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THE LAW AND PENOLOGY OF PRISON DISCIPLINE

VOLUME TWO (OF TWO VOLUMES)

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VOLUME TWO

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11. Thanks .. .. .	251

FOOTNOTES

## CHAPTER ONE

1. Foucault, M. (1977) Discipline and punish: the birth of the prison, London, Peregrine Books, 235, 236.
2. See, eg, Sereney, G. (1977) Into that darkness, London, Picador. Survivors described how the regime of Treblinka improved under its last warden, Stangl, who would not tolerate infractions of the law or internal regulations despite the camp's raison d'etre being to exterminate its inmates.
3. Bottomley, A.K., Pease, K. (1986) Crime and punishment: interpreting the data, Milton Keynes, Open U.P., 110-111.
4. McConville, S. (1981) A history of English prison administration, Vol.1, 1750-1877, London, Routledge and Kegan Paul, passim; Radzinowicz, L., Hood, R. (1986) A history of English criminal law, Vol.5, London, Stevens, passim; Cornish, W.R., Hart, J., Manchester, A.H., Stevenson, J. (1978), Crime and Law in nineteenth century Britain, Dublin, Irish U.P., 71-87.
5. Fraser v Mudge 1975 3 All ER. 78.
6. R v Board of Visitors of Hull Prison ex parte St. Germain 1979 1 All ER. 701.
7. Quinn, P.M. (1972) "No place for man", Prison Service Journal, April, 9.
8. Quinn, P.M. (1978) "High security prisons", Letter to the editor, The Times, 3 April. See, too, McDermott, K., King, R.D. (1988) "Mindgames: where the action is in prisons", 1988 Brit. J. Criminol., 357, 369.
9. Marin, B. (1983) Inside justice, London, Associated U.P.
10. Home Office (1988) "Private sector involvement in the remand system", London, H.M.S.O. Cm.434.



## CHAPTER TWO

1. See, for example, Fitzgerald, M. (1977) Prisoners in Revolt, London, Penguin, 25-37.
2. Home Office (1979) "Report of the committee of inquiry into the United Kingdom Prison Services" (The May Report), London, HMSO, Cmnd 7673, 90.
3. A memorandum to all governors and regional directors, dated 12 July 1988, informed them that a working party had been set up to examine the present organisational structure of the Service (Pilling, J.G. (1988) Shared mail box memo 90/1988. This was later confirmed by way of H.O.P.D. (1988) Notice to staff 38/1988.
4. The demarcation between governor grades and prison officers was formally removed with the introduction of a unified grade structure with the implementation of the "fresh start" system of management during 1987-1988. Prison service grades 1 to 5 presently carry out the functions formerly ascribed to the "governor grade".
5. 15 to 16 Geo. 6 and 1 Eliz. 2 Ch.52.
6. Prison Act 1952 ss.1-5.
7. Prison Act 1952 s.6.
8. Prison Act 1952 ss.7-11.
9. Prison Act 1952 ss.12-32.
10. Prison Act 1952 ss.33-38.
11. Prison Act 1952 ss.39-42.
12. Prison Act 1952 ss.43-46. The sentence of borstal training was abolished by the Criminal Justice Act 1982. A new sentence of youth custody was created by that statute. The Criminal Justice Act 1988, introduced the so-called unified sentence for young offenders and the distinction between Youth Custody Centres and Detention Centres was abolished.
13. The literature on these temporary prisons is sparse. The outstanding exception is Evans, R. (1981) Rollestone, London, Home Office Prison Department, which presents a meticulous account of that prison's short life. An account of the maintenance of discipline and control there is to be found at 64 et.seq.
14. Leishing, F.M. (1980) Prison governors' handbook, London, HOPD.
15. Zimbardo, P. (1972) "Pathology of imprisonment" in Society, Rutgers State University Press, 4-8; Zimbardo, P. (1973) "A Pirandellian prison", New York Times, 8 April 1973; Honey, C., Banks, C., Zimbardo, P. (1973) "Interpersonal dynamics in a simulated prison", International J. of Criminol. and Penology, 60-97.

