NORTHERN IRELAND PRISON SERVICE

MANUAL ON THE CONDUCT OF ADJUDICATIONS
ADJUDICATION MANUAL

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By their nature, prisons are normally closed institutions in which large numbers of people are held against their will in confined spaces. It is inevitable that from time to time, some prisoners will breach the rules and regulations of the prison in various ways.

Regardless of the fact that these people have been incarcerated by the rule of law, they are still entitled to be treated like all citizens – according to the law. These adjudication procedures provide adjudicators with the relevant processes and procedures that must be followed, to ensure that those charged with alleged breaches of discipline are dealt with according to the requirements of the law and in a manner that does not breach any Statute or Convention that provides for a person’s Human Rights.

The awards available to adjudicators under Prison Rule 39(1) a-f, are likely to engage and/or interfere with various Articles of the European Convention on Human Rights (ECHR). The ECHR provides for the interruption of such circumstances according to proportionality and law. Adjudicators must therefore, have a thorough understanding of the various Articles that may be engaged or interfered with through the application of the adjudication process. A full breakdown of the possible implications of engaging/interfering with ECHR provisions is provided as an Annex to this manual.

It is the responsibility of all adjudicators, when pronouncing awards, to apply relevance and proportionality to the offence committed and to enquire into and fully consider the effect that an award may have on the rights of a prisoner according to his/her personal circumstances at that time.
THE PRISON DISCIPLINARY SYSTEM

Purpose of the Adjudication

1.1. An adjudication has 2 purposes:

- To help maintain order, control, discipline and a safe environment in the prison; and
- To ensure that the use of authority in the prison is lawful, reasonable and fair.

The Role and Responsibility of the Adjudicator

1.2. The adjudicator is required to enquire into a report of alleged events and to decide whether an offence under Prison Rule 38 has been established beyond reasonable doubt. It is for the adjudicator to ascertain the facts by questioning the accused, the reporting officer and any other witnesses and by considering any other evidence that is available.

1.3. The adjudicator is responsible for the procedure that is followed at the hearing. This is the case even where a prisoner is granted legal representation. This manual provides guidance, and is not stipulative, except where an action is indicated as mandatory. If adjudicators depart from the guidance and, in doing so, compromise fairness and justice, their decisions risk being overturned. Case law to date has suggested that normal adjudication procedures are classified as disciplinary and therefore do not engage Article 6 of the European Convention on Human Rights. However, it is important that adjudicators respect the underlying principles of Article 6 when presiding over adjudications to ensure that proceedings are as fair and transparent as possible.

1.4. Where the alleged offence against prison discipline may constitute an offence in criminal law, the Governor must decide whether to invite the police to investigate the charges or continue to deal with the matter by way of disciplinary proceedings (subject to the provisions
1.5. In reaching their decision, Governors can draw on the guidelines detailed in the “Memorandum of Understanding on the Investigation and Prosecution of Offences Committed in Prison” which has been agreed by the NIPS, PSNI and PPS. Where the decision is taken to refer charges to the police, the adjudicator will open and adjourn the adjudication pending the outcome of the police investigation.

**Who may adjudicate?**

1.6. Prison Rule 36(6) requires that the Governor or his Deputy consider any charge against a prisoner. If neither is available, the Governor may delegate the inquiry to another Governor who has been authorised by the Secretary of State to conduct adjudications. The Deputy Director, Head of Operations shall issue a list of Governors authorised to conduct adjudications, which shall be reviewed and amended annually. Under Prison Rule 36(2), adjudicators must adjudicate on every charge and, save in exceptional circumstances, must do so not later than the next day after the charge has been laid, unless that day is a Saturday, Sunday, a public holiday or a day of religious observance for the prisoner concerned.

**Referral of Serious Offences**

1.7 Where an alleged offence is reported that is listed in paragraphs A – G in the Memorandum of Understanding on the Investigation and Prosecution of Offences Committed in Prison, Governors should, following initial consideration of the individual circumstances of the alleged offence, refer the matter to the PSNI for formal investigation. The offences listed are:

- A – Assault
- B – Escape
- C – Possession of Weapons or Drugs
In such instances, the adjudication must not be reconvened until the outcome of the police investigation is known, as the police may, depending on the outcome of their investigation, lay criminal charges against the prisoner.

**Separated Prisoners**

1.8 Under Prison Rule 109(b-e), arrangements for the adjudication process for serious offences allegedly committed by separated prisoners are provided. Where a separated prisoner is charged with an offence which, in the view of the Governor, the awards available are insufficient, when compared with the seriousness of the offence, the Governor may refer the charge to a Commissioner, appointed by the Secretary of State for that purpose.

1.9. The adjudicator may hear a charge against a prisoner even if the alleged offence was committed at another establishment.
Laying of charges

2.1. Under Prison Rule 35, a charge of an offence against prison discipline must be laid within 48 hours of the discovery of the offence. Failure to charge within 48 hours renders any subsequent hearing void unless there are very exceptional circumstances. The charge is laid when the report of the alleged offence is made to the Governor on Form 1126. Where it is alleged that an offence has been committed and the prisoner has been immediately transferred to another prison for whatever reason, the charge must be raised by the establishment in which the alleged offence occurred, with the papers then being faxed to the holding establishment. A hearing can only be concluded if the prisoner is still subject to the warrant on which s/he was being held at the time of the offence.

2.2. Normally a charge will be drawn up by the Prison Officer against whom the offence was committed or who witnessed or dealt with the incident during which the alleged offence took place. It may however be laid by another Officer. This would be appropriate if no member of staff was present or if the offence was committed while at another prison or on home leave.

2.3. Before laying a charge, the Reporting Officer may consult a more senior officer who may offer guidance on whether to lay the charge and what charge is appropriate. Governors should ensure that at least one of their management team is able to offer advice on adjudication matters. (Adjudication Liaison Officer)

2.4. The charge must be of an offence described in Prison Rule 38. The charge may not be changed after the Notice of Report has been served on the prisoner. However under Prison Rule 37, the adjudicator may reduce the charge at the hearing to another substantive charge, if it appears appropriate to do so and it would not unfairly prejudice the interests of the prisoner. Any minor errors in describing the offence, the location, the timing and so on, should be brought to the attention of the adjudicator by the reporting officer at the hearing.

2.5. Exceptionally, more than one charge may be laid if it is unclear which charge is the most appropriate. In such circumstances the adjudicator should consider each charge in the light of the evidence presented. As the evidence is presented, it will become clear to the adjudicator
which, if any, of the charges is correct. The charge for which there is insufficient evidence must be dismissed. An adjudicator may not find the prisoner guilty of more than one offence based on the same act.

2.6. If a series of offences have been committed during one incident (for instance an attempted hostage taking, together with an assault on an officer and abusive language) more than one charge may be laid and the prisoner may be found guilty in each case.

2.7. A charge may only be laid in respect of conduct at Court if the prisoner was in the custody of a prison officer. If the Court has already dealt with the conduct no further charge should be laid.

**Informing the Prisoner of the Charge.**

2.8. The prisoner must be informed of the charge and the grounds on which it has been made within 24 hours of the charge being laid before the Governor, *(Prison Rule 35(2))* by being given a completed copy of Form 1127 and Information Sheet 21. Form 1127 must be accompanied by a copy of the reporting officers’ evidence. It should therefore, contain sufficient explanatory detail so that the prisoner can understand the nature of the charge.

2.9. The prisoner must receive Form 1127; Information Sheet 21 and a copy of the Reporting Officers evidence, at least 2 hours before the adjudication is due to begin. Best practice is for these documents to be issued the day before the adjudication to allow the prisoner to prepare his case. If an adjudication has been adjourned, a fresh copy of all the aforementioned forms should be issued in advance of the reconvened hearing. A written record should be kept of when and by whom any documents were issued to the prisoner.

**Self Harm.**

2.10. Disciplinary charges should not normally be brought either in respect of deliberate self harm or preparations for self harm. This applies equally to repetitive acts of self-harm. The Prison Service’s response, *(under its obligation to conform to Article 2 of the Human Rights Operational Policy & Co-ordination Branch March 2007)*
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Act 1998), to self-harm or attempted self-harm must look to the care of the individual prisoner as its priority. If early signs of a tendency to self-harm are overlooked or met with a punitive response, the risk of eventual tragedy may be increased. The threat of punishment should not form part of the strategy for dealing with such behaviour. Exceptionally a disciplinary charge may be brought if the attempt endangered the health and safety of others (for instance through a cell fire). In such circumstances if the prisoner intended or was reckless regarding the harm to others he may be charged. However, the care of the individual prisoner should be considered in deciding whether a charge is appropriate.

Medical Examination Before the Hearing.

2.11. On the day of an adjudication or reconvened adjudication and before the hearing starts the prisoner will be examined by a Medical Officer (Doctor or a Registered Nurse (Prison Rule 85(2A)) who shall;

- Report on Form 1128 whether the prisoner is in a fit state of health to attend the hearing and, if necessary, to undergo a punishment of cellular confinement; and
- Report in writing to the adjudicator any matters regarding the prisoner’s mental or physical capacity which appears relevant to the adjudication.

These duties may not be delegated to any member of health care staff who does not hold a registered nursing qualification.

2.12. In the interests of providing a fair hearing, the adjudicator must be satisfied that the prisoner is fit to take part in the adjudication process and may take into account advice provided by the Doctor or Nurse and from any other source. If he decides to adjourn the hearing until a later date he may ask the Medical Officer (Doctor or Registered Nurse) for an opinion as to when the prisoner may be fit.

