 55 (26) - disobeys or fails to comply with any rule or regulation applying to him. Refusal to attend a pre-arranged interview might also be classified as falling under rule 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. If a finding of guilt is made in respect of such charges, the adjudicator would then have the option of a range of punishments, including making an order for the removal of privileges.
- 1.137 It would not be appropriate to use the adjudication process to deal with issues such as the provision to the Home Office of evasive or misleading or inaccurate information.

#### Unauthorised Photographs

- 1.138 A disciplinary charge can only be brought in cases where photographs are taken of prisoners in prison and are posted on social networking sites (or which appear in other forms of media) if a local document exists. This document should make it clear that prisoners must not permit photographs to be taken of themselves in prison, and/ or allow a photograph taken in prison to be published on any social networking sites. Governors/ Directors are asked to ensure that a local document is in place and is appropriately communicated to prisoners. All incidents of prisoners accessing social media should be reported to HMPPS Digital Investigation Unit (DIU) at [DMIUSPOC@justice.gov.uk](mailto:DMIUSPOC@justice.gov.uk). The DIU can also support with providing evidence for use in internal or external proceedings and assist with removing offensive or unlawful content.
- 1.139 An appropriate form of words, to help form the local document, would be:  
*"You must not permit an unauthorised photograph (which is a photograph that has been taken without the prior approval of the Governor/Director) to be taken of you whilst in HMP [Name of prison] or any other prison and/or allow a photograph taken in HMP [Name of prison] or any other prison to be published by any person on any social networking site. Failure to comply with this rule will result in disciplinary charges being brought against you."*

- 1.140 Where a prisoner has taken a picture within a prison, the appropriate charge would be under Rule 51(12) possession of an unauthorised article.
- 1.141 If a prisoner has allowed a picture to be taken of themselves, they may be charged with failing to obey any local rule or regulation.
- 1.142 Other disciplinary offences may also be relevant depending on the circumstances. For example, if a prisoner has been given a copy of a photograph and then gives it to someone else without permission, a disciplinary charge under Prison Rule 51(14) might be appropriate - sells or, without permission, delivers to any person any article which he is allowed to have only for his own use.
- 1.143 Considerations:
- Was there a rule or regulation operating in the prison or YOI?
  - Was the rule or regulation lawful, i.e., a rule under the Prison Act 1952, 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 disabilities), 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.
- 1.144 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.
- 1.145 PR 51 (24) / YOI R 55 (27) receives any controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance 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 PR 38 /YOI R 16)**
- 'At (time) on (date) during the course of your visit you received an article believed to be a controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance (or 'an article, namely (describe article), without the consent of an officer.')**
- 1.146 '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/PinPhone/BWVC evidence may support a charge under PR 51 (24) / YOI R 55 (27).
- 1.147 'Rule 38 /16' refers to visits from the prisoner's legal advisers.
- 1.148 Considerations:

- Did the accused prisoner receive a controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance 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, medicine, substance 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/PinPhone/BWVC 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, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance 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.

1.149 If the prisoner presents a defence of not knowing that the item was a controlled drug, pharmacy medicine, prescription only medicine, psychoactive substance or specified substance 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.

**1.150 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)').**

1.151 The words etc. will be racist if motivated (partly or wholly) by hostility to a member or members of a racial group. Refer to paragraph 1.14 and 1.15.

1.152 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.

1.153 Considerations:

- 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

1.154 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.

**1.155 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**

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).'

1.156 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.

1.157 Considerations:

(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?

1.158 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.

#### Incidents at Height

1.159 When laying charges for incidents at height, there are a number of potential charges, some of which include:

PR 51 (22) / YOI R 55 (25) - disobeying a lawful order - where a member of staff at the scene has given the prisoner any instruction not to climb or to return to the landing / ground level and the prisoner has failed to do so. It is essential that prisoners are given clear and repeated direct orders to desist from their action, and that this is recorded.

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 - where a prisoner has accessed any area at height which is out of bounds and clearly signed as such.

PR 51 (23) / YOI R 55 (26) - disobeys or fails to comply with any rule or regulation applying to him - where a prisoner has been informed – for example during induction that this type of behaviour is unacceptable and must not occur and that any breach could lead to a charge. The local rule or regulation must make clear which areas of the prison are prohibited.

1.160 The presence of signs (notices) can be used as part of the charge and evidence at the adjudication hearing; local notices may be displayed to re-iterate this requirement not to access areas at height (local notices are considered to be lawful orders even if those staff present at an incident do not issue a direct order).

#### Smoking related charges

1.161 Governors are advised to treat non-compliance with their smoke-free policy on a case by case basis with consideration given to alternative measures such as informal warnings, review of incentive level and the prisoner's treatment needs and intention. The following factors will also be relevant:

- Type of prison - a therapeutic prison would have different stance than a local prison.
- The prison's priority in dealing with non-compliance, for example awarding cellular confinement for a prisoner who is a tobacco dealer may be justified if that prisoner's actions generated more serious issues for the prison.
- Nature of offence and if repeat offence
- Prisoner's previous adjudication history

- Any mitigating factors that the prisoner raises.

1.162 A range of charges may be appropriate, for example: 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; PR 51 (23) / YOI R 55 (26) - disobeys or fails to comply with any rule or regulation applying to him - in this case a Rule can include a local rule which must have been brought to the prisoner's attention with sufficient notice and prominence so that they were aware of it, they know how it impacts on them, and the likely consequences of breaching it. This could include reference to unauthorised tampering of a device to use for smoking, for example. See Smoke Free Policy Framework for further details.

#### Prisoners assisting in drone related activity

1.163 Prisoners involved in criminal activities using drones must be referred to the Police. Where a police referral is not appropriate for prisoners who play a more minor role in assisting the main operators of drone-related offences, the following disciplinary offences might be relied upon depending on the individual circumstances:

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;

PR 51 (13) / YOI R 55 (14) - sells or delivers to any person any unauthorised article, and;

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.

## 2. INDIVIDUAL PUNISHMENTS

### 2.1 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.

### 2.2 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 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.

2.3 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.

2.4 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 the incentives scheme may be lost. Visits entitlement under PR 35/YOI R 10 must not be forfeited. In-cell televisions may be forfeited, but not normally radios, newspapers, magazines, notebooks, attendance at education, or religious activities.

2.4a In Open prisons, smoking is facilitated in the outside environment. This is because open prisons represent an exception to the general position in Prison Rule 25(2) that no prisoner shall be allowed to smoke, unless otherwise directed by the Secretary of State. In these establishments, possession of tobacco and smoking are privileges under Prison Rules 8, and can be forfeited. However, all governors must ensure that smoking cessation products, e cigarettes/vaping devices/nicotine replacements therapy products are not removed from a prisoner as a form of punishment, nor are they prevented from purchasing them (provided the prison ensure that the prisoner can only purchase the weekly amount as per their facility list). Preventing prisoners from accessing smoking cessation equipment can affect the prisoner's mental and physical health, and this may lead to the prisoner placing themselves in future financial hardship.

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

### 2.6 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 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.

**2.7 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.

2.8 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.

**2.9 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 at a normal pace.

**2.10 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.

2.11 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.

2.12 As indicated at paragraph 1.95 above, in cases where prisoners have intentionally destroyed or caused damage to a prison or to prison property they will be subject to a requirement to recompense the prison for the cost of replacing these items or property. However, this should not be seen as part of a punishment but simply a way of recovering the costs of making good the damage. The details of this can be found in [Annex C](#) of this document which replaced the guidance previously found in PSI 31/2013 – Recovery of Monies for Damages to Prisons and Prison Property.

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

**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)**

2.14 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.

- 2.15 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.
- 2.16 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.
- 2.17 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.
- 2.18 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.
- 2.19 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, (in line with Prison Rule 58/YOI Rule 61(1). Further guidance on the segregation process, the ISHS, and on the monitoring of prisoners in CC is in paragraph 2.3 (8) of PSO 1700 Segregation). *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).*
- 2.20 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.
- 2.21 *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).*
- 2.22 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. *A member of the Chaplaincy Team must visit prisoners in the Segregation Unit daily. It is a statutory duty to visit all prisoners undergoing cellular confinement - please see [PSI 05/2016 Faith and Pastoral Care for Prisoners](#) - Section 13 about prisoners on CC.*

2.23 *Prisoners in cellular confinement must be observed according to the requirements set out in [PSO 1700 Segregation](#), and the healthcare unit and chaplain must be notified daily of prisoners in CC.*

2.24 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).

**2.25 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)**

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.

**2.26 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.

2.27 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.

2.28 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.