16. A code of discipline for prison officers is established under Prison Rule 84 (The Prison Rules, 1964, SI 1964 No.388).
17. Zellick, G.J. (1981.1) "Prison rules and the courts", 1981 Crim LR 602; Zellick, G.J. (1982.1) "Prison rules and the courts: a postscript", 1982 Crim LR 575. The classification is borrowed and adapted by Walker, N.D. (1985) in Sentencing: theory, law and practice, London, Butterworth, 182.
18. See, eg, Williams v Home Office No.2 1981 1 All ER 1211 which will be examined in Chapter Three(4).
19. R v Secretary of State for the Home Department ex parte Herbage (No.2) 1987 2 WLR 226 at 241 per Purchas, L.J., who was contemplating Order 53 RSC relief. For a discussion of the point see Jowell, J. and Lester A. (1987) "Beyond Wednesbury: substantive principles of administrative law" 1987 PL 368 at 378.
20. Pullen v Prison Commissioners 1957 3 All ER 470.
21. Weston v London County Council 1941 1 All ER 555.
22. Pullen v Prison Commissioners, n.20 supra, per Lord Goddard C.J., 471.
23. See Prison Rule 7 and HOPD circular instruction 19/1981, para 3(iii).
24. See, eg, Cohen, S. and Taylor, L. (1978) Prison secrets, London. NCCL/RAP.
25. Hansard, Vol.17, 6th series, 1981-82, c481.
26. Cartoon in The Grendon Rag, Christmas, 1984. Cohen, S. and Taylor, L. (1976)op.cit. wrote of "rules about rules about rules".
27. Blom-Cooper, L., Zellick, G.J. and Barton, H. (1982) Prisons: a reprint from Halsbury's laws of England, London, Butterworth at 728.
28. Young, H. (1982) "The department of civil liberties" in The Home Office - perspectives on policy and administration, London, Royal Institute of Public Administration, 86.
29. Davies, N. (1983) "Gaol visit ban on Gerry Adams", The Guardian, 29 July 1983.
30. Home Office Prison Department (undated, but post-1983) The Prison Department: some general information for people working in prisons, Wakefield, Prison Service College, 20.
31. Raymond v Honey 1982 1 All ER 756 per. Lord Wilberforce at 760, 761.
32. The Order was cancelled by circular instruction 62/1983.
33. R v Governor of Wormwood Scrubs Prison ex parte Anderson 1984 1 All ER 920.

- X 34. The simultaneous ventilation rule remains extant in respect of the expression of grievances to all but lawyers (Standing Order 5B34j). It may be abolished after the 1989 amendments to Prison Rule
35. Silver v UK European Court of Human Rights, Vol.61, Series A (publications of the Court), 25 March 1983.
36. A feature of the implementation of Rule 47 is that women prisoners are disciplined twice as frequently as their male counterparts (NACRO, 1986) and that officers in open prisons place inmates on report twice as frequently as their colleagues in closed prisons (Jones and Cornes, 1977). (NACRO (1986) "Offences against discipline in women's prisons", information leaflet, London, NACRO; Jones, M., Cornes, P. (1977) Open prisons, London, Routledge and Kegan Paul, 212, 213). Charges may be dealt with at a number of levels. In Young Offender Institutions (not primarily the subject of this study) they may be dealt with as "minor reports". This means that the more trivial will be heard by senior wing staff acting under the governor's delegated authority. A circular instruction places a limit on this authority (Circular Instruction 23/1983, Annex A). Young Offender Institutions do not have to operate a minor report system but the circular prevents a governor discontinuing one that is in existence without the prior permission of his Regional Director (Circular Instruction 23/1983, para.1). An internal management survey of the use of minor reports at one Detention Centre conducted between 2 and 23 February 1987 revealed that of the 26 charges brought, 25 were "in any way offends against good order and discipline" under paragraph 20 of the then Detention Centre Rule 50 (Unattributed (1987) "Minor reports": briefing paper prepared for the governor of H.M.D.C. Medomsley, 17 March, internal circulation). Perhaps because of its relative informality and the relative triviality of the minor reports system, there has been little criticism of it, yet it is here that unsophisticated young inmates are often at their most vulnerable. The circular requires such reports to be dealt with "in a properly constituted manner" (Circular Instruction 23/1983, para.2). There is not total compliance with this and since young offenders tend not to challenge there remains a "dark figure" of adjudications that may go awry. An example might be that when the writer observed a hearing at a Youth Custody Centre in 1983, the assistant governor opened the proceedings with the words "I'm going to fine you lad. Now why do you think I'm going to do that?" The record of the hearing was rudimentary, yet no impropriety would have been evident to one inspecting it. The circular requires the governor to monitor the minor report system but, if he discovers that the hearings have not been conducted properly, or he is dissatisfied with the awards, he is simply urged to "raise the matter with the staff concerned" (Circular Instruction 23/1983, para.6).
37. Zellick, G.J. (1982.2) "The offence of false and malicious allegations by prisoners", 1982 Brit. J. Criminol. 21.
38. The Prison Rules 1952, 1952 SI 1045.