2.13. If it is not possible for the prisoner to be medically examined before the hearing (in exceptional circumstances or because the Medical Officer (Doctor or Registered Nurse) is not
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available) the adjudication may proceed. However, the prisoner should be examined as soon as possible after the adjudication. The reasons for the delay should be recorded on Form 1128. In these circumstances no award of cellular confinement may be made.

**Preliminaries to the Hearing**

2.14 Before the hearing the prisoner may request;

- To see copies of any statements made by witnesses or other materials relevant to the alleged offence (CCTV footage that is to be presented as evidence, drug test results etc), in order to allow him to prepare his case; and

- For the names of witnesses or others involved in the incident which gave rise to the charge.

In each case the request should be granted and the information provided by a member of staff not conducting or otherwise involved in the hearing. The prisoner should also be informed of the names of any witnesses of which he may be unaware.

2.15. The prisoner may request to interview potential witnesses to the incident, including other prisoners, before the hearing. S/he should make this request known to staff, who will inform the Adjudicating Governor, who in turn will consider whether such interviews can assist in the preparation of his/her defence and does not prejudice fairness or that the interviews may intimidate witnesses. The Governor may allow such interviews if he considers the request reasonable and if the witnesses agree. If the Governor directs that the interview must take place within the hearing of a member of staff, that officer must not be the Reporting Officer or any other officer who may be called to give evidence at the adjudication. The officer may not disclose the nature of any discussion unless it presents a threat to security or unless there is clear intention to defeat the ends of justice. If this is the case the interview should be terminated and a report made which may be made available at the adjudication. Any actions taken by the adjudicator must be both necessary and proportionate.
**Access to a Solicitor before the Adjudication**

2.16. A prisoner may consult his/her legal advisor before the adjudication takes place. Should a prisoner request, during the opening of the adjudication that s/he wishes to seek legal advice from his/her legal adviser, the adjudication should again, following consideration of the evidence in chief, be adjourned to permit this. *(A general proposition mooted by Mr Justice Girvan in Judicial Review judgement – Robert Letters November 2005)*

**3. Legal Representation - McKenzie Friend - Advocacy**

**Requests for Legal Representation**

3.1. At the start of the hearing, the adjudicator must ask the prisoner whether they wish to request legal representation for the hearing. If refused, the prisoner may make a further request at any point during the hearing. Adjudicators should take care to distinguish between requests for legal representation by the prisoner and requests for access to a solicitor for legal advice. Granting legal representation will require an adjournment and possibly a new hearing with a different adjudicator who comes to the case de novo. Given that we strive to ensure fairness, there is a presumption that reasonable requests for adjournments will be approved.

**Request for assistance from a McKenzie Friend**

3.2. The adjudicator should also ask the prisoner whether they wish to request assistance from a friend or adviser (sometimes known as a McKenzie Friend). It is for the prisoner to nominate the person to provide assistance. Assistance may be provided by another prisoner, a relative or a friend. The adjudicator may refuse to allow a particular McKenzie friend if the person nominated is not readily available.

3.3. A McKenzie friend’s role is restricted to attending the hearing, taking notes and making suggestions to the prisoner to assist him/her in presenting his case. The adjudicator may
allow greater participation if appropriate. The McKenzie friend may be required to leave if s/he interferes or participates without the permission of the adjudicator.

Advocacy

3.4. When a charge is preferred on a juvenile, s/he should be advised that s/he may avail of the services of an advocate. The young person should be advised of this when s/he is served with the Notice of Report Form 1127. The advocate will meet with the young person as soon as possible to explain, where necessary, the nature of the charge, possible outcomes and the individual’s rights. The advocate may also give assistance in preparing an answer. If the young person requests it, the advocate may attend the adjudication. They may also speak on the young person’s behalf and, with the adjudicators consent, direct questions to witnesses on the young person’s behalf. The adjudicator should confirm during the opening stage of the adjudication that the young person has been made aware of this service.

Considering requests

3.5. The adjudicator should consider the request for legal representation or other assistance on the basis of the charge, the Reporting Officer’s statement and any statement the prisoner wishes to make or read out. The adjudicator may request further information where necessary. If either legal representation or a McKenzie friend are requested the requests should be considered separately.

3.6. The adjudicator should consider any request on balance; s/he does not need to be satisfied beyond reasonable doubt that assistance or representation is required or not required.

3.7. In considering a request the adjudicator should take account of the following considerations (taken from the Tarrant case).
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a) The seriousness of the charge and the potential penalty;

b) If any points of law are likely to arise;

c) The capacity of the prisoner to present his/her own case;

d) Any likely procedural difficulties;

e) The need for reasonable speed; and

f) The need for fairness.

This list is not exhaustive and there may be other relevant issues in an individual case.

Matters arising from the decision

3.8. If legal representation or a McKenzie friend is granted, it may be necessary to adjourn the hearing. It is the responsibility of the prisoner to appoint a solicitor or approach a proposed McKenzie friend.

3.9. If legal representation is granted, then a member of staff (not directly involved in the case) should arrange through Headquarters for the Prison Service to be represented by the Crown Solicitors Office. The adjudicator should not be involved in these arrangements.

3.10. If an adjudicator has considered and granted legal representation or other assistance, it may be inappropriate for him/her to hear the adjudication. This would be the case where in considering the request, the adjudicator had become aware of the prisoner’s defence or other information relevant to the case. As a consequence, it would be impossible for the adjudicator to hear the charge afresh (*the de novo principle*) when the adjudication resumes with representation.

3.11. If the request is refused the adjudicator should explain to the prisoner and for the record that s/he has considered the request under the criteria set out above. The adjudication may then proceed.

Operational Policy & Co-ordination Branch

March 2007
**Arrangements for legal representatives**

3.12. Legal representatives may request access to the prison to view the scene of an alleged incident, to interview witnesses in advance of the hearing, or for other reasons related to the preparation of the case. Any such request should be considered by a Governor grade at the prison, who is named on the register to hear adjudications, and is not directly involved in the adjudication.

3.13 If an interview with other prisoners or staff is requested and they are prepared to be interviewed, the interview may take place. If a request for an interview is made during the hearing, the adjudicator, if s/he agrees to the request, may adjourn the hearing to allow the interview to take place.

3.14. Interviews between the prisoner’s legal representative and potential witnesses should normally take place in sight but out of hearing of prison officers. The Governor grade considering the request for facilities, may direct that the interview should take place within the hearing of an officer for the reasons of security or, because of the possibility of coercion or the possibility of collusion between witnesses. The officer supervising the interview may not disclose the nature of the discussion unless it presents a threat to security or unless there is a clear intention to defeat the ends of justice. If this is the case the interview should be terminated and a report made which may be made available at the adjudication.

**Arrangements for McKenzie Friend**

3.15. A McKenzie friend may ask for arrangements to be made before the hearing for access to various facilities in order to help the prisoner prepare his/her case. Requests must be considered by a Governor grade named on the register for hearing adjudications who is not involved in the adjudication, and such facilities as appear reasonable for this purpose should be offered.
Adjudications in the Prisoners Absence

4.1 Adjudications in the prisoner’s absence may happen either because:

- The prisoner is unable to attend because of illness or a prolonged sequence of Court appearances;
- The prisoner refuses to attend;
- The adjudicator refuses to allow the prisoner to attend.

If a prisoner refuses to attend at an adjudication, it should be explained by the adjudicator or a member of staff appointed by the adjudicator, that the hearing will proceed in his/her absence. However, the adjudicator will identify the reasons for the prisoner’s non-attendance and will seek to address any issues raised to ensure that any action taken by the adjudicator is both necessary and proportionate. It should be noted on the record that the prisoner has been informed and that:

- The prisoner is considered fit for adjudication;
- The prisoner has been seen and informed that the hearing will proceed in his/her absence;
- The name of the person who spoke to the prisoner;
- What the prisoner said in response.

4.2 If a prisoner is prepared to attend an adjudication, but is inappropriately dressed or in a condition which is contrary to rules and regulations, s/he will be given the opportunity to be properly dressed and if they fail to comply they will be informed that the adjudication will take
place in his/her absence. The record should show that this warning has been given and that the prisoner has had the opportunity to change his/her appearance as necessary.

4.3. A plea of ‘not guilty’ should be entered on behalf of the prisoner and the adjudication should proceed as normal. In all instances where a prisoner is not present at the hearing, the adjudicator should keep the prisoner informed at key points in the proceedings. The adjudicator must inform the prisoner when a determination of guilt has been made and may invite him/her (if appropriate), to attend to make a plea in mitigation. Any such approach should be noted on the record.

4.4. If a prisoner has been granted legal representation, the legal representative should be present even if the prisoner is to be adjudicated on in his/her absence.

**Multiple Charges**

4.5. If more than one charge has been laid against a prisoner in respect of a single incident, the adjudicator should hear all the evidence before making a decision on any individual charge. There is otherwise a risk that the adjudicator will appear prejudiced on subsequent charges by the decision reached on the first.

4.6. If a prisoner is charged with more than one offence arising out of separate incidents, the adjudicator may hear the charges separately. However, the adjudicator should consider in each case whether the charge should be heard at a separate hearing.

**Single charges with more than one accused**

4.7. Where more than one prisoner has been charged with offences arising out of the same incident, for example, a fight, best practice to ensure a fair hearing will be for the adjudicator to hear the cases at a single hearing with both accused present, to avoid taking into account evidence heard in one adjudication when reaching a decision in the other case(s). This also allows all the parties to hear all the witnesses, since, in this example each of the accused is also a witness to the offence. However, the adjudicator can still decide to hear the cases
separately and in stages. In such instances, adjudicators must take care not to take into account evidence heard at one adjudication in the decision process of the other, unless that evidence has been produced at both hearings separately.