## Procedure for the recovery of monies for damage caused by prisoners to prisons and prison property

### General Principles

- 1.1 The main aim is to recover the cost for the destruction of or damage to a prison or prison property. It is not used as a punishment but a way of compensating HMPPS for the loss. The intention is that the prisoner is required to “put right” the damage caused (such as replacement of the item or paying for the damage to be repaired) and there is no punitive element to the amount the prisoner is required to pay back.
- 1.2 A requirement to pay compensation can be made for up to 100% of the damage caused, including labour costs (see paragraph 1.12 for further details) but the maximum cannot exceed the value of the damage caused or, in any event, exceed £2000.
- 1.3 The stipulation to pay 100% of the cost of the damage caused will be made following a finding of guilt for a charge under Prison Rule 51 (17) or 51 (17A) or YOI Rule 55 (18) or 55 (19) unless there are sufficiently compelling reasons to make a lesser award. Such a reason may be where the prisoner has acted completely out of character and in response to very distressing personal circumstances.
- 1.4 Payment can be by way of deductions from a prisoner’s prison accounts and can be in the form of (i) a lump sum; (ii) periodical deductions; or (iii) a combination of the two. However, any outstanding debt for compensation will last no longer than 2 years after the imposition of the award or the prisoner has reached his/her Sentence Expiry Date, whichever occurs first. After this time no further money will be recovered from the prisoner.
- 1.5 *Deductions will be made from all three prisoner accounts i.e. Savings, Private Cash and Spends accounts but prisoners must be left with a minimum amount to purchase necessary items and remain in contact with their family/friends. It will be for Governors, outside of the adjudication process, to set a minimum amount to be left in the prisoner’s accounts, taking into consideration the prisoner’s individual circumstances, but this must not be less than £5.00 per week. Anything over the minimum determined by the Governor must be recovered from the prisoner’s accounts until the full amount of the compensation requirement has been paid (see paragraphs 1.17 - 1.19 below).*
- 1.6 *The recovery process must cease on release from prison custody (excluding Release on Temporary Licence (ROTL)) but the amount owing under the compensation requirement will remain due until the 2-year time limit expires or until the prisoner reaches his/her Sentence Expiry Date, whichever occurs first. Therefore, if a prisoner is recalled to custody on a sentence that was being served when the compensation requirement was imposed the balance of the debt can be recovered provided the time limit has not expired. Similarly, if an unconvicted prisoner is bailed and then returned to custody on the same charge(s), recovery can continue. To ensure that the money is recouped from a prisoner upon his/her return to custody, finance staff should run periodic damage obligation reports for completeness. Recovery must not continue if the prisoner is returned to custody solely on a different sentence/charge. Therefore, staff need to ensure that the prisoner’s records are updated accordingly and that deductions do not exceed the amount imposed or the time limit.*
- 1.7 *Recovery of any outstanding debt must continue when the prisoner transfers for one establishment to another. If transferred from a contracted to public sector prison, the Prison-NOMIS system must be updated with the obligation prior to transfer or the receiving public sector informed at the earliest opportunity of all the details including the amount paid and supporting adjudication number. If received into contracted sites, their account balances must be cleared from Prison-NOMIS and the obligation screen checked in order to transfer any information if required. Detailed instructions can be found in Chapter 15.15 of [PSI 37/2013 – HMPPS Finance Manual](#)*

- 1.8 Immigration detainees and foreign national prisoners held within the prison estate are subject to Prison Rules and not Detention Centre Rules so are therefore treated as unconvicted prisoners with the same rights and responsibilities as unconvicted prisoners ([PSO 4600 'Unconvicted, Unsentenced and Civil Prisoners'](#)). When a foreign national prisoner has reached the end of their custodial sentence but continues to be held under immigration powers, they are treated as an unconvicted prisoner. Consequently, when an immigration detainee or foreign national prisoner has intentionally destroyed or caused damage to a prison or to prison property they will also be subject to a requirement to recompense the prison for the cost of replacing these items or property. The Governor/adjudicator therefore has the power to stop or deduct monies from an immigration detainee's earnings, where they have chosen to work and where they are found guilty under this offence, as well as from any other prison accounts.
- 1.9 Paragraph 1.14 in [Annex A](#) indicates that "it would not normally be appropriate to lay disciplinary charges where the prisoner's actions were related to self-harm or preparations for it". That principle remains in place in respect of the guidance in this Annex.

### **Procedures and matters for the Adjudicator**

- 1.10 At the start of the hearing the Adjudicator will inform the prisoner that, if found guilty, they will be required to pay compensation for the damage caused and that monies will be recovered from their prison accounts to fulfil that requirement. They will also indicate the estimated total value of the damage caused and to assist with their considerations, the Governors must ensure that the Adjudicator has an assessment of their cost of the damaged caused.
- 1.11 To assist in assessing the cost of the damage, a list of the charges for replacing the majority of items can be found in the attached link to the Public Sector Prison Industries Clothing and Equipment Catalogue:  
[http://psw10595:88/national/organisation/national/regime\\_service\\_group/enterprise\\_&\\_supply\\_services/index.htm](http://psw10595:88/national/organisation/national/regime_service_group/enterprise_&_supply_services/index.htm)
- 1.12 The above link also contains the contact details of a member of staff from the Stock Management Team should staff require any further advice on costings. Governors need to assess the cost of damage on a case by case basis, taking appropriate account of any local issues which may affect the costing of materials. Also, and to ensure the adjudication process is not unnecessarily delayed, where there is no better evidence available for the cost of labour, a figure of £12.80 per hour can be set. This is based on a generic cost of prison staff time but, for the purposes of this process, it applies equally to a contractor's time where there is no better evidence of their actual cost.
- 1.13 The prisoner will be given the opportunity to raise any mitigating factors and these are to be recorded in the record of hearing.
- 1.14 An example of the wording for a notification of an award is as follows:  
"It is estimated that cost of repairing the damage you have caused is £30. Having taking into account the evidence made available at this adjudication, including your representations, I am making an award for recovery of £30 for the damage. Outside of this adjudication the prison will assess how much will be deducted from your accounts at this stage. Any remaining balance will be recovered as and when further monies become available. You will be left with a minimum amount in your prison accounts, to be determined, but it will be no less than £5.00 per week after any deductions for this compensation award are taken. Any outstanding debt will last for a maximum of 2 years or until you have reached your Sentence Expiry Date, whichever occurs first."
- 1.15 The DIS 7 – Adjudication Result Form, includes a section for the recording of the award for recovery of monies in respect of the compensation requirements.
- 1.16 If possible where any damage has been caused it should be photographed and a copy made available to the Adjudicator.



- 1.17 Following an award for compensation, the Governor needs to take into account the prisoner's individual circumstances and determine the minimum amount that he/she should be left with in their accounts after deductions are made for compensation towards the damage caused. This cannot be less than £5.00 and any consideration should include, but is not limited to:
- i) The prisoner's need to maintain contact with family/friends;
  - ii) The need to purchase any necessary items;
  - iii) Any specific needs on ROTL or release, if appropriate;
  - iv) When considering the recovery of monies from young people (under 18s), Governors must pay particular attention to the requirement to protect and safeguard their welfare and the heightened need to maintain family contact.
  - v) Any needs related to caring for a child in a prison Mother and Baby Unit. Any benefits (such as Child Benefit) which are paid to a mother for the purposes of looking after her child should not be subject to deductions. Furthermore, consideration should be given to whether any deductions from a mother's account might have a negative impact upon the care of the child and if so, no such deduction should take place.
- 1.18 They also need to decide how much can be taken from the prisoner's accounts by way of a lump sum (this will be everything that is available above the minimum set by the Governor) and arrange for any outstanding balance to be recovered as soon as any monies above the minimum become available. This will be before any monies are authorised for purchases or sent out of the prison from the prisoner's accounts. The prisoner should be informed of the decision on the pro-forma found at C1 below.
- 1.19 Governors will need to ensure that recovery does not adversely impact on our aim to reduce reoffending by causing prisoners financial hardship on release. Discharge grants are exempt from deductions. If a prisoner has insufficient monies to contribute even a small amount to the damage caused whilst still allowing the minimum £5.00 in their accounts, then no money should be taken from their accounts. The minimum amount can be re-assessed in order to take into account of any change in the prisoner's circumstances but the minimum cannot be readjusted for punitive reasons and not be lower than £5.00. So, for example, it is permissible for the minimum to be increased or decreased because the individual's needs have changed. However, whilst deterioration in behaviour may trigger a review, it is not permissible to reduce the minimum because of that behaviour.
- 1.20 If a prisoner is found guilty of a further incident of damage the Adjudicator will be required to make a separate award for recovery of monies for that incident. However, the recovery of the debts will run consecutively i.e. the recovery of the first debt is required before commencing recovery of the second.
- 1.21 Deductions are to be made before the canteen sheets are printed in order to ensure that prisoners are not misled about the amount they are able to spend. Any monies recovered will be retained by the prison making the deduction and not transferred to the prison where the damage occurred or to HMPPS centre. This is to minimise administrative costs. The appropriate account code (notified in Chapter 15.15 of [PSI 37/2011 - HMPPS Finance Manual](#)) will need to be used to identify the amounts collected.