39. One local authority goes so far as to publish a list to those in its care of what may constitute an offence against them by staff an advises how a remedy may be sought. ("Guide for children in care" - undated) Durham County Council).
40. R v Cairns and Croft 1974 Crim LR 674.
41. Zellick, G.J. (1982.2) op.cit. at 25.
42. Hansard, Vol.5, 6th Series, written answers c.88.
43. Home Office (1985) Report of the committee on the prison disciplinary system (The Prior Report), Vol.1, paras. 7.51-7.72. London, HMSO, Cmnd. 9641-1.
44. R v Board of Visitors of Thorp Arch Prison ex parte de Houghton, 16 October 1987, QBD (hereinafter cited as ex parte de Houghton). The dicta of Bingham L.J. are taken from the transcript, (ex parte de Houghton may be found at Lexis CO/407/87(13)).
45. ex parte de Houghton, supra, per Bingham L.J., transcript, 10.
46. HM Chief Inspector of Prisons (1987) A Review of prisoners' complaints, London, Home Office, 83. See generally 82-83 and 92.
47. H.O.P.D. (1988) Minutes of the second meeting of the Working Party on Grievance Procedures in Prison, 4 October, internal circulation.
48. Marin, B. (1983) Inside Justice, London and Toronto. Associated Universities Press, 51-53.
49. Hobhouse, S., Brockway, F. (1922) English prisons today, London, Longman and Green.
50. Quinn, P.M. (1980) "The carrot and the stick", joint address to the 1980 annual conference of assistant prison governors, Torquay, (with Morgan, R.) unpublished.
51. Hicks, J. (1985) in Carlen, P. (ed) Criminal Women, Oxford, Basil Blackwell at 134.
52. Bryans, S. (1986) "Institutional misconduct", M.Phil. thesis. University of Cambridge, at appendix B.
53. Cretney, S.M. (1986) "The (Prior) Committee and its recommendations", text of address given at a NACRO seminar, 9 June 1986, 4.
54. Mandaraka-Sheppard, A. (1986) The dynamics of aggression in women's prisons in England and Wales, Aldershot, Gower, 81-82.
55. Marshall, J. (1974) How to survive in the nick, London, Allison and Busby, 88.
56. Barlow, L. (1985) The Abolitionist, No.19, London, RAP/PROP, 20.
57. Padel, U., Stevenson, P. (1988) Insiders, London, Virago, 10.