**Physical arrangements**

4.8. The adjudication setting should be relaxed but maintain sufficient formality to emphasise the importance of the proceedings. The prisoner must be allowed to sit, and should be offered writing materials to make notes. Other participants should also be allowed to sit if possible.

4.9 If escorting or discipline staff are required to be present, they should sit and should normally not be in front of or facing the prisoner. They should not act in a manner likely to intimidate the prisoner.

4.10. At the beginning or resumption of a hearing, the prisoner should enter the room before the Reporting Officer and witnesses. At an adjournment, the Reporting Officer and witnesses should leave the adjudication room first. This is to preclude suggestions that evidence may have been given to the adjudicator in the absence of the prisoner.

4.11. The prisoner’s record should not be in the adjudication room as its presence might suggest that the adjudicator may have had access to it in advance of the hearing *(which would breach the de novo principle)*.

**Adjournments**

4.12. An adjournment may be necessary for a number of reasons. For example, a witness may be sick, a forensic test may be required, or one of the accused may need further time to prepare. In each case, the adjudicator should give his/her reasons for adjourning the hearing so that they can appear in the record. In cases where legal representation has been agreed, adjudicators should set a date for the represented hearing to reconvene. This should not be longer than six weeks after the representation had been granted. However, an impending release date for the prisoner may affect the length of the adjournment. If legal
representatives are not ready to proceed on the day of the adjournment, the adjudicator should set a further and final date of no more than three weeks later.

4.13. If a material witness is unavailable, the evidence may be given in writing if the prisoner does not wish to question it.

4.14. If there is likely to be some delay, the adjudicator should set a date on which the adjudication will reconvene. As a general rule, and to expedite the Tarrant principles, the need for reasonable speed – adjudicators should apply the maximum of an adjournment in any case to nine weeks in total. There will be exceptions to this, e.g. where an investigation by the PSNI is involved. In all cases, the adjudicator must take into consideration the need to give the prisoner the opportunity to present the best defence. If it is not possible to hear the charge within this period, the adjudicator may decide not to proceed with the hearing on the grounds of fairness.

4.15. If the charge is criminal in character and the Governor considers that it should be referred to the PSNI, the hearing should be opened and adjourned until the PSNI investigation and any subsequent prosecution has been completed. The prisoner should be informed of the reason for the adjournment.

4.16. The Medical Officer (Doctor or Registered Nurse) should re-examine the prisoner for fitness for adjudication and cellular confinement if a hearing is adjourned for more than 24 hours.

**Segregation**

4.17. Prison Rule 35(4) allows a Governor to segregate a prisoner who is to be charged with a disciplinary offence for up to 48 hours. This power may be used to prevent the risk of collusion or intimidation relating to the alleged offence, or if there are concerns of a further deterioration or continued use of violent behaviour. If segregation in excess of 48 hours is required, it may be authorised under Rule 32 (*subject to the normal requirements of that Rule*).
4.18. Generally, adjudications will be taped to provide, where necessary, the opportunity of producing a verbatim typed record of the proceedings. The adjudicator is responsible for the record of the proceedings and should always note on the record (Form 1128) the following details:

- Action taken in response to the prisoners answers to preliminary questions (preparation time, aware of nature of charge, legal representation, etc);
- Action taken in response to a written statement by the prisoner (is it read out? What did it say?);
- The main evidence offered against the prisoner;
- Any defence offered by the prisoner;
- Requests for witnesses and how they were dealt with;
- The adjudicator’s consideration of the need to call any other witnesses not named by the prisoner;
- The adjudicator’s response to other requests (for example adjournments) made by the prisoner;
- The reason for any other adjournment;
- The weight given to evidence in support of the charge and arguments made by the prisoner in his/her defence; and
- Any mitigating evidence the adjudicator has taken into consideration in deciding a punishment.
From the record, it should be possible to reconstruct the course of the hearing and to identify where decisions were made and the grounds for those decisions, including the ultimate findings.

4.19. If two cases are being considered together one record may be prepared and the second record simply refer to the first.

4.20. Verdicts and punishments should be recorded separately.

4.21. The record may be made on Form 1128 during the adjudication, may be transcribed from tape when required or, may be prepared from contemporaneous notes. Generally, adjudicators should take immediate notes of any salient comments or remarks made by the prisoner or witnesses, any requests made by the prisoner, and of any statement made in mitigation. In each case when Form 1128 is completed, the adjudicator who is responsible for the adequacy and accuracy of the record should sign it. Any amendment to the record should only be made by striking through the original text and entering amendments above or beside the deletion. On no account should correction fluid or other liquid paper products be used.

4.22. After the adjudication, details of the charge, the finding and any punishment should be entered on the prisoner’s record. This entry should be checked and initialled by an officer who attended the adjudication, who will also initial the relevant space on Form 1128. If an earlier suspended punishment has been activated, that should be recorded on the previous relevant record and on the relevant Form 1128.

4.23. The prisoner’s record and Form 1128 should be made available to an appropriate member of staff to make any necessary amendment to the prisoners release date and inform the prisoner of the change.

4.24. The record of the hearing should be held on the prisoners file. If the adjudication has been taped, the tapes should be held for 12 months.
General

5.1. It is for the adjudicator to assess the truth of each statement given in evidence and where there is any doubt, to try to obtain further information to allow an assessment to be made.

5.2. The prisoner or his/her legal representative must have the opportunity to hear and challenge all the evidence in the case. In making his/her decision, the adjudicator may not take into account any information not presented as evidence (although s/he may take into account his/her general knowledge of the prisoner).

5.3. The prisoner may question witnesses directly, but if s/he abuses that opportunity the adjudicator may direct that questions be put through him/her. The adjudicator may need to help an unrepresented prisoner who has difficulty in framing questions. S/he may ask questions to get the information the prisoner seeks.

Written Statements

5.4. The adjudicator may accept a written statement only if it is read out and either the writer is present at the hearing, so the accused may have an opportunity of questioning him/her or, if the prisoner is prepared to accept it. If the prisoner accepts the statement but subsequently challenges its contents, the adjudicator may decide to exclude it in part or in whole. In such a case the adjudicator may adjourn the hearing to allow the witness who made the statement to be called.

Physical Evidence

5.5. Physical evidence relevant to the charge should be retained and produced at the hearing. The prisoner should be allowed to ask questions regarding any physical evidence. Where a substance, alleged to be a drug, is presented as evidence, laboratory test results must be presented in corroboration. BDH tests are not acceptable as evidence.
5.6. If there is a dispute relating to the location of the charge it may be appropriate to adjourn to visit the location. All relevant parties should visit the location and a note of the visit and what was discovered should be made in the record.

**Hearsay Evidence**

5.7. Hearsay evidence is where a witness relates a statement made by another person which is intended to prove the truth of that statement. For example, witness A says that s/he heard witness X say that s/he saw prisoner Y hit the officer. In this case the evidence is given that prisoner Y hit the officer. As the evidence is given hearsay, there is no opportunity to question prisoner X regarding his/her statement. (Note, that if witness A says s/he heard prisoner Z say “stop or I’ll shoot”, that is not hearsay as it is intended to prove the threat was made).

5.8. The adjudicator may allow hearsay evidence to be given, but should not give it undue weight.

**Circumstantial Evidence**

5.9. Evidence which tends to suggest that a prisoner committed an offence based on his/her presence at the scene or in other similar circumstances, may be taken into account, but will rarely be sufficient (without other evidence) to prove a charge.
Calling of Witnesses

5.10. The prisoner should be asked before the hearing to name any witnesses s/he would like to call, so that arrangements may be made to make them available. The names of these witnesses should be indicated on the back of the Notice of Report Form 1127 by the prisoner. The accused may request further witnesses during the hearing.

5.11. The reporting officer should name any witnesses that s/he would propose should give evidence. The names of these witnesses should be indicated on the front of Charge Form 1126. The adjudicator may decide to call a witness not named by the prisoner or the reporting officer if s/he thinks they may have relevant testimony. For instance, s/he may call the Medical Officer (Doctor or Registered Nurse) to give testimony regarding the prisoner’s mental state or fitness for adjudication.

5.12. Any person employed in the Prison Service may be required by the adjudicator to attend and give evidence (but see Para 5.21 below). A witness who is a prisoner, may be required to attend the hearing, but may not be compelled to give evidence. If a prisoner declines to give evidence this should be recorded. Other persons may be invited to attend but are not required to do so. Copies of the letter of invitation should be made available to the prisoner and form part of the record.

5.13. If a witness to the incident refuses to attend and does not give evidence, the adjudicator must consider whether in the absence of their testimony, the charge should be dismissed.

5.14. The adjudicator may refuse to call a witness named by the prisoner or the Reporting Officer, if s/he is satisfied that the witness has no material information to offer or if the adjudicator has already heard the evidence that the witness will give and, that the proposed witness will simply repeat it. However, a witness should not be refused on the grounds of administrative convenience or because the adjudicator considers the case against the prisoner is already proved. If the adjudicator refuses to call a witness, s/he should give reasons for the record.
5.15. The prisoner should be allowed to ask questions of the Reporting Officer and any other witness. If s/he abuses this, the adjudicator may direct that questions be put through him/her. The prisoner should not be prevented from asking any question unless the adjudicator considers it is irrelevant to the charge.