### **Appeals**

- 1.22 The actual decision to impose a compensation order for damage to prisons and prison property cannot be appealed against as this action is mandatory upon a finding of guilt for a charge under Prison Rule 51 (17) or 51 (17A) or YOI Rule 55 (18) or 55 (19). However, if a prisoner wishes the adjudication conducted by the Governor to be reviewed on the grounds

that it was flawed, then they should follow the procedures previously outlined in paragraphs 3.2 to 3.11 of [Annex A](#). This review would include the actual amount imposed but not the minimum to be left in the prisoner's account (see 1.24 below for details on this). The same can be applied to those cases dealt with by an Independent Adjudicator, which would be reviewed by the Senior District Judge, and details of this can again be found in [Annex A](#) at paragraphs 3.12 to 3.15.

- 1.23 *If the amount of the compensation imposed is reduced, any overpayment must be reimbursed to the prisoner by the prison where the prisoner is located (or last located if the prisoner has been released).*

#### Governor's Decisions on Recovery

- 1.24 It is open to prisoners to question the minimum amount that is to be left in their Accounts but this will be via the prisoner complaints process and dealt with/ answered locally. As decisions on the minimum amount are taken by Governors and are not part of the adjudication process, an appeal against it must not be treated as a reserved subject.

#### Priority of Payment

##### Court Orders

- 1.25 *If a Court has imposed an Order against a prisoner to pay monies (such as a confiscation order) then that takes precedent over the recovery of monies for damage to property (or recovery of an advance – see paragraph 1.27 below). If the prisoner has sufficient monies left in his/her accounts after complying with instalments imposed under the Court Order then the prison will be able to take the money provided the safeguards identified in paragraphs 1.17 – 1.19 above are in place. If the prisoner refuses to comply with the Court Order and no enforcement action has been taken by the Court then the prison can take payments from the prisoner's accounts for any damage caused.*
- 1.26 *If the recovery of monies for damage is underway and a subsequent Court Order is imposed by the Court, this Order takes precedent and recover will be suspended whilst the issues raised above in paragraph 1.25 are considered.*

##### Advances and other Scheduled Payments

- 1.27 Any further obligations, such as advance repayments and TV charges will be deducted after the damage obligation scheduled payment has run on Prison-NOMIS. Recovery of advances and TV payments should not impact on decisions about the minimum amount to be left in the prisoner's accounts and prisoners will be liable to pay back these charges from within the minimum set.

#### Replacement of Items

- 1.28 For non-essential items, such as televisions, subject to safety, equalities and safeguarding considerations, it is possible to withhold the replacement of any damaged item until the amount owing under an adjudication compensation award in relation to that damage has been recovered from the prisoner. This may pose operational difficulties particularly in shared cells, and Governors need to ensure that they are not penalising any innocent party by withholding items, such as televisions. Essential items, such as cell fixtures, need to be replaced as soon as operationally possible and regardless of whether the prisoner has paid for the damage.

**Prisoner notification of recovery of monies**

**Establishment** .....

**Prisoner's Name** .....

**Prisoner's Number** .....

**Adjudication Charge Number** .....

1. Following the finding of guilt at adjudication charge number ..... an award was made to recover £..... for the damage that you caused to the prison and/or prison property.
  
2. Following an assessment of your circumstances it has been determined that you will be left with £..... per week after deductions for damage are taken.
  
3. I am arranging for £..... to be deducted from your accounts (£.....from Private Cash, £.....from Savings and £....., from Spends) at this stage. The balance of the debt will be recovered as and when any monies above the minimum stated in paragraph 2 above become available.
  
4. The outstanding debt will last for a maximum of 2 years or until you have reached your Sentence Expiry Date, whichever occurs first.
  
5. If you wish to appeal this decision, which is not part of the adjudication process, it is open to you to raise a request/complaint.

**Staff Signature** .....

**Date** .....

**cc: Prison Finance Department**

## **Flow charts**

Basic adjudication process

Virtual Adjudications process

Independent Adjudications: referrals back to governors

These flow charts can be found via the following link:

<https://www.gov.uk/government/publications/prison-adjudications-policy-psi-052018>

## Significant adjudication case law (European Court judgements and judicial reviews)

### **R (O'Brien) v Independent Adjudicator [2019] EWHC 2884**

The independent adjudicator, to whom disciplinary charges against prisoners were referred, did not have an express or implied power to refer charges to the police. The regime for discipline in prisons was intended to operate separately from the criminal justice system, except where the governor referred charges to the police or where the charges related to very serious offences.

### **Ryan Wilson vs the Independent Adjudicator and the Secretary of State for Justice [2016] EWHC 176 (Admin) -**

The issue before the Divisional Court was whether the common law defence of duress should apply in prison disciplinary proceedings. The Court held that article 6 does not provide a right to a defence of duress. The court determined that the decision in *St Germain* (below) is persuasive authority for the proposition that breaches of YOI Rules and Prison Rules constitute disciplinary rather than criminal offences. The fact that a defence of duress is expressly provided for in the Prison Rules in relation to some offences and not others points strongly to the conclusion that it is available only in those cases where that is expressly stated.

### **Gifford v Governor of HMP Bure (2014) EWHC 911 (Admin) –**

In this case, the Admin court gave guidance as to when complaints made by prisoners in connection with adjudications were suitable for a reference to the Prison and Probation Ombudsman and when they were suitable for applications for JR. The court held that most complaints in connection with adjudications are suitable for reference to the PPO. In general, JR will only be appropriate in situations where (a) an injunction is sought; (b) there is an urgent/emergency element; or (c) there is a challenge to the underlying policy.

### **Ezeh & Connors – 2003, Grand Chamber of the European Court of Human Rights -**

Decided that additional days came within the scope of Article 6 of the European Convention on Human Rights (right to a fair trial), and should only be imposed by an independent tribunal, not prison governors. This led to the creation of independent adjudicators (District Judges).

### **St Germain – 1978-9 laid down principles that:**

- Adjudicators must be de novo and reach decisions solely on evidence presented
- The accused prisoner has a right to a fair hearing
- Hearsay evidence may be accepted if accused prisoner does not object; if he does object he may question the hearsay witness, or if that witness is unavailable the hearsay evidence must be disregarded
- The accused prisoner may call witnesses if necessary for his defence or mitigation. Adjudicator has discretion to refuse to hear a witness, if reasonable and on proper grounds, but not just for administrative convenience.

**Leech – 1981, governors' adjudications may be judicially reviewed. The Secretary of State has no authority to direct a governor on how to adjudicate on a particular charge, or what punishment to impose.**

**Mealy – 1981, adjudicators are masters of their own procedure, but should not depart from the procedure that has been previously explained to the prisoner (in the form given to him when he is charged) unless reasons are given. Adjudicators must show they will hear evidence of**

every witness with an open mind. If the accused prisoner's plea is 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 (e.g. 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 PCS 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 (e.g. 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).

## Table of adjudication forms

Form	Purpose
DIS 1	Notice of report
DIS 2	Prisoner adjudication information sheet and prisoner's statement
DIS2 Easy Read	Easy Read - Prisoner adjudication information sheet and prisoner's statement
DIS 3 (updated preliminaries 11/08/2022)	Record of adjudication hearing
DIS 4	Record of hearing continuation sheet
DIS 5	Adjudication report
DIS 6	Conduct report for adjudicator
DIS 7	Adjudication result
DIS 8	Request for a review of an adjudication heard by a Governor or Director
DIS 9	Application for restoration of additional days
IA 1 (amended April 2023)	Referral to the Independent Adjudicator (IA)
IA 2	Prisoner transfers (IA cases)
IA 3 (amended April 2023)	Outcome of adjudications conducted by an IA
IA 4	Request for a review of an adjudication punishment heard by an IA
MR 1	Notice of minor report
IA5 (Prisoner Independent Adjudication Information Form – formerly Template C)	Informing prisoners of their IA hearing and requests for legal advice/ representation
Refusal to attend Governor hearing	Refusal to attend form for Governor hearing
Refusal to attend IA hearing	Refusal to attend form for IA hearing

**All Adjudications forms can be found via the following link:**  
<https://www.gov.uk/government/publications/prison-adjudications-policy-psi-052018>