5.16. The adjudicator, the Reporting Officer and the prisoner may all question witnesses.

5.17. After a witness has been examined, s/he should not be allowed to talk to others waiting to give evidence.

**Allegations against staff made before or at an adjudication**

5.18. If an allegation is made before or during an adjudication (whether by the prisoner or a witness), the adjudicator should consider whether it is alleged that a criminal action may have occurred or, is an offence listed as one that may be referred to the PSNI for investigation. If it is determined that this is the case, the adjudication will be adjourned until the findings of the PSNI investigation are known.

5.19. If the allegation is clearly not relevant to the charge, the prisoner should be advised that s/he should make his/her complaint in writing and the adjudication should proceed.

5.20. If the allegation is too serious or complicated to be investigated adequately during the hearing, the adjudicator should open the hearing and adjourn proceedings to allow a separate investigation (*subject to the requirements at 5.18 above*). Following that investigation, the adjudication may continue. The adjudicator may only take into account evidence presented at the hearing and should ensure that s/he is not influenced by the information from the investigation that s/he may become aware of separately. If there is a danger of such influence, the hearing should be conducted by a separate adjudicator (*the de novo principle*).

5.21. A member of staff may not be compelled to give evidence likely to incriminate him/her at an adjudication. If s/he does give evidence that may lead to a disciplinary charge being made...
against him/her, that evidence is inadmissible in a future staff disciplinary hearing. If an
allegation is made and a member of staff may give such evidence, the adjudicator should
adjourn the hearing, to allow a formal disciplinary investigation into the allegation, before
proceeding with the adjudication.
List of Offences

A prisoner shall be guilty of an offence against prison discipline, if s/he;

1. mutinies or commits any act of collective indiscipline;

2. assaults an Officer or other member of staff;

3. commits an assault causing injury against any other person including another prisoner;

4. commits any other assault;

5. fights or wrestles with any prisoner or other person;

6. escapes or absconds from prison or legal custody;

7. endangers the health or personal safety of any person or persons, including prisoners, through intentional or reckless conduct;

8. detains any person against his/her will;

9. intentionally obstructs an Officer in the execution of his/her duty or any other person going about his/her authorised duties within a prison;

10. denies access to any part of a prison to any Officer or other authorised person;

11. (a) fails to comply with a condition of temporary release under Prison Rule 27;

   (b) provides false information in an application for temporary release;

12. has in his/her possession, any unauthorised article or, a greater quantity of any article that s/he is authorised to have or, sells or delivers to or receives from any
person, an unauthorised article or, sells, or without permission, delivers to any person any article which s/he is allowed to have only for his/her own use;

13. takes improperly any article belonging to another person or to a prison;

14. intentionally or recklessly sets fire to any part of a prison or any property, whether or not his/her own, or, destroys or damages any part of a prison or other property not being his/her own;

15. absents himself/herself from any place where s/he is required to be or is present at any place where s/he is not authorised to be;

16. is disrespectful to any person or uses threatening, abusive or insulting words or behaviour;

17. pierces himself/herself or another person with a needle or other implement, or consents to another prisoner piercing him/her with a needle or other implement, for the purpose of making a tattoo, for bodily piercing (including ear piercing), or for any other purpose;

18. commits an indecent or obscene act;

19. prepares, manufactures, consumes, inhales or administers to himself/herself or any other prisoner, with or without consent, any intoxicating substance or drug, or buys, sells, passes or possesses any such item;

20. bribes or attempts to influence any Officer or other person going about authorised duties within a prison;

21. being required to work refuses to do so, or intentionally fails to work properly;

22. disobeys any lawful order;
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23. (a) wears an item of clothing, or wears, carries or displays an article in such a way or in such circumstances as to arouse reasonable suspicion that s/he is a member or a supporter of a proscribed organisation within the meaning of Section 3 of the Terrorism Act 2000;

(b) without reasonable excuse wears any hood, mask or other article made, adapted or used for concealing his/her identity or features;

24. in any other way offends the good order and discipline; or

25. attempts to commit, incites another prisoner to commit or, assists another prisoner to commit or attempt to commit any of the foregoing offences.

Standard of Proof

6.1. The adjudicator must be satisfied beyond reasonable doubt, based on the evidence that s/he has heard that the prisoner has committed the offence which is the subject of the charge before finding guilt. This is the case even when the plea is not guilty.

Mitigation and Conduct Reports

6.2. If the adjudicator finds the prisoner guilty, s/he should ask him/her if there is anything s/he wishes to say in mitigation, or to explain his/her actions before a punishment is awarded. The prisoner may request to call witnesses to support a plea of mitigation and the adjudicator should grant this if s/he considers the witness will give relevant evidence. Any plea in mitigation or if the prisoner does not make one should be recorded.

6.3. The adjudicator may also ask a member of staff to make a report (oral or written) on the prisoner’s general conduct. The report should be based on facts regarding the prisoner’s behaviour in prison. The prisoner may ask questions regarding this report. This report forms part of the record.

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Giving Reasons for Decisions

6.4. Since the prisoner has the right to challenge an adjudication through the Prisoner Ombudsman, and through the Courts, s/he must be given the reasons for his/her finding of guilt based on the evidence that s/he has heard.

Recording of Punishments

6.5. Each and every punishment should be clearly recorded in the record on Form 1128. If privileges are removed, the privilege must be named and the duration of the removal given.

Consistency of Punishments

6.6. Rule 39 sets out the only punishments that may be awarded by a Governor.

6.7. The punishment should take account of the circumstances and seriousness of the offence, its relevance to the offence and the prisoner’s general conduct. It may also take account of the type of prison, the effect of the offence on the regime, the general order and discipline of a closed institution and the need to discourage the prisoner and others from repeating the offence.

6.8. Within an establishment, adjudicators should aim to be consistent in their awards and should be aware of awards given by other adjudicators.
The Application of Punishments

6.9. No prisoner shall be awarded a punishment if the adjudicator has any doubt regarding his/her fitness to undergo it. A prisoner may not be given cellular confinement without the authorisation of the Medical Officer (Doctor or Registered Nurse).

6.10. The adjudicator should ensure that the prisoner fully understands the effect of the punishment imposed.

6.11. Punishment should start immediately unless it was ordered to be suspended, or it was ordered to start at the end of a period of punishment already being served or just imposed. Adjudicators should always take into consideration the number of days spent under the restrictions of Rule 32 and Rule 35(4), when considering the imposition of Cellular Confinement (Mooted by Mr Justice Weatherup – McCafferty Judicial Review 2007). Generally, adjudicators should only impose Cellular Confinement in respect of serious or repeated offences, where it is seen that other awards have had little restorative impact.

6.12. If two or more punishments of the same kind are imposed at the same time for different offences, they may be ordered to run concurrently or consecutively. Generally if punishments relate to the same incident, they should run concurrently. If consecutive punishments are imposed, the adjudicator should ensure that the result is not excessive for all the offences taken together. Prisoners awarded cellular confinement must be allowed all privileges, except those that are not compatible with cellular confinement, unless an award of forfeiture of privileges has also been imposed. Other than in exceptional circumstances, for instance, where a prisoner is at risk of harming himself or others, s/he should be permitted to retain reading material and tobacco. Multiple awards of cellular confinement and forfeiture of privileges together should be considered exceptional, and imposed only where the offence is considered as serious. The record should show whether punishments are consecutive or concurrent. Where an award of Loss of Privileges is made, the adjudicator must specify the privilege to be removed. In the award of Loss of Tuck Shop, the adjudicator must also specify whether goods already purchased are to be forfeited and state the number of “Ordering Days” to be forfeited (e.g. 14 days loss of shop = 2 Ordering Days).
6.13. An award of cellular confinement will not be imposed on a prisoner aged under 18 at the time that the offence was committed. Adjudicators may, where it is considered that the prisoner is a persistent offender, impose a period of confinement to the prisoners own room in normal location, for a period not exceeding 7 days. In exceptional circumstances, the Adjudicator may consider that the offence is of such a serious nature e.g. arson; violence; controlled drugs, that it may impact on the duty of care towards inmates and staff. Under such circumstances, and having considered the potential risks, the Adjudicator may impose a period of confinement to a room of not more than 7 days to be served in the confines of the SSU. Such considerations should be recorded on Form 1128 by the adjudicator.

**Juveniles**

6.14. Adjudicators should be mindful of the need to ensure that juveniles are fully conversant with procedures, and that they have had the opportunity to discuss the case with their chosen Advocate. The juvenile should also be aware that s/he is entitled to have the Advocate present at the adjudication. Juveniles are vulnerable and may lack confidence in representing themselves at hearings. Clearly the adjudicator must ensure fairness in hearing the case.
MODEL PROCEDURE FOR THE CONDUCT OF AN ADJUDICATION

General

It is important that the adjudication is conducted in a fair manner. The adjudicator must decide the case solely on the evidence presented at the hearing. If in advance of the hearing s/he is aware of the prisoner’s defence or has other information relating to the incident that may compromise, or appear to compromise his/her impartiality, s/he should not conduct the adjudication.

2. The adjudicator has the power to adjourn the hearing to allow further information to be gathered, to allow a witness who is not present to be made available or to allow the prisoner to prepare his case. The adjudicator must give his/her reasons for the adjournment.