## Table of amendments

Amendment	Reference
Public sector equality duty, unconscious bias	PSI Executive Summary
Recovery of monies for damage to prisons and prison property	PSI Executive Summary, 2.40, 2.46 - 48, 3.12 – 3.13 <a href="#">Annex B</a> , 1.91, 1.95, 2.12 <a href="#">Annex C</a>
Immigration detainees and foreign national prisoners, Prison Rules, refusal to comply	PSI Executive Summary <a href="#">Annex A</a> , 1.4 – 1.5 <a href="#">Annex B</a> , 1.134 – 1.137
Removal of mandatory consultation with the Adjudication Liaison Officer	PSI 2.3
Crimes in Prison Referral Agreement	PSI 2.8 <a href="#">Annex A</a> , 2.23 – 2.27 <a href="#">Annex D</a>
Further guidance on assisting prisoners with communication or language difficulties or any other special needs	PSI 2.16, 2.26 <a href="#">Annex A</a> , 1.21 – 1.26
Timescale for adjournments to seek legal advice	PSI 2.17
Disclosure of CCTV/PinPhone/body worn video camera footage and adjudication papers	PSI 2.19, 2.22 <a href="#">Annex A</a> , 2.9 - 2.13
Body worn video cameras	PSI 2.19 <a href="#">Annex A</a> , 2.11 - 13, 2.46 <a href="#">Annex B</a> , 1.146, 1.148
Children and young persons	PSI 2.20, 2.35
Fitness to face hearing and punishment including CC	PSI 2.27 <a href="#">Annex A</a> 1.31 – 1.32 <a href="#">Annex B</a> , 2.19
IA hearings – referrals, independence, protocol, seriousness test, procedures, impact assessment, video link, prisoner's absence, induction of new IAs	PSI 2.32 <a href="#">Annex A</a> 2.28 – 2.29 2.31 – 2.33, 2.35 – 2.39 <a href="#">Annex D</a> <a href="#">Annex E</a>
Additional days and sentence calculation requirements	PSI 2.39 <a href="#">Annex A</a> , 2.75
Punishments and CSRA	PSI 2.41
Minor reports	PSI 2.45
Discretion to adjudicate and alternative measures	PSI 3.2-3.5
Timely completion of paperwork and any drug tests	<a href="#">Annex A</a> , 1.2
Status of accused and Rules applicable	<a href="#">Annex A</a> , 1.3
Safer custody guidance	<a href="#">Annex A</a> , 1.14 - 17
Adult safeguarding	<a href="#">Annex A</a> , 1.18 - 20
Segregation	<a href="#">Annex A</a> , 1.27 - 30
Transfers before hearing is commenced or completed	<a href="#">Annex A</a> , 1.33
Hearing room layout	<a href="#">Annex A</a> , 2.1- 2.2
Hearings in a prisoner's absence & record of hearing	<a href="#">Annex A</a> , 2.3 – 4, 2.6
Hearing procedures - preliminaries	<a href="#">Annex A</a> , 2.5 – 2.8
General Data Protection Regulation (GDPR)	<a href="#">Annex A</a> 2.13, 3.36
Principles of natural justice and adjournments	<a href="#">Annex A</a> , 2.20 – 2.22
Offences involving protected characteristics	<a href="#">Annex A</a> , 2.32, 2.61

	<a href="#">Annex B</a> 1.2-1.3
Witnesses and video link	<a href="#">Annex A</a> , 2.41
Teleconferencing	<a href="#">Annex A</a> , 2.45
Prisoner's defence - duress	<a href="#">Annex A</a> , 2.54
Punishments - ACCT	<a href="#">Annex A</a> , 2.64
Handing of DIS 7 to prisoner	<a href="#">Annex A</a> , 2.66
Additional days	<a href="#">Annex A</a> , 2.73, 2.75, 2.77, 2.78
Appeals - role of Prisoner Casework Section and Prison Group Director	<a href="#">Annex A</a> , 3.4 – 3.8
Remission (or restoration) of additional days	<a href="#">Annex A</a> , 3.20 - 3.31
Management oversight	<a href="#">Annex A</a> , 3.32 – 3.34
Retention of records	<a href="#">Annex A</a> 3.36
Charges, Punishments and Proof	<a href="#">Annex B</a>
Escape and abscond definitions - charges	<a href="#">Annex B</a> , 1.36 - .38
Psychoactive substances - charges	<a href="#">Annex B</a> , 1.46 - 50
Mobile phones - charges	<a href="#">Annex B</a> , 1.68
Refusal to attend court - charges	<a href="#">Annex B</a> , 1.128
Unauthorised photographs	<a href="#">Annex B</a> 1.138
Incidents at height - charges	<a href="#">Annex B</a> , 1.159 - 1.160
Smoking related charges	<a href="#">Annex B</a> 1.161, 2.4
Prisoners assisting in drone related activity - charges	<a href="#">Annex B</a> 1.163
Visits entitlement	<a href="#">Annex B</a> , 2.4
Flow chart	<a href="#">Annex D</a>
Updated case law	<a href="#">Annex E</a>
<b>The below is updated as of the republishing of PSI 05/2018 on 11/08/22</b>	
Independent Adjudicators	PSI 1.14
Resource Impact, Independent Adjudicators	PSI 1.18
Independent Adjudicators, reasons for referral to the IA	PSI 2.32
Authority to adjudicate	PSI 3.7
Contents	<a href="#">Annex A</a>
Prisoners with disabilities, mental impairments, and communication or language difficulties	<a href="#">Annex A</a> 1.21
Hearing room layout	<a href="#">Annex A</a> 2.1
Hearings in a prisoner's absence	Annex 2.3
Referral to an Independent Adjudicator	<a href="#">Annex A</a> 2.31-.233
IAs entering prison establishments, HMPPS Chief Magistrate IA Protocol, Further good practice guidance	<a href="#">Annex A</a> 2.35-2.39 – now moved to <a href="#">Annex J</a>
Arranging IA hearings	<a href="#">Annex A</a> 2.40a-2.40e, 2.41a-2.41b
IA hearings in a prisoner's absence	<a href="#">Annex A</a> 2.42
Completing IA hearings	<a href="#">Annex A</a> 2.43
Other witnesses	<a href="#">Annex A</a> 2.47
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Preparing for Virtual Hearings Guidance	<a href="#">Annex I</a>
Independent Adjudicators entering prison establishments, Template IA Facility Check Sheet and Template Safe System of Work Review	<a href="#">Annex J</a>
<b>The below is updated as of the republishing of PSI 05/2018 on 03/05/23</b>	
Executive Summary	PSI before 1.1
IA referrals sent back to the governor	PSI 2.8b-2.8d
Prisoners right to legal representation following the IA referring a case back to the governor	PSI 2.17, 3.10
Consequences of governor failing to provide reasons for referral to the IA	PSI 2.32
IA being unable to refer a case back to the governor following re-referral by the governor after reviewing the case	PSI 2.37
Authority of the IA to consider the sufficiency of seriousness of IA referrals	PSI 3.11a-3.11b
Electronic signatures for adjudication paperwork	<a href="#">Annex A</a> 1.2
Considerations for the governor when opening a hearing	<a href="#">Annex A</a> 2.8
Referral to the police	<a href="#">Annex A</a> 2.23, 2.23a
Group of related offences being referred to the IA	<a href="#">Annex A</a> 2.30
Adjudicating governors stating their reasons for referral to the IA	<a href="#">Annex A</a> 2.31
Outlining the process following the IA referring a case back to the governor	<a href="#">Annex A</a> 2.34a-2.34b
Arranging IA hearings	<a href="#">Annex A</a> 2.40c-2.40e, 2.41b
IA Hearings in a prisoner's absence	<a href="#">Annex A</a> 2.43
Conduct Report and Adjudication Report	<a href="#">Annex A</a> 2.63
Extended sentence prisoners & eligibility of added days and reference made to sentence calculation policy framework	<a href="#">Annex A</a> 2.74, 2.78
Additional days for prisoners serving a recall from licence	<a href="#">Annex A</a> 2.75
Additional days for Unconvicted prisoners and suspended sentences	<a href="#">Annex A</a> 2.78
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Failure to comply with conditions for temporary release - charges	<a href="#">Annex B</a> 1.42a
Forfeiture of privileges punishment - guidance	<a href="#">Annex B</a> 2.4a
Introduction of IA referring cases back to governor flow chart	<a href="#">Annex D</a>
IA1 and IA3	<a href="#">Annex F</a>
Updates to the Virtual Hearings Guidance section following the Amendment Rule 2023	<a href="#">Annex I</a> E, 1.3, 2.2, 4.1, 4.1a, 9.1

**Chief Magistrate's Sentencing Adjudication Guidelines**

**ADULT**

**PRISON ADJUDICATIONS**

**Independent Adjudicator's Punishment Guidelines**

1. Adjudicators should first decide the starting point for the punishment. This starting point will normally be within the guideline range. The starting point suggested is for a prisoner (i) with no previous findings of guilt on adjudications and (ii) following a not guilty plea.
2. The starting point should be increased to reflect any aggravating features of the offence itself and of the offender (such as previous findings of guilt) to ascertain the provisional punishment.
3. The starting point may exceed the range if the aggravating features justify this in which case the Adjudicator should make a written entry on the punishment sheet (DIS7) explaining why the punishment is outside the guideline range.
4. The provisional punishment should then be adjusted to reflect any personal mitigating factors.
5. Having thus ascertained the provisional punishment that takes into account all aggravating and mitigating factors the punishment should then be reduced by a third to reflect a discount for a TIMELY plea of guilty if that has been entered.
6. There is a power to suspend additional added days not exceeding 6 months. You should state your reasons for suspending the term imposed.
7. In all cases the IA should consider the imposition of loss of privileges, as an additional punishment. In particular when dealing with the most serious charges and repeat offenders.

[Note: These Guidelines only apply to added days. Independent Adjudicators may award any other punishment(s) available by virtue of Rule 55 (1) instead of or (with the exception of a caution) in addition to, added days but must, if additional punishment is imposed, bear in mind proportionality.]

Rule 51 Para.	Disciplinary Offence	Starting Point (Days)	Range of Added Days
1.	Commits any Assault:  (a) Upon staff: Push Deliberate blow Spitting Weapon used Sustained attack  (b) Upon inmate: Push Deliberate blow Spitting Weapon used Sustained attack  <i>** Aggravated</i>	8 28 28 38 35  5 16 16 35 35  +7	5 – 15 21 – 42 21 – 42 35 – 42 31 – 42  3 – 10 10 – 30 21 - 42 31 – 42 31 – 42  + 7
1A.	Commits any racially aggravated assault	+ 7	+ 7
2.	Detains any person against his will.	35	28 – 42
3.	Denies access to any part of the prison to any officer or other person (other than a prisoner) who is at the prison for the purpose of working there. [Dependent on duration & disruption] (i.e. Barricade)	28	21 – 42
4.	Fights with any person.  (4a) Multiple Participants (4b) If Sustained Attack	14  28 35	7 – 28  21 - 35 31- 42
5.	Intentionally endangers the health or personal safety of others or, by his conduct, is reckless whether such health or personal safety is endangered. [Dependent on duration & disruption]  Intentional: Reckless:	  36 20	  28 – 42 14 – 35
6.	Intentionally obstructs an officer in the execution of his duty, or any person (other than a prisoner) who is at the prison for the purpose of working there, in the performance of his work.	14	6 - 30

7.	Escapes or absconds from any prison or legal custody. Escapes: Absconds:	32 22	28 – 42 14 – 42
8.	Fails to comply with any conditions upon which he is temporarily released under Rule 9.	16	10 - 30
9.	Is found with any substance in their urine which demonstrates that a controlled drug has been administered to him by himself or by another person. Class A: Class B/C: Non-prescribed medication:	34 18 18	30 – 42 10 – 28 10 – 28
10.	Is intoxicated as a consequence of knowingly consuming any alcoholic beverage.	15	10 - 30
11.	Consumes any alcoholic beverage whether or not provided to the prisoner by another person.	15	10 - 30
12.	Has in his possession: (a) any unauthorised articles, or (b) a greater quantity of any articles that he is authorised to have. Non-prescribed medication: [including “legal highs”] Weapons: Class A drugs: Class B/C drugs: Item to cheat MDT: Smart Phone Camera ‘phone: Mobile ‘phone and/or accessory: Alcohol: Other item:	18 35 38 18 38 40 38 32 32 13	10 - 28 31 – 42 35 – 42 10– 21 35 – 42 36 - 42 35 – 42 28 – 42 28 – 42 5 – 30
13.	Sells or delivers to any unauthorised person any unauthorised article.	24	10 - 42
14.	Sells or, without permission, delivers to any person any article which he is allowed to have only for his own use.	10	6 - 21

15.	Takes improperly any article belonging to another person or to a prisoner.	28	10 - 42
16.	Intentionally or recklessly sets fire to any part of a prison or any other property, whether or not his own. Intentionally: Recklessly:	36 26	30 – 42 14 - 35
17.	Destroys or damages any part of a prison or any other property, other than his own. Intentionally: Recklessly:  <i>** Aggravated</i>	32 20  +7	30 - 42 14 – 35  + 7
17A.	Causes racially aggravated damage to, or destruction to any part of a prison or any other property, other than his own.	+ 7	+ 7
18.	Absents himself from any place he is required to be or is present in any place where he is not authorised to be.	16	10 - 42
19.	Is disrespectful to any officer or other person (other than a prisoner) who is at the prison for the purpose of working there, or any person visiting a prison.  <i>** Aggravated</i>	10  +7	6 – 21  +7
20.	Uses threatening, abusive or insulting words or behaviour.  <i>** Aggravated</i>	14  +7	5 – 30  +7
20A.	Uses threatening, abusive or insulting racist words or behaviour. Add to above days:	+ 7	+ 7
21.	Intentionally fails to work properly or, being required to work, refuses to do so.	10	5 – 21
22.	Disobeys any lawful order:  MDT: Other:	34 16	30 – 42 10 – 30
23.	Disobeys or fails to comply with any rule or regulation applying to him	6	3 – 14

24.	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).	38	30 - 42
24A.	Displays, attacks or draws on any part of a prison or on any other property, threatening, abusive or insulting racist words, drawings, symbols or other material.	28	18 - 42
25	(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.	The days awarded will be the same as the substantive offences above.	The days awarded will be the same as the substantive offences above.

\*\* The punishment will be increased if the offence was

- religiously aggravated;
- motivated by, or demonstrates, hostility based on the victim's sexual orientation or presumed sexual orientation;
- motivated by, or demonstrates, hostility based on the victim's disability or presumed disability



## Young Offender (18-20 year olds)

### YOI ADJUDICATIONS

#### Independent Adjudicator's Punishment Guidelines for YOI

8. Adjudicators should first decide the starting point for the punishment. This starting point will normally be within the guideline range. The starting point suggested is for a young offender (i) with no previous findings of guilt on adjudications and (ii) following a not guilty plea.
9. The starting point should be increased to reflect any aggravating features of the offence itself and of the offender (such as previous findings of guilt) to ascertain the provisional punishment.
10. The starting point may exceed the range if the aggravating features justify this in which case the Adjudicator should make a written entry on the punishment sheet (DIS7) explaining why the punishment is outside the guideline range.
11. The provisional punishment should then be adjusted to reflect any personal mitigating factors.
12. Having thus ascertained the provisional punishment that takes into account all aggravating and mitigating factors the punishment should then be reduced by a third to reflect a discount for a TIMELY plea of guilty if that has been entered.
13. There is a power to suspend additional added days not exceeding 6 months. You should state your reasons for suspending the term imposed
14. In all cases the IA should consider the imposition of loss of privileges, as an additional punishment. In particular when dealing with the most serious charges and repeat offenders.
15. YOI – 18 - 20 year olds - 20% deduction from adult guidelines already calculated below.
16. YOI – 15 - 17 years sliding scale of a further 20% (maximum of 40% in total) to the Sentencing Guidelines attached.

#### **When sentencing children or young people (those aged under 18 at the date of the finding of guilt) a court must have regard to:**

- **the principal aim of the youth justice system (to prevent offending by children and young people); - s.37(1) Crime and Disorder Act 1998**
- **the welfare of the child or young person - s.44(1) Children and Young Persons Act 1933**

[Note: These Guidelines only apply to added days. Independent Adjudicators may award any other punishment(s) available by virtue of Rule 60 (1) instead of or (with the exception of a caution) in addition to, added days but must, if additional punishment is imposed, bear in mind proportionality.]