Preliminaries

3. Before commencing the hearing the adjudicator should check that;

- The charge has been properly laid under the rules within 48 hours of the discovery of the offence (if the charge has been laid outside that period, s/he should consider whether the circumstances were sufficiently exceptional to justify the delay);

- The prisoner was informed of the charge and was served with Form 1127 Notice of Report, Information Sheet 21, and a copy of the Reporting Officers evidence statement within 24 hours of the charge being laid, and at least two hours before the hearing;

- The charge recorded on Forms 1126, 1127 and 1128 is identical;

- Form 1128 has been prepared for the hearing;
• Each charge as recorded on Form 1128 is a disciplinary offence under Prison Rule 38, and there is sufficient explanatory detail to make the accused aware of the precise nature of the charge; and that

• The Medical Officer (Doctor or Registered Nurse), has certified on Form 1128 that the prisoner is fit for adjudication and cellular confinement.

4. If the adjudication is reconvened after an adjournment, the prisoner should have been re-examined by the Medical Officer (Doctor or Registered Nurse), and should have received a fresh copy of Form 1127 and Information Sheet 21, again at least 2 hours before the hearing.

**Opening Procedure**

5. The adjudicator must take the following steps and record them and any responses by the accused on the Form 1128.

• Identify the accused;

• Ask the accused if s/he has received Form 1127 and Information Sheet 21, and that s/he understands the procedure;

• Read the charge;

• Ask the accused if s/he understands the charge;

• Ask the accused if s/he has had sufficient time to prepare an answer to the charge;

• Ask the accused if s/he wishes to request legal representation or the assistance of an advocate (juveniles) or a friend;

• Ask the accused whether s/he pleads guilty or not guilty to the charge (or if there is more than one charge, each of the charges); and
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- Ask the accused if s/he wishes to call witnesses.

6. If the adjudicator is satisfied that the accused needs more information on the procedure or the charge, more time to prepare his/her answer to the charge or, to make his/her case for representation or assistance, the hearing should be adjourned following the introduction of the evidence in chief.

7. If the offence that the prisoner has been charged with has been referred to the police or, in the case of drug offences, a substance or article has been sent for forensic analysis, the adjudication should be opened and, following the introduction of the evidence in chief, should be adjourned to await the outcome of the investigation or laboratory test (see paragraph 5.5).

8. If legal representation or other assistance is granted, the hearing should be adjourned to allow the prisoner to make the necessary arrangements. Adjudicators should bear in mind the time limits at paragraph 4:12 when arranging further hearings. If representation or assistance is refused the record of the hearing must show the reason for the refusal.

9. Where a hearing is reconvened after an adjournment under paragraph 7 or 8, the opening procedure should be followed from the beginning.

**Investigating the Charge**

10. The adjudicator should hear the evidence of the Reporting Officer and invite the accused to question the officer on that evidence, or on relevant matters that the officer has not covered. The adjudicator may also ask questions for clarification.

11. The adjudicator should invite the accused to make his/her defence to the charge and to give oral evidence if s/he wishes.

12. If the accused asks to call witnesses, whether named in advance or during the hearing, the adjudicator should ask what the accused thinks their evidence will show or prove. Unless
the adjudicator is satisfied that a witness will not be able to give relevant evidence, they
should be called. If the adjudicator decides not to call a witness, the accused should be given
the opportunity to comment. The refusal and the reason for the refusal should be recorded in
the record.

13. The adjudicator should invite the accused’s witness to say what they know of the affair,
and allow the accused to question the witness.

14. The Reporting Officer should also be given the opportunity to question the accused and
the witnesses.

15. The witness should not remain in the room after they have given their evidence and been
questioned, except when the witness is a co-accused and the charges are being heard
together.

16. If the adjudicator agrees to hear a witness who is not readily available to give evidence in
person, the hearing should be adjourned to allow the witness to be present.

17. The adjudicator may himself/herself, call further witnesses and ask questions to discover
the truth of the matter.

18. If any exhibit is produced during the hearing, this should be described for the record and
the time it is produced.

19. If having heard the evidence the adjudicator is satisfied that a lesser substantive charge
would be appropriate, s/he may substitute that charge for the original, if it would not unfairly
prejudice the interests of the prisoner. The accused shall be given an opportunity to respond
to the substituting charge. The adjudicator shall record his/her reasons for substituting the
charge.

20. After the evidence has been heard the adjudicator should ask the accused whether s/he
wishes to say anything further regarding the case, to comment on the evidence, or to draw
attention to any relevant considerations. If the accused makes points in mitigation at this
stage, they should be noted and considered at the appropriate time.
21. The adjudicator must consider the question of guilt based on the evidence that s/he has heard. S/he may adjourn while considering his/her verdict. The adjudicator should find the accused guilty, only if s/he is satisfied beyond reasonable doubt that the prisoner is guilty of all the essential elements of the case.

22. The adjudicator must announce the decision and this should be recorded on Form 1128. When more than one charge is being heard, the verdict in respect of each charge should be clearly stated and recorded.

23. If the finding is one of guilt, the prisoner should be asked if s/he has anything to say in mitigation, and may ask to call witnesses in support of the mitigation.

24. Before deciding upon punishment, the adjudicator should ask for a conduct report. The prisoner may ask questions of the officer making the report.

25. The adjudicator should consider the appropriate punishment in the light of the nature of the offence and the reports s/he has received. S/he may adjourn to consider. In all cases, adjudicators should consider the rationale quoted in the section in this manual “European Convention on Human Rights” and the issues cited as examples. Consideration must be given to time spent under the restrictions of Rule 32 and/or Rule 35(4), when considering the imposition of Cellular Confinement (Mooted by Mr Justice Weatherup – McCafferty Judicial Review 2007).

26. The adjudicator should announce the punishments, and if they are being imposed in respect of more than one charge, whether the punishments are to be consecutive or concurrent with other punishments. The prisoner should be provided with written confirmation of the awards laid, and information must be provided regarding the procedures for appeals.

27. If the prisoner is currently subject to a suspended punishment, the adjudicator’s decision on the suspended punishment must be announced and explained to the prisoner and recorded on the form.
28. The adjudicator must ensure that the punishments are correctly entered on Form 1128, and must sign and date the forms to complete the record.

29. Pre-Action Protocol - In cases where, following an adjudication, a prisoner’s legal adviser writes to question the outcome of the adjudication, the letter should be passed to the adjudicator for a response. The response must clearly clarify the questions asked. A detailed explanation of the decision making process, the evidence considered, considerations of the relevance and proportionality of the awards etc., must be provided. A clear and justified explanation at this stage can reduce the likelihood of judicial action.
INFORMATION SHEET 21
PRISONER ADJUDICATION PROCEDURES

1. You will receive this Information Sheet together with Form 1127 which informs you of the charge(s) against you. You should receive this Information Sheet and Form 1127 at least 2 hours before the adjudication.

2. You may request to see a copy of all statements to be submitted in evidence and be informed of the names of any witnesses to the incident in advance of the hearing. You may also request to interview any witnesses named. This request must be made to staff when you are issued with your charge(s). The adjudicator will consider your request.

3. You may, if you wish, seek to consult with a Solicitor before the adjudication. If you are not able to consult your Solicitor before the hearing the Adjudicator will decide if it necessary for the hearing to be adjourned to allow you to do so. If an adjournment is granted a date for the resumption of the hearing will be set. If you have not asked for or received advice by the time the adjudication is reconvened it may proceed. If you do not know of a Solicitor who will act for you, a list of Solicitors will be made available to you on request.

The Adjudication.

4. The procedure at the adjudication is as follows. If at any stage of the proceedings you do not understand what is happening you should say so.

5. To open the adjudication the Adjudicator will;- 

a. Ask if you have received Form 1127 and this information sheet and if you understand the adjudication procedures;

b. Read out the charge and ask if you understand it – if the charge differs from that on Form 1127, or you are in any doubt about the charge you should say so;

c. Ask if you have had sufficient time to prepare an answer to the charge – if you consider you need more time you should state your reasons so that the possibility of an adjournment may be considered;

d. Ask if you would like the question of legal representation or other assistance to be considered (Advocacy or McKenzie friend) – you will have to state the reasons for requesting legal representation or assistance and the decision on whether to grant your request will lie with the Adjudicator;

e. Ask, on each charge separately, whether you plead guilty or not guilty – if you make no plea, you will be treated as having pleaded not guilty;

f. Ask if you wish to call witnesses.
6. The Reporting Officer will give his/her evidence and you will then have the opportunity to question the Officer on his/her statement.

7. If there are any witnesses in support of the charge(s) against you, they will give their evidence and you will be allowed to question them. If you do not feel able to adequately put your question to a witness, explain your point to the Adjudicator who may assist you by asking questions on your behalf.

8. If you have pleaded guilty, you may make a verbal statement including any factors you wish to be taken into consideration by the adjudicator in reaching a finding.

9. If you have pleaded not guilty, you may now make your defence to the charge(s) laid. Any written statement you have made can be read, and you can comment on the evidence given. You may also ask to call witnesses. You will need to tell the Adjudicator what you think their evidence will prove, and they will be called where the Adjudicator is satisfied that their evidence will assist in establishing exactly what happened. You will be able to question the witnesses on their evidence or any relevant matter, and they may also be questioned by others present including the Reporting Officer.

10. After your witnesses (if any) have been heard, you may make a further statement if you wish.

11. The Adjudicator may adjourn the adjudication at any stage of the proceedings where s/he finds it necessary and the reason for any adjournment will be explained to you.

12. If, after hearing the evidence, he/she is satisfied that a lesser alternative charge would be more appropriate, s/he may substitute that for the original charge. If this happens, you will be given the opportunity to respond to the new charge.

13. Having heard all the evidence, the Adjudicator will announce the findings on each charge.

14. If you are found guilty, the Adjudicator will ask you if there is anything you wish to say in support of a request for leniency before any punishment is imposed. You may also ask to call someone, readily available, who may make comments for you.

15. The Adjudicator may ask for a report on your conduct in custody to be given, and you will be able to ask questions in connection with that report.

16. The Adjudicator will then announce the award(s) for any offence(s) proved. If you do not understand how you will be affected by the award(s), you should ask for it to be explained to you.

17. If you feel that you have not had a fair hearing or, you have a complaint about the manner in which the adjudication was managed, you may submit a petition form 18 AD to the Secretary of State. You may submit a complaint through your legal adviser. To lodge your complaint, your legal adviser must write to the Governor citing the details as soon as possible after the hearing. You may submit your complaint using the Internal Complaints procedure. If you are not satisfied with the response during the internal process, you may, on exhaustion of the internal process, elevate your complaint to the Prisoner Ombudsman for investigation. Under Review.

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18. If you do not understand any of the points made in this information sheet, or need any other information about the conduct of the hearing, you should ask a member of Prison Staff to assist you.

19. It is in your interests to attend the adjudication. However, you should be aware that if you refuse to attend the adjudication it may still take place in your absence. Once a finding has been made, you will be given the opportunity to attend to make a plea in mitigation. If you still refuse to attend, you will be informed of the result of the hearing.

CRIMINAL PROSECUTION

Where an alleged offence against Prison Discipline may constitute an offence in Criminal Law, the Governor may decide to refer the charge(s) against a Prisoner to the Police for investigation, with a view to considering Criminal Prosecution. In such cases, Disciplinary Proceedings may be adjourned pending the outcome of the police investigation.
Memorandum of understanding on the investigation and prosecution of offences committed in Prison Service Establishments between the Northern Ireland Prison Service, the Police Service of Northern Ireland and the Public Prosecution Service for Northern Ireland.

**Offences.**
This section sets out those offences that should be referred. References to substantive offences should be taken to include attempts and conspiracy to commit them.

**A. Assault.**
1. Alleged offences and attempted offences of murder, manslaughter, non-consensual buggery or rape and threats to kill where there appears to be genuine intent.

2. Other alleged assaults if any kind of the following elements are present:
   - A. The use of a weapon likely to cause, or causing, serious injury;
   - B. The occasioning of serious injury by any means;
   - C. The use of serious violence against any person (providing that more than minor injury was the intended or likely outcome of such assault);
   - D. Personal sexual violation other than rape.
   - E. Any alleged assault that amounts to unlawful imprisonment (hostage taking).

**B. Escape.**
3. Any alleged escape or attempt to escape from a closed establishment or secure escort.
4. Any other serious case where the means of escape have been found and where referral is needed to discover how they are obtained and to prosecute those responsible; the nature and category of the prisoner will be relevant in deciding whether referral is justified.
5. Any alleged escape or abscond from open conditions (for instance an outside work party) where the prisoner has been absent for a substantial period of time (normally any period over eight weeks).

**C. Possession of Unauthorised Articles.**

**Weapons.**
6. Alleged possession of firearms or explosives.
7. Alleged possession of other offensive weapons (knives, kitchen or workshop implements, homemade weapons, etc) if there is evidence to suggest that the weapon was intended for use in the commission of a further serious criminal offence (such as serious assault or escape).

**Drugs.**
8. Class A drugs: alleged possession, alleged supply / possession with intent to supply.
9. Class B drugs: alleged possession, alleged supply / possession with intent to supply unless there is only a small scale supply for no payment; alleged possession when the quantity is substantial.
Note;
Class B drugs: alleged possession of a small quantity of drugs should not normally be referred.
Class C drugs: alleged possession and alleged supply / possession with intent to supply should not normally be referred.

In order to ensure a consistent approach, the Officer in charge of the Drugs Squad should ensure that there is regular contact with staff at Prison Service Headquarters to confirm the thresholds that should be applied before an offence is referred to the Police. This information should be disseminated within the Prison Service to the adjudicating Prison Governors. In cases of doubt, the Drugs Squad can be contacted to offer advice.

D. Criminal Damage / Arson.

Criminal Damage.
10. Destroying or damaging property.
11. Destroying or damaging property with intent to endanger life.
12. Destroying or damaging property being reckless as to whether life would be endangered.
13. Threatening to destroy or damage property.
14. Possessing anything with intent to destroy or damage property.

Note:
These offences should be referred where damage to property of the prison or other prisoners is serious, normally to a value in excess of £2000; evidence of a concerted action by a group of prisoners will strengthen the case for referral; it will be appropriate to obtain an estimate of the damage caused.

Arson.
15. Destroying or damaging property by fire, unless it is clear that there was no risk of the fire taking hold.
16. Destroying or damaging property by fire with intent to endanger life.
17. Destroying or damaging property by fire being reckless as to whether life would be endangered.

Note:
Governors should be aware of the possibility that cell fires may in fact be evidence of a prisoner's highly disturbed suicidal state of mind. Acts that amount in reality to attempts at self-injury should not normally be referred to the police nor dealt with under the prison rules.

E. Robbery.
Where the alleged theft is accompanied by the use of threat of serious violence of a weapon.

F. Major Disturbances.
18. Incidents involving a number of prisoners where the Governor has lost or was in danger of losing control of all or part of the establishment.
19. Incidents involving the use or threat of violence resulting in assaults or criminal damage serious enough to be referred under A or D above or in the commission of other serious criminal offences.
Note:
The following should not be referred:

- Small localised incidents where no criminal offence is committed and which the Governor is able to control without difficulty.
- Passive disobedience, even on a large scale, where it is clear that the prisoners are protesting about a particular grievance and where there seems to be no intention to overthrow lawful authority.
- Other disturbances for which the Governor believes his or her powers under the disciplinary system to be adequate.

G. Failure to Return from Temporary Release.
Any alleged failure to return where the prisoner was unlawfully at large for a substantial period of time (normally any period over eight weeks).

Note:
The prison should have already informed the police that the prisoner has failed to return from temporary release. The process of referral under this circular involves a request that the police investigate the alleged offence (in this case being unlawfully at large) with a view to prosecution.
Further alleged offences committed whilst the prisoner was unlawfully at large may make it preferable to refer the whole incident to the police for investigation even if the failure to return in itself is not particularly serious.
Prisoners who have a reasonable excuse for failure to return on a time after a period of temporary release should not normally be referred (a reasonable excuse might include any case where the prisoners failure to return was not intentional but was due to unforeseen circumstances or factors beyond his or her control).
GUIDANCE IN ASSESSING EVIDENCE THAT ESTABLISHES GUILT

The information in this annex is provided to assist adjudicators in assessing whether the accused is guilty of the charge laid, according to the evidence submitted. Adjudicators must be aware that **proof beyond reasonable doubt is required to deliver a verdict of guilt** in any case. In general, if the evidence satisfies the descriptions listed in this annex, and the accused was clearly involved or connected, a guilty finding can be returned.

Offences are listed as in Prison Rule 38. A brief interpretation of the law relating to each offence is given, followed by the evidence required to establish guilt.

Para 1 – Mutinies or commits any act of collective indiscipline.

Under the terms of the Prison Security Act 1992, Chapter 25, Para 1 (2), a prisoner shall be guilty of an offence of mutiny if he, with at least one other prisoner, while on the premises of any prison, engages in conduct which is intended to further a common purpose of overthrowing lawful authority in that prison. *(While the Prison Security Act 1992 does not extend to Northern Ireland, the description of the offence of mutiny has been quoted from this Act.)*

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused’s actions showed that he, along with others, intended to exert force or usurp authority from those persons with authority for the prison.

Para 2 – Assaults an Officer or other member of staff.

A prisoner will be guilty of assault if s/he applies unlawful force to another person. Under the criminal law, a person may also be guilty of assault if, without applying unlawful force, s/he causes another person to fear the application of immediate unlawful force to that person. This may be a suitable charge if say, a prisoner spat on an Officer. However, a charge under Prison Rule 38, Para 16 will generally be more appropriate where there is no actual physical contact.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused applied force to another person (or, subject to the guidance above, committed an act that caused another person to fear the immediate application of force to that person). It is not a defence to a charge of assault that the victim consented to be injured;

- The force was unlawful, in other words the accused did not use only that force which was reasonable in self defence or to prevent the commission of each offence as the
accused honestly believed them to be, and bearing in mind that in a moment of attack, an accused cannot always weigh exactly the amount of force required to resist.

Para 3 – Commits an assault causing injury against any other person including another prisoner.

A prisoner will be guilty of an offence under this paragraph if he commits an assault as outlined above and causes an injury to the other party that requires medical treatment, whether in the Healthcare Centre or an outside hospital.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

• The accused applied a level of force to the other person that caused injury which required some level of treatment by medical services.

• The force applied was unlawful. It is not a defence to this charge that the victim consented to be injured.

Para 4 – Commits any other assault.

See Para 2 above for general conditions. This charge is a ‘catch all’ alternative to the two separate charges listed above.

Para 5 – Fights or wrestles with any prisoner or other person.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

• The assault must have been committed in the context of a fight with the other person. It is for the adjudicator alone to decide whether the conduct did or did not amount to a fight. The incident must amount to a fight in the ordinary sense of the word. It is implicit in the idea of a fight that another person must also have been involved in events. This does not mean that the accused can be found guilty only if the other person is also found guilty. The other person may have a defence, for example, acting in self-defence. It does mean however, that the other person must have applied force, whether by one or more blows or forceful resistance, to the accused. It may sometimes be helpful for the adjudicator to ascertain who started the fight;

• Fighting is similar to assault or other like charges in that self-defence is a complete defence. If the accused acted only in self-defence, the force would not have been unlawful. It is however, a defence to a charge of fighting or assault that a prisoner consented to being injured.
Para 6 – Escapes or absconds from prison or legal custody.