Rule 55 Para.	Disciplinary Offence	Starting Point (Days)	Range of Added Days
1.	Commits any Assault: (a) Upon staff: Push Deliberate blow Spitting Weapon used Sustained attack  (b) Upon inmate: Push Deliberate blow Spitting Weapon used Sustained attack  <i>** Aggravated</i>	6 22 22 30 28  4 12 12 28 28  +5	4 – 12 16 – 33 16 – 33 28 - 33 24 – 33  2 – 8 8 – 24 8 - 24 24 – 33 24– 33  +5
2	Commits any racially aggravated assault	+ 5	+ 5
3.	Detains any person against his will.	28	22 – 33
4.	Denies access to any part of the YOI to any officer or other person (other than an inmate) who is at the YOI for the purpose of working there. [Dependent on duration & disruption] (i.e. Barricade)	22	16 – 33
5.	Fights with any person.  (4a) Multiple Participants (4b) If Sustained Attack	11  22 28	5 – 22  16 - 28 24 - 33
6.	Intentionally endangers the health or personal safety of others or, by his conduct, is reckless whether such health or personal safety is endangered. [Dependent on duration & disruption]  Intentional: Reckless:	28 16	22 – 33 11 – 28
7.	Intentionally obstructs an officer in the execution of his duty, or any person (other than an inmate) who is at the YOI for the purpose of working there, in the performance of his work.	11	2 - 24

8.	Escapes or absconds from any a YOI or legal custody. Escapes: Absconds:	25 17	22 – 33 11 – 33
9.	Fails to comply with any conditions upon which he is temporarily released under Rule 5.	10	8 - 24
10.	Is found with any substance in their urine which demonstrates that a controlled drug has been administered to him by himself or by another person. Class A: Class B/C: Non-prescribed medication:	27 14 14	24 – 33 8 – 22 8 – 22
11.	Is intoxicated as a consequence of knowingly consuming any alcoholic beverage.	12	8 - 24
12.	Consumes any alcoholic beverage whether or not provided to him by another person.	12	8 - 24
13.	Has in his possession: (a) any unauthorised articles, or (b) a greater quantity of any articles that he is authorised to have. Non-prescribed medication: [including “legal highs”] Weapons: Class A drugs: Class B/C drugs: Item to cheat MDT: Smartphone Camera ‘phone: Mobile ‘phone and/or accessory: Alcohol: Other item:	14 28 30 14 30 32 30 25 25 10	8 - 22 27 - 33 28 – 33 8 – 16 28 – 33 28 - 33 28 – 33 22 – 33 22 – 33 4 – 24
14.	Sells or delivers to any unauthorised person any unauthorised article.	19	8 – 33
15.	Sells or, without permission, delivers to any person any article which he is allowed to have only for his own use.	8	4 - 16

16.	Takes improperly any article belonging to another person or to a YOI.	22	8 - 33
17.	Intentionally or recklessly sets fire to any part of a YOI or any other property, whether or not his own. Intentionally: Recklessly:	28 20	24 – 33 11 - 28
18.	Destroys or damages any part of a YOI or any other property, other than his own. Intentionally: Recklessly:  <i>** Aggravated</i>	25 16  +5	24 - 33 11 – 28  +5
19.	Causes racially aggravated damage to or destruction to and part of a YOI or any other property, other than his own, when aggravated.	+ 5	+ 5
20.	Absents himself from any place he is required to be or is present in any place where he is not authorised to be.	12	8 - 33
21.	Is disrespectful to any officer or other person (other than an inmate) who is at the YOI for the purpose of working there, or any person visiting a YOI.  <i>** Aggravated</i>	8  +5	4 – 16  +5
22.	Uses threatening, abusive or insulting words or behaviour.  <i>** Aggravated</i>	11  +5	4 – 24  +5
23.	Uses threatening, abusive or insulting racist words or behaviour.	+5	+5
24.	Intentionally fails to work properly or, being required to work, refuses to do so.	8	4 – 16
25.	Disobeys any lawful order:  MDT: Other:	27 12	24 – 33 8 – 24

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26.	Disobeys or fails to comply with any rule or regulation applying to him	4	2 – 11
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 16).	30	24 - 33
28.	Displays, attacks or draws on any part of a YOI or on any other property, threatening, abusive or insulting racist words, drawings, symbols or other material.	22	14 - 33
29.	(a) Attempts to commit, (b) incites another inmate to commit, or (c) assists another inmate to commit or to attempt to commit, any of the foregoing offences.	The days awarded will be the same as the substantive offences above.	The days awarded will be the same as the substantive offences above.

\*\* The punishment will be increased if the offence was

- religiously aggravated;
- motivated by, or demonstrates, hostility based on the victim's sexual orientation or presumed sexual orientation;
- motivated by, or demonstrates, hostility based on the victim's disability or presumed disability

## **Young Offender (15-17 year olds)**

### **YOI ADJUDICATIONS**

#### **Independent Adjudicator's Punishment Guidelines for YOI**

17. Adjudicators should first decide the starting point for the punishment. This starting point will normally be within the guideline range. The starting point suggested is for a young offender (i) with no previous findings of guilt on adjudications and (ii) following a not guilty plea.
18. The starting point should be increased to reflect any aggravating features of the offence itself and of the offender (such as previous findings of guilt) to ascertain the provisional punishment.
19. The starting point may exceed the range if the aggravating features justify this in which case the Adjudicator should make a written entry on the punishment sheet (DIS7) explaining why the punishment is outside the guideline range.
20. The provisional punishment should then be adjusted to reflect any personal mitigating factors.
21. Having thus ascertained the provisional punishment that takes into account all aggravating and mitigating factors the punishment should then be reduced by a third to reflect a discount for a TIMELY plea of guilty if that has been entered.
22. There is a power to suspend additional added days not exceeding 6 months. You should state your reasons for suspending the term imposed
23. In all cases the IA should consider the imposition of loss of privileges, as an additional punishment. In particular when dealing with the most serious charges and repeat offenders.
24. YOI – 18 – 20 year olds - 20% deduction from adult guidelines already calculated below.
25. YOI – 15 - 17 years sliding scale of a further 20% (maximum of 40% in total) to the Sentencing Guidelines attached.

#### **When sentencing children or young people (those aged under 18 at the date of the finding of guilt) a court must have regard to:**

- **the principal aim of the youth justice system (to prevent offending by children and young people); - s.37(1) Crime and Disorder Act 1998**
- **the welfare of the child or young person - s.44(1) Children and Young Persons Act 1933**

[Note: These Guidelines only apply to added days. Independent Adjudicators may award any other punishment(s) available by virtue of Rule 60 (1) instead of or (with the exception of a caution) in addition to, added days but must, if additional punishment is imposed, bear in mind proportionality.]

Rule 55 Para.	Disciplinary Offence	Starting Point (Days)	Range of Added Days
1.	Commits any Assault:		
	(a) Upon staff:	Push	3 - 10
		Deliberate blow	13 - 26
		Spitting	13 - 26
		Weapon used	21 - 26
		Sustained attack	19 - 26
	(b) Upon inmate:	Push	2 - 6
	Deliberate blow	6 - 19	
	Spitting	6 - 19	
	Weapon used	19 - 26	
	Sustained attack	19 - 26	
	** <i>Aggravated</i>	+4	+4
1A.	Commits any racially aggravated assault	+ 4	+ 4
2.	Detains any person against his will.	21	18 - 26
3.	Denies access to any part of the YOI to any officer or other person (other than an inmate) who is at the YOI for the purpose of working there. [Dependent on duration & disruption] (i.e. Barricade)	18	12 - 26
4.	Fights with any person.	9	4 - 18
	(4a) Multiple Participants	18	12 - 21
	(4b) If Sustained Attack	21	19 - 26
5.	Intentionally endangers the health or personal safety of others or, by his conduct, is reckless whether such health or personal safety is endangered. [Dependent on duration & disruption]		
	Intentional: Reckless:	21 13	18-26 9-21
6.	Intentionally obstructs an officer in the execution of his duty, or any person (other than an inmate) who is at the YOI for the purpose of working there, in the performance of his work.	9	2 - 19

7.	Escapes or absconds from any a YOI or legal custody. Escapes: Absconds:	20 14	18 – 26 9 – 26
8.	Fails to comply with any conditions upon which he is temporarily released under Rule 5.	8	9 - 19
9.	Is found with any substance in their urine which demonstrates that a controlled drug has been administered to him by himself or by another person. Class A: Class B/C: Non-prescribed medication:	22 11 11	19 – 26 6 – 18 6 – 18
10.	Is intoxicated as a consequence of knowingly consuming any alcoholic beverage.	10	6 - 19
11.	Consumes any alcoholic beverage whether or not provided to him by another person.	10	6 - 19
12.	Has in his possession: (a) any unauthorised articles, or (b) a greater quantity of any articles that he is authorised to have. Non-prescribed medication: [including “legal highs Weapons: Class A drugs: Class B/C drugs: Item to cheat MDT: Smartphone Camera ‘phone: Mobile ‘phone and/or accessory: Alcohol: Other item:	11 21 24 11 24 26 24 20 20 8	6 - 18 22 - 26 21 – 26 6 – 13 21 – 26 21 - 26 21 – 26 18 – 26 18 – 26 3 – 19
13.	Sells or delivers to any unauthorised person any unauthorised article.	15	6 - 26
14.	Sells or, without permission, delivers to any person any article which he is allowed to have only for his own use.	6	3 - 13



15.	Takes improperly any article belonging to another person or to a YOI.	18	6 - 26
16.	Intentionally or recklessly sets fire to any part of a YOI or any other property, whether or not his own. Intentionally: Recklessly:	22 16	19 – 26 9 - 22
17.	Destroys or damages any part of a YOI or any other property, other than his own. Intentionally: Recklessly:  <i>** Aggravated</i>	20 13  +4	19 - 26 9 – 22  +4
17A.	Causes racially aggravated damage to or destruction to and part of a YOI or any other property, other than his own, when aggravated.	+4	+ 4
18.	Absents himself from any place he is required to be or is present in any place where he is not authorised to be.	10	6 - 26
19.	Is disrespectful to any officer or other person (other than an inmate) who is at the YOI for the purpose of working there, or any person visiting a YOI.  <i>** Aggravated</i>	6  +4	3 – 13  +4
20.	Uses threatening, abusive or insulting words or behaviour.  <i>** Aggravated</i>	9  +4	3 – 19  +4
20A.	Uses threatening, abusive or insulting racist words or behaviour.	+4	+4
21.	Intentionally fails to work properly or, being required to work, refuses to do so.	6	3 – 13
22.	Disobeys any lawful order:  MDT: Other:	22 10	19 – 26 6 – 19

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23.	Disobeys or fails to comply with any rule or regulation applying to him	3	2 – 9
24.	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 16).	24	19 - 26
24A.	Displays, attacks or draws on any part of a YOI or on any other property, threatening, abusive or insulting racist words, drawings, symbols or other material.	18	11 - 26
25.	(a) Attempts to commit, (b) incites another inmate to commit, or (c) assists another inmate to commit or to attempt to commit, any of the foregoing offences.	The days awarded will be the same as the substantive offences above.	The days awarded will be the same as the substantive offences above.