Escaping or absconding refers to the act of getting clean away from the prison or legal custody. If the prisoner did not get beyond the boundary of the establishment in trying to escape, a charge under Prison Rule 38, Para 25 would be correct.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The prisoner was held in prison or legal custody. The latter includes being escorted to or from a prison by a prison officer or a prisoner custody officer, or working on an outside work party. A copy of the Committal Warrant should be produced in evidence together with details of the provisional release date at the time of the escape.

- The prisoner escaped or absconded. These terms are interchangeable since they are the same in law. It is for the adjudicator to decide whether the conduct alleged amounted to an escape, therefore the details of the charge should contain details of the events alleged and not merely “He escaped from HMP [name].”

Para 7 – Endangers the health or personal safety of any person or persons, including prisoners, through intentional or reckless conduct.

A charge under this paragraph may, on occasion, be correct when a prisoner is alleged to have intentionally, set a fire in his/her own cell or other area that other persons have access to. This should only be done when it is believed that the criteria set out below can be established.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The health and personal safety of at least one other person other than the accused was endangered. In other words there was a definite risk of harm to the health and safety of at least one specific person;

- The danger was caused by the accused’s conduct;

- The accused intended this to occur, or was reckless as to whether it would.

Para 8 – Detains any person against his will.

This charge is designed to deal with the hostage taker. It is important when laying and dealing with these charges to decide whether or not the victim colluded in events. Where collusion is suspected, it may be appropriate to lay a charge under Prison Rule 38 Para 10, either instead of or in addition to one under this paragraph, if the incident has also involved a
refusal to allow officers or anyone else working in the prison to enter a cell or other part of the establishment.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The victim was detained; this includes detention in the open. Freedom of movement must have been curtailed in some way by force or threat of force. Any item used as apparatus for restricting movement should be produced in evidence;

- The detention was against the victim's will. If the incident was planned and executed as a joint venture freely entered into by all parties, and remained in that state throughout, it may be difficult to prove the detention was against the victim's will. In this case, collusion would be a complete defence. Details of injuries sustained by the victim would tend to negate collusion, as would matters such as evidence of previous enmity between victim and accused. The adjudicator should investigate whether or not there has been any attempt by the accused to pressure the victim into saying s/he was colluding. A hostage-taking may begin with collusion, and yet develop into an unlawful detention where one party changes his/her mind and wishes to surrender, but is prevented from doing so by the other. The evidence of negotiators will be of importance in proving the lack of consent.

**Para 9 – Intentionally obstructs an officer in the execution of his duty or other person going about his authorised duties within the prison.**

This charge covers physical obstruction but not exclusively so. A prisoner who deliberately provides false information to an officer might be charged with this offence.

**Evidence** – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- There was an obstruction of some sort, physical or otherwise;

- The person obstructed was an officer of the Prison Service or anyone else (other than a prisoner) who was at the prison for the purpose of working there;

- The officer was attempting to carry out his or her duty, or the person was attempting to perform his or her work

- The accused intended such a person to be obstructed in such a way.

**Para 10 – Denies access to any part of a prison to any officer or other authorised person.**

This charge is designed to deal with barricades but is also appropriate, for instance, where the prisoner denies access without constructing a barrier;
Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- Access was denied;
- The site was part of a prison or YOC;
- The person denied access was an officer of the Prison Service or anyone else (other than another prisoner) who was at the establishment for the purpose of working there.

Para 11a – Fails to comply with a condition of Temporary Release under Rule 27.

Where a prisoner is charged with failing to return from Temporary Release, a frequently used excuse is that s/he was not fit to travel due to illness. Such claims should be corroborated with the hospital/doctor that the accused claims s/he saw prior to returning to the prison. If a hospital doctor confirms such events occurred prior to the expiry date of the period of temporary release, the prisoner has a complete defence, though in such circumstances, a charge would not be laid in the first instance. The adjudicator must consider whether the statement of the hospital/doctor establishes that the prisoner was not well enough to be conveyed or travel to a prison healthcare centre. A prisoner who was physically prevented from returning due to circumstances that were genuinely beyond their control, would also have a defence to a charge of failure to return.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- A form of temporary release, signed by a person with authority to do so, had been issued. Its terms were clear and unambiguous and the prisoner was made aware of the conditions and had signed to that effect. The original copy of this form should be produced as evidence;
- The accused clearly failed to comply with one or more of the conditions set out. This includes the condition as to time of return;
- There was no justification for the failure to comply with any condition.

Para 11b – Provides false information in an application for temporary release.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused intentionally gave false information to further his/her application for release.
Para 12 – Has in his possession any unauthorised article, or a greater quantity of any article that he is authorised to have, or sells or delivers to or receives from any person an unauthorised article, or sells, or without permission, delivers to any person any article which he is allowed to have only for his own use.

This paragraph is intended to cover in the case of (a) the possession of an article (for example drugs), which is unauthorised in itself, an article which may be authorised (such as a radio) but which is, in the particular case, unauthorised (perhaps because it has been smuggled in), or (b), an article which may have been authorised to a certain prisoner but not to the one in whose possession the article is found. This may apply when a prisoner claims that the article is a gift from another prisoner. in the case of (b), the offence is intended to cover possession of more of certain articles than a prisoner is entitled to have.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- **Presence:** the article exists; it is what it is alleged to be and is found where it is so alleged;

- **Knowledge:** the accused knew of the presence of the article and its nature, for example, that a substance was a controlled drug. Knowledge of its nature can be properly inferred from all the circumstances, for instance, whether it was hidden or whether the prisoner attempted to dispose of it before it was found. It is good practice for a reporting officer to question the prisoner as soon as an article is found so that his/her immediate reaction to its presence can be presented in evidence;

- **Control:** the accused exercised sole or joint control over the article. A prisoner who drops or throws away an article simply because s/he believes that it is about to be discovered, may still be guilty of possession at an earlier stage, if there is sufficient evidence that it was in his/her control before it was abandoned. Care will be needed in specifying the time the offence is alleged to have occurred on such a case.

Para 13 – Takes improperly any article belonging to another person or a prison.

This charge covers exclusively articles belonging to people other than the accused and can be considered as similar to the criminal charge of theft.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- There was an article;

- The article belonged to another person or to a prison. This charge covers exclusively articles belonging to people other than the accused and in many cases the only way of proving the charge beyond reasonable doubt will be to show to whom the article does belong;
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- The accused assumed physical control of the article. Consequently, if an accused has signed for another prisoner’s tuck shop purchases but has not yet taken possession of them, s/he cannot be guilty of an offence under this paragraph. In these circumstances, a charge of attempt under Prison Rule 38, Para 25 might be appropriate;

- The article was taken improperly. This means that the accused did not have permission to take it;

- It will be a defence to a charge under this paragraph that the accused genuinely believed s/he owned the article or had permission to take it. Of course, where an accused gives evidence that s/he held such a belief, the reasonableness or otherwise of this statement will be a matter for the adjudicator to assess.

Para 14 – Intentionally or recklessly sets fire to any part of a prison or any property, whether or not his own, or, destroys or damages any part of a prison or other property not being his own.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused set fire to, or destroyed or damaged a part of an establishment or other property; property is to be taken as meaning property of a tangible nature, whether real (for example, land or buildings) or personal, including money, and also including creatures which are held in ownership;

- The accused intended to set fire to the property, or was reckless as to whether this would happen.

Para 15 – Absents himself from any place where he is required to be or is present at any place where he is not authorised to be.

This charge can apply to incidents within or outside the prison. If a prisoner on an outside work party absents themselves from the group without permission for a specific purpose, with every intention of returning to the prison, then a charge under this paragraph would apply.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused was required to be a particular place or was not authorised to be in the place where s/he was found. It will be important to be able to show that local instructions to prisoners relating to where they may or may not go are passed to them and to the accused in particular or that reasonable steps had been taken to pass instructions to the accused in respect of this information;

- The accused was in fact absent from the place s/he was required to be, or was in fact present at the place s/he was not authorised to be;

- The accused had no justification for his/her actions;
A genuine belief that the accused was not required to be somewhere, or was authorised to be in the place where s/he was found would be a defence. Where an accused states that s/he held such a belief, the reasonableness or otherwise of the belief is a matter which may affect the credibility of the accused’s evidence.

Para 16 – Is disrespectful to any person or uses threatening, abusive or insulting words or behaviour.

It is important that it is shown how the action was threatening, abusive or insulting, but it may not always be necessary to establish at whom the action was aimed and it is not necessary to name an individual in every charge.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused performed a specific act or adopted a general pattern of behaviour or said specific words. This need not be a single incident but may have continued over a period of time;
- The act, pattern of behaviour or words was either threatening, abusive or insulting. These terms should be given their ordinary meanings, taking account of the circumstances of the case. It should be borne in mind that words or behaviour might be annoying or rude without being abusive or insulting. To find guilt it is only necessary to be satisfied that a reasonable person at the scene would consider the words or behaviour threatening, abusive or insulting.

Para 17 – Pierces himself or another prisoner with a needle or other implement, or consents to another prisoner piercing him with a needle or other implement, for the purpose of making a tattoo, for bodily piercing (including ear piercing), or for any other purpose.

This charge is specifically designed to deal with the prisoner who intentionally attempts to engage in the act of tattooing himself or others, either on request of forcibly or, attempts to carry out an act of body piercing on himself or others, either on request or forcibly.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused had in his possession or, had direct access to the tools for committing such an offence;
- The accused or, the third party, has marks, scars or piercings on his person that were not recorded during the committal process, and that can reasonably be attributed to such an act having taken place.
Para 18 – Commits an indecent or obscene act.

This offence refers to any offence of a sexual or obscene nature as described in Part 1 (certain sections only) and Part 2 of the Sexual Offences Act 2003. Where it is considered that such an offence may have been committed, clarity of the framing of a charge under this paragraph and the evidence required should be sought from Prison Policy and Law Branch at PSHQ as soon as possible following the alleged offence occurring.

Para 19 – Prepares, manufactures, consumes, inhales or administers to himself or any other prisoner, with or without consent, any intoxicating substance or drug, or buys, sells, passes or possesses any such item.

This charge is specifically designed to deal with the prisoner who receives a controlled drug from a visitor during visits, or from another prisoner or any other person not authorised to provide such a drug. A prisoner found preparing, ingesting or preparing to ingest an unauthorised controlled drug to himself or another prisoner, or passes or is preparing to pass such an unauthorised controlled drug to another prisoner, may also be charged under this paragraph. Prisoners who are seen to discard an article, that when laboratory tested proves to be a controlled drug and that drug is unauthorised, (for instance during a search when leaving visits), may also be charged under this paragraph.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- That the prisoner received a controlled drug (confirmed by a laboratory test), during the course of a visit or from another person;
- That the prisoner knew that it was an unauthorised controlled drug;
- That the prisoner knew that s/he was not authorised to possess that item.
- That in the case where a prisoner is charged with preparing or manufacturing, evidence is provided in the form of ‘the makings’ and/or the raw plant or substance.

Para 20 – Bribes or attempts to influence any officer or other person going about authorised duties within a prison.

Where it is alleged that an offence under this paragraph has occurred, clarity of the correct framing of the charge and the evidence required should be sought from Prison Policy and Law Branch at PSHQ as soon as possible following the alleged offence being reported.
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Para 21 – Being required to work refuses to do so, or intentionally fails to work properly.

This charge covers two distinct offences under the one paragraph. Firstly that a prisoner who is required to work, refuses to do so and, a prisoner who is required to work, intentionally failed to work properly. The evidence required for each offence differs.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

In the first instance:

- The accused was lawfully required to work at the time and in the circumstances specified (for example, that s/he was an un-convicted prisoner who could not be required to work in the first instance);
- The accused refused to work. This may be either by an act or omission. The accused does not have to say “I refuse” but his/her actions may amount to such refusal;
- A genuine belief that s/he was not required to work there and at that time would be a defence to this charge. Where an accused states that s/he held such a belief, the reasonableness or otherwise of the belief is a matter which may affect the credibility of the accused’s evidence.

In the second instance:

- The accused was lawfully required to work at the time and in the circumstances specified (for example, that s/he was an un-convicted prisoner who could not be required to work in the first instance.);
- The accused failed to work properly. In other words the alleged failure should be measured against a standard;
- A genuine belief that the accused felt that the work was adequate would be a defence however, this belief should be measured against the standard normally expected.

If the prisoner claims to have been medically certified unfit to carry out the work s/he is required to do, care must be taken to investigate fully such a defence. If the prisoner claims to have been unfit to carry out such work, but has not been medically certified as unfit, the adjudicator may wish to seek evidence on the point.

Para 22 – Disobeys any lawful order.

A lawful order is one which is reasonable and which a member of staff has authority to give in the execution of his/her duties. This may be appropriate where a prisoner declares an intention to commit any act, such as dirty protest, and staff order that the prisoner does not commit the act or that s/he desists from doing it.

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Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The action of the member of staff amounted to an order. An order is a clear indication by word and/or action given in the course of his/her duties by a member of prison staff, requiring a prisoner to do or refrain from doing something. Whilst it is desirable that such an instruction should be given verbally, it need not be so to amount to an order. What is necessary is that there is a clear indication of what is required of the prisoner concerned. “This is an order,” or “I am giving you a direct order” or the like;

- The order was lawful;

- The accused did not comply with the order. The prisoner need not have said “I refuse” but it is important to be satisfied that s/he did not comply with the order within a reasonable period of time. Even if a prisoner eventually complies with an order, there may nevertheless, be sufficient evidence to find him/her guilty under this charge where the adjudicator can be satisfied that the accused deliberately delayed compliance. This will depend on the particular circumstances of any case;

- The accused must have understood what was being required of him/her.

Para 23 – Disobeys or fails to comply with any rule or regulation applying to him/her

Rules or regulations of the prison can range from the requirements of Prison Rules to a local instruction of that particular establishment or wing. For example, this is the recommended charge to bring when a prisoner is alleged unlawfully to have abstracted electricity by tampering with the mains supply to power up a radio or other electrical item. In such an instance, there must be a local rule/instruction stating that prisoners must not:

- Tamper with cell electrical fittings, mains supply or circuitry;
- Wire up any equipment or article to cell electrical fittings, mains supply or circuitry;
- Allow their property to be or continue to be so connected, or use any equipment or article so connected.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The rule or regulation applied to the accused. The accused must have been aware of the rule or regulation or reasonable steps must have been taken to make him/her aware. The latter may be shown, for example, by evidence from an induction unit or a member of wing staff that the rule in question has been explained or pointed out to the prisoner at some time in the past, or that the rule or regulation was displayed in such a fashion that it should have been clear to a prisoner passing it. In the latter case, the burden of proof will obviously be greater in the case of an illiterate or non-English speaking prisoner. It may be proven (perhaps in the case of kitchen workers) who had been given training and that the rules or regulations had been explained to him/her during this training. Evidence that the prisoner had complied with the rule or regulation on previous occasions might be sufficient in any given case. However, a genuine belief, reasonably held that the rule or regulation did not apply to the prisoner in

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question would be a defence to this charge. A breach of compact is not, in itself, a breach of a rule;

- The rule or regulation was lawful. As is the case with paragraphs 21 and 22, it is important to show that the rule or regulation was lawful in respect of the particular prisoner concerned. Lawful has the same meaning as it does in relation to orders. A lawful rule or regulation is one which prison staff have authority to impose in keeping prisoners in custody or one contained in Prison Rules or in any national or local instruction;

- The accused did not comply with the rule or regulation.

Para 23a – Wears an item of clothing, or wears, carries or displays an article in such a way or in such circumstances as to arouse reasonable suspicion that he is a member or a supporter of a proscribed organisation within the meaning of Section 3 of the Terrorism Act 2000.

This charge refers to an offence where it is alleged that a prisoner has worn any item that would constitute as being representative of a uniform or regalia of any proscribed organisation or, where a prisoner visibly carries or displays any item that would constitute as being representative of any proscribed organisation or group.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The item of clothing or disguise was there;

- The actions and demeanour of the prisoner at that time gave sufficient cause for suspicion that he was/is a member or supporter of a proscribed organisation.

Para 23b – Without reasonable excuse, wears any hood, mask, or other article made, adapted or used for concealing his/her identity or features.

This charge refers to any incident where a prisoner wears any item that can assist in his identity being disguised or from preventing him from being clearly identified. This may be as an individual action or as a member of a group.

Evidence – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- See above

Para 24 – In any other way offends against good order and discipline.

This is a catch all charge that can be applied in circumstances where the alleged offence fails to correctly ‘fit’ any of the listed charges.
Para 25 – Attempt to commit, incites another prisoner to commit, or assists another prisoner to commit or attempt to commit any of the foregoing offences.

When laying this charge, the details of the alleged offence should relate to the paragraph of Prison Rule 38 that would have been breached, had the action been successful. For example, That on [date], you attempted to escape from lawful custody by climbing up the perimeter fence. Escaping from lawful custody is an offence under paragraph 6 of this Rule.

Evidence of attempting to commit: – Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused committed an act, which was more than merely preparatory to the commission of the intended offence. An example might be that the manufacture of a short rope out of knotted sheets would not constitute an attempted escape but where the rope was long enough to descend into the grounds, might well do so;

- The accused intended to commit the full offence. It is not necessary to show that it was one that s/he would be able to carry out (because for example, the level of security in place was such that an attempted escape from that area could not possibly have succeeded)

Evidence of inciting to commit: - Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- The accused's actions were communicated to other prisoners. It is necessary to show that the other prisoner’s were sufficiently near to be able to react to the incitement;

- The act was capable of inciting other prisoners to commit the full offence. Incitement in this context means seeking to persuade another prisoner to commit a disciplinary offence, whether this is done by suggestion, persuasion, threats, pressure, words or implication. It does not matter that nobody in fact attempted to commit the full offence. It is for the adjudicator to decide whether the act was capable of inciting other prisoners and s/he should take into account the nature of the prisoners involved in deciding this;

- The offence was either the subject of the incitement or the consequence of it.

Evidence of assisting - Before an adjudicator can be satisfied of guilt beyond a reasonable doubt, the following must be established:

- Another prisoner committed an offence. This may include an attempt. However, since this charge is one of assisting another to commit an offence, it would be a defence of this charge if the other prisoner was found not guilty of committing the substantive offence;

- The accused actively assisted in the commission of the offence. It is not sufficient that the accused was aware of and did not prevent the offence occurring. It is important that s/he did an act, which made the commission of the offence easier;

- The accused intended to assist the other prisoner.