\*\* The punishment will be increased if the offence was

- religiously aggravated;
- motivated by, or demonstrates, hostility based on the victim's sexual orientation or presumed sexual orientation;
- motivated by, or demonstrates, hostility based on the victim's disability or presumed disability

- A. Each prison has been provided with a laptop to use specifically for virtual hearings. Regional SPOCs and prison SPOCs have details of the Cloud Video Platform (CVP) room, where the hearings will take place. Each prison has a URL link (and PIN number) assigned to them for use when hosting an IA hearing.
- B. To prepare for a hearing, prisoners should be given access to [PSI 05/2018 Prisoner Discipline Procedures \(Adjudications\)](#) when requested and offered access to the [DIS 2 Easy Read](#) if needed or requested.
- C. The below stepped process for prison staff shows how to prepare for a virtual hearing following confirmation of a hearing date from the Chief Magistrate's Office (CMO). A flowchart which summarises this process on one page is available at [Annex D](#). Some of these steps may be taken simultaneously, this just sets out the logical ordering:

### **Before you begin:**

- D. **Please ensure that the date of the first referral to the date of the scheduled hearing does not exceed the 28-day legislative deadline:** *"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".* The IA will dismiss cases that have exceeded the legislative deadline.
- E. If the case has been re-referred to the IA following a referral back to the governor for review, the 28 day-legislative deadline does not apply, but the hearing should be scheduled to take place as soon as possible.
- F. In a virtual hearing the IA will normally only consider 15 charges per sitting. If you have made referrals to the IA for more than 15 charges, please ensure you sift your caseload and prioritise the charges in accordance with the 28-day IA deadline for opening hearings.

### **1) Inform the prisoner as soon as possible and facilitate any request for Legal Advice and/or Legal Representation**

1.1 For a new referral please use IA5 (Prisoner Independent Adjudication Information Form – formerly Template C) to inform the prisoner and allow them to arrange legal advice/representation. Ensure the reporting officer and any witnesses are made aware of the hearing date.

1.2 The prisoner's right to legal advice/representation remain unaffected and you must ensure that all requests are facilitated. This can be done by telephone. If the prisoner chooses to have legal representation for the hearing, the name, email address and contact for the legal representative must be obtained as soon as possible.

1.3 If the case has been re-referred to the IA following a referral back to the governor for review, the prisoner must be informed and given another opportunity to arrange legal representation. The governor should issue the prisoner with a Prisoner IA Information Form (IA5), requesting the details of their legal representative and confirming whether they have changed since the initial hearing. Once the prison has obtained these details, they should contact the legal representative to inform them that the case is back with the IA and inform them of the date of the next scheduled hearing should the prisoner wish for them to attend, as per the usual process. Staff should not rely on any information given previously by the prisoner as their legal representatives may have changed since the initial referral.

### **2) Send new Referral Template (IA1 form) to the Chief Magistrate's Office**

## Annex I

2.1 The IA1 form should be sent to [gl-ind.adjudication@justice.gov.uk](mailto:gl-ind.adjudication@justice.gov.uk). Once sent, the Chief Magistrate's Office will send a booking confirmation with the date and time of the hearing. Ensure that any reporting officers and/or witnesses are informed of the hearing date if they are required.

2.2 Where the IA1 form contains any cases that are being re-referred to the IA, these must be clearly marked on the form and include any explanation.

### 3) Organise the schedule of hearings

3.1 You will need to organise the hearings in running order of the day. You may want to schedule the hearings where a legal representative is involved earlier in the day, so that you can provide the lawyer with a more accurate time slot for virtually attending the hearing. Please remember that you will need to facilitate time prior to the hearing for the lawyer to speak with their client, again this can be done by telephone. Hearings will start from 9.30am, unless advised otherwise in the confirmation email from the Chief Magistrate's Office.

### 4) Send the DIS1 and DIS3 to the IA (the details of which will be on the booking letter provided by the Chief Magistrate's Office) **as soon as possible, but at least 48 hours (excluding weekends and bank holidays) before the listed hearing.**

4.1 Include any evidence that will be relied upon in the hearing, but **not** the conduct or adjudication report. The DIS3 should contain reference to any adjournments, decisions to refer the charge and the full reasons for making the referral. The chronological order of any decision-making should be included, including dates and the date the prisoner was informed of the IA hearing should also be included. *The adjudicator must state their reasons for referral on the record of hearing (DIS3) as giving no reasons or quoting 'seriousness of the offence' alone may mean that the case is returned to the governor for inquiry, and the case cannot subsequently be re-referred to the IA even for an extremely serious offence.* Adjudicators must not rely on the fact that a matter has been previously referred to the police or the facts of the case to justify referral to the IA. The reasoning must demonstrate why the test for seriousness ([Annex A](#) paragraph 2.32) has been met. This may include factors such as: what happened, impact on the regime, any injuries, if the disobedience is repeated, or risk to security, order and control, or safety.

4.1a If a case is being re-referred to the IA following a referral back to the governor for review for a police referral, the reasons must be clearly stated in the DIS 3.

4.2 The paperwork bundle for each charge should be sent in an individual email with all the relevant paperwork for that charge. Please ensure that you write the following in the subject title of the email: **prisoner surname; prisoner number; charge number; hearing 1** (expected running order of the hearing on the day if known). The prison should send these documents preferably by Word document, with careful attention to the page ordering and legibility of the document. Each document should be saved with the prisoner name, prisoner number, charge number and name of document e.g. Smith, A000987, 1023, DIS3.

4.3 The paperwork bundle should be sent directly to the IA (the email address for the IA can be found on the booking letter provided by the Chief Magistrate's Office). It is essential that paperwork is sent correctly **as soon as possible, but at least 48 hours (excluding weekends and bank holidays) before the hearing.** For example, if a hearing is scheduled for Monday at 9am, the paperwork must be sent on the previous Thursday by 9am.

### 5) Send the legal representative the same paperwork

## Annex I

5.1 But also include any adjudication and/or conduct report that will be relied upon in the hearing.

### **6) As soon as possible but at least 24 hours (excluding weekends and bank holidays) before the hearing send the IA and legal representative a virtual invitation to the hearing.**

6.1 You should directly email this invitation to the IA using the email address provided on the booking confirmation from the Chief Magistrate's Office, please also copy in the Chief Magistrate functional mailbox ([gl-ind.adjudication@justice.gov.uk](mailto:gl-ind.adjudication@justice.gov.uk)). This same invitation should be copied to legal representatives or translators if being used.

6.2 Please ensure that you send the full URL link, and the name of your prison's hearing room to the IA and legal representative, in the prison invitation template. Also ensure that you include a contact name and direct phone number so that the IA or legal representative can contact you on the day if they are having any issues. You should also contact the IA if you will be late to start the hearing or if you are having any difficulties logging in. IMB members can also attend virtual hearings and should be sent the virtual invitation and URL link where requested.

6.3 If any external parties are having difficulties logging in, ask them to try and use the link on different browsers.

### **7) A separate private room and telephone must be available during the hearing**

7.1 This is in the event that the legal representative needs to speak with his or her client during the hearing. If this happens, the IA will pause the hearing to facilitate this.

### **8) Have a copy of the DIS 7 ready for each hearing**

8.1 To minimise the time delay to the prisoner in receiving the DIS7 Form, the IA may provide express permission during the hearing for prison staff to complete the form on his/her behalf. This should be done at the time of the hearing, and given to the prisoner whilst the IA is still present. Staff should ensure that enough copies of the DIS7 are readily available to complete, so that there is minimum delay to any subsequent hearings.

### **9) The IA3 Outcome Sheet should be sent to the Chief Magistrate's Office as soon as possible, but no later than 24 hours of concluding the hearing**

9.1 Care should be taken to ensure that the document is legible, and that the reasons for any cases being referred back to the governor are clearly outlined. Please send to: [gl-ind.adjudication@Justice.gov.uk](mailto:gl-ind.adjudication@Justice.gov.uk).

### **10) The Chief Magistrate's Office will provide you with a DIS3 form**

10.1 Within 48 hours of concluding the hearing you will receive the DIS3 completed by the IA via email. The DIS3 may not be the same as the one you provided to the Chief Magistrate's Office; the IA's version should be attached to the prison copy for record.

### **11) Other information:**

11.1 If a prisoner refuses to attend a Governor or an IA hearing, ensure a refusal to attend form is completed.

11.2 If at any point in the process a prisoner is transferred before their scheduled hearing, prisons must complete the Transfer form (IA2) as soon as possible and send it to

## [Annex I](#)

the Chief Magistrate's Office functional mailbox ([gl-ind.adjudication@justice.gov.uk](mailto:gl-ind.adjudication@justice.gov.uk)), clearly stating the receiving establishment.

11.3 In exceptional circumstances, it may no longer be deemed suitable to continue with an IA referral. In this case, a prison can withdraw a referral so that it does not have to go back before the IA to be dismissed. The prison should directly contact the Chief Magistrate's Office to withdraw the referral, clearly stating the reasons behind this decision. **Please note that if a charge is withdrawn, the Governor cannot deal with this matter within the establishment.**

### **12) The IT Service Desk**

12.1 The IT Service Desk will be available to answer any questions regarding **technical issues with your laptop**, such as being unable to connect to internet/the laptop will not turn on. You should contact the Digital and Technology IT Service Desk on **0800 917 5148**.

## Independent Adjudicators entering prison establishments

[Annex J](#)

- 1.1 Governors should ensure the safety of an IA throughout the duration of their visit to the prison. Any known intelligence relating to threats against an IA must be passed to all staff involved in the security of the adjudication including segregation unit staff, staff escorting the IA and those escorting the prisoner and appropriate measures taken to mitigate those risks.
- 1.2 Abusive behaviour or threats of violence towards an IA must not be tolerated, including behaviour in the presence of, but not directed towards the IA which is nonetheless abusive or threatening. This should immediately be challenged and the situation managed to prevent any harm to the IA. Dependant on the circumstances, the prisoner should be placed on report and if it is very serious, referred to the Police.
- 1.3 The following good practice protocol has been agreed between HMPPS and the Chief Magistrate. Local searching policies should be reviewed and amended to comply with the Protocol.
- 1.4 HMPPS/Chief Magistrate IA Protocol:
  - IAs should have identity with them and produce this if required to do so.
  - IAs will be subject to the same search regime which applies to all official and professional visitors to a prison, including the prison Governor/Director. However, it should be recognised that the prison is dealing with a holder of a judicial office and IAs should not be searched in front of waiting visitors/lawyers.
  - An effort should be made to 'fast track' the IA through the prison to the adjudication room.
  - At no time should the IA be left alone in the establishment and they should be accompanied by sufficient prison staff to ensure their safety when being escorted through the establishment.
  - An adjudication room should be provided which has been subject to a written risk assessment which will be available to the visiting IA and the Chief Magistrate's Office (see below).
  - All prisons will have an agreed local searching strategy setting out the frequency and type of searching conducted. All prisoners will be searched in line with that strategy before attending an independent adjudication.
  - At all times there should be sufficient security to ensure the safety of the IA. This includes there being at least two escort staff present at all times when a prisoner is before the IA.
- 1.5 Further guidance on risk assessments

Before IAs re-enter establishments, Governors must review previous procedures for holding IA hearings at the prison and share an updated risk assessment with the CMO.

To assist with this work, templates for the **IA Facility Check Sheet and Safe System of Work Review** are provided below to assist with action planning to meet full compliance with health and safety obligations, including risks around communicable diseases, eg. COVID ([see HMPPS \(Interim\) Compartmentalisation and Protective Isolation Policy Framework for further information on the process for this](#)). The review should also consider the appropriateness of the adjudication room, for the purpose of a formal hearing. Further assistance can be obtained from health and safety colleagues and the following supporting documents:

- PSI 37/2015 – H&S Arrangements for Risk Assessment<sup>3</sup>
- Template Risk Assessment<sup>4</sup>
- [HMPPS \(Interim\) Compartmentalisation and Protective Isolation Policy Framework](#)

Prisons are only required to update their risk assessments (IA Facility Check Sheet and Safe System of Work Review) the first time a physical hearing is arranged. *A copy of these documents must be retained in case you are asked to provide them to the CMO again.*

#### 1.6 Further good practice guidance

Governors are encouraged to build good relationships with IAs so that issues of concerns can be resolved locally. It is good practice to provide new IAs with an induction when they first visit a prison which could include:

- How to raise the alarm
- What alarm bells look and sound like
- Location of the adjudication room
- Evacuation routes
- Reassurance that someone will stay with them unless there are exceptional circumstances, in which case they may be locked into a room for safety while staff deal with an incident
- What to do if there is an incident (i.e. staying out of the way and finding a place of safety)
- How to raise concerns locally

Governors should consider giving IAs a reminder of alarm bell location on each day they are in the establishment and providing a more general reminder if they haven't been in the prison for a while.

## Template - IA Facility Check Sheet

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<sup>3</sup> [PSI 2015-37 - HMPPS Intranet \(gsi.gov.uk\)](#)

<sup>4</sup> [https://intranet.noms.gsi.gov.uk/\\_\\_data/assets/word\\_doc/0006/694338/Risk\\_Assessment\\_March\\_2006.doc](https://intranet.noms.gsi.gov.uk/__data/assets/word_doc/0006/694338/Risk_Assessment_March_2006.doc)



<b>Establishment:</b>	<b>HMP</b>	<b>Location of IA Facility:</b>	<b>e.g. Segregation Unit</b>
<b>Persons Completing Visit:</b>		<b>Date of Visit:</b>	
<b>People spoken to during visit</b>			

### **Covid 19 & other communicable diseases**

**Please answer the question and comment on relevant observations that may be required if prison is in outbreak status**

Has a specific Covid-19/communicable disease Risk Assessment been undertaken for the IA room?	
Can 2m social distancing be maintained based on the normal occupancy levels for IA hearings? (if relevant)	
What type of ventilation is available?	

### **Security & Safety**

Has a H&S Risk Assessment been undertaken for IA procedures?	
Does the Risk Assessment specify arrangements for maintaining Security & Safety?	
Is there a general alarm call point located in the room?	
Are items that may be used as weapons secured appropriately?	

### **Welfare Facilities**

What welfare facilities are provided for use by the IA?	
Are the welfare facilities located to enable ease of access?	

**Housekeeping**

Are cleaning schedules available to evidence the frequency of cleaning?	
Was the area inspected found to be clean and tidy?	

**General**

Is the room an appropriate size for the intended purpose? *please provide approximate dimensions	
Is the furniture provided suitable?	
Is the lighting in the area appropriate?	
Please comment on the general condition of the facilities to be used by the IA?	

**Appended Documentation**

e.g. copy of risk assessments, safe operating procedures and photographs etc.
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**Recommendations**

- E.g. replace furniture, set cleaning schedule, undertake Covid RA, cease using venue etc.
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HMPPS	FHS 103 SSOW/
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SAFE SYSTEM OF WORK

<b>Establishment:</b>	
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<b>Dept/Section:</b>		<b>Author:</b>	
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<b>Task /Process:</b>		<b>Date:</b>	
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**PARTICULAR HAZARDS:**

**SPECIAL EQUIPMENT, PRECAUTIONS OR PPE NEEDED:**

**DETAILED STEPS TO FOLLOW:**

**EMERGENCY PROCEDURES AND/OR CONTACT POINT:**

PERSONNEL AUTHORISED TO CARRY OUT TASK:	
PERSONNEL AUTHORISED TO TEACH/SUPERVISE TASK:	
ASSESSMENT/MANUAL REFERENCE:	
ASSESSORS SIGNATURE:	
SUPERVISORS SIGNATURE:	

**Safe System of Work Review**

Reference Number
------------------

**Review Date:**

**Review Type: Routine/changes to task or process/accident**

**Review Findings:**

**If new SSOW was carried out state reference number:**

**Date of Next Review:**

**Signature of Person Carrying out this Review:**

**Safe System of Work Review**

Reference Number
------------------

**Review Date:**

**Review Type: Routine/changes to task or process/accident**

**Review Findings:**

**If new SSOW was carried out state reference number:**

**Date of Next Review:**

**Signature of Person Carrying out this Review:**