58. Anderson, J.M.H. (1984) interviewed in The Abolitionist, December 1984, RAP/PROP, 22.
59. Unattributed letter (1986) The Abolitionist, No.21, London, RAP/PROP, 17. See too Mandaraka-Sheppard, A. (1986) *ibid*.
60. Hall, J. (1937) "Nulla poena sine lege", 47 Yale L.J. 165.
61. Sunday Times v UK 1979 2 EHRR, paras.47-49. See too Duffy, P.J. (1980) "The Sunday Times case: freedom of expression, contempt of court and the European Convention on Human Rights", 1980, 5 Human Rights Review, 17 at 19-27.
62. Walker N.D. (1985) Sentencing: theory, law and practice, London, Butterworth at 185.
63. See generally Zellick, G.J. (1980) "Prison offences", 1980, Brit. J. Criminol. 337 and Zellick, G.J. (1981.2) "Penalties for disciplinary offences in prison", 1981 PL 228.
64. King, R.D., Elliott, K.W. (1977) Albany: birth of a prison, end of an era, London, Routledge and Kegan Paul, 139.
65. In 1983, the writer observed a disciplinary hearing held at a youth custody centre. The inmate had been charged under Youth Custody Centre Rule 50.20 (the equivalent of Prison Rule 47.20). It was alleged that he had been eating apples in his cell. The centre has large orchards and the unwritten rule was to inhibit "scrumping". The accused pleaded guilty but, in mitigation, stated that he was newly sentenced and had only recently arrived there. At his previous remand centre, the local rule was that fruit could only be eaten in cells.
66. Mandaraka-Sheppard, A. (1986) *op.cit.* 79. See too Hill, M., quoted in Cohen, S., Taylor, L. (1978) *op.cit.* 21.
67. Mandaraka-Sheppard, A. (1986) *op.cit.* 86 noted that at Styal Prison, prisoners were not allowed to wear shoes at adjudication. A similar "rule" prevailed at Manchester prison when the writer last checked (1986). At Cornton Vale prison, in Scotland, the "rule" is reported to apply only to those prisoners who are under 21 (Dobash, R.P., Dobash, R.E., Gutteridge, S. (1986) The imprisonment of women, Oxford, Basil Blackwell, 149). When the present writer visited Dartmoor prison in 1983, he discovered that prisoners segregated under punishment were not allowed to walk upon black squares painted on the floor of the wing (see photograph overleaf, kindly supplied by Mr. John May, Governor, HMP Dartmoor).
68. Stevenson, P. (1988) Letter to the editor, The Guardian, 10 August 1988.
69. H.O.P.D. (P.2. Division, 1979) "Report of the working party on open prisons". Internal circulation, reference PDG/68/104/7/20, at 20.



70. Genders, E., Player, E. (1986) "Age mixing in women's prisons: revised final report to the Home Office". Oxford, University of Oxford Centre for Criminological Research, 128, 129. Unpublished. See, too, H.O.P.D. (1981) circular instruction 31/1988, particularly paras. 19-23.
71. Home Office (1987) HM Chief Inspector of Prisons Report of an inquiry into the disturbances in prison service establishments in England between 29 April and 2 May 1986. London, H.M.S.O. Cmd. 1987.42 at 13. See too 18-20.
72. H.O.P.D. Standing Order 3D14.
73. Prison Rule 48.1.

74. Prison Rule 48.4.
75. Prison Rule 48.2.
76. See Quinn, P.M. (1985) "Getting lawyers into prison", Legal Action. December, 10, and H.O.P.D. circular instruction 27/1984, para.4.
77. H.O.P.D. Standing Order 3D12A.
78. H.O.P.D. Circular Instruction 27/1984, para.2.
79. H.O.P.D. Circular Instruction 27/1984, para.6.
80.
  - a) escaping or attempting to escape from prison custody,
  - b) assaulting an officer,
  - c) doing gross personal violence to a person not being an officer.
81. In practice, the governor informs his regional director (H.O.P.D. Circular Instruction 18/1981).
82.
  - a) mutiny,
  - b) incitement to mutiny,
  - c) doing gross personal violence to an officer.
83. H.O.P.D. Standing Order 3D27D.
84. Prison Rule 51.2.
85. R v Dartmoor Prison Board of Visitors ex parte Seray-Wurie. 1982 The Times, 5 February.
86. Prison Rule 50.
87. Prison Rule 4 requires that a system of privileges be established in each institution.
88. An award of cellular confinement may only be made if the medical officer has certified the prisoner to be in a fit state of health (Prison Rule 53.2).
89. H.O.P.D. Standing Orders 3D28b and 3D30.
90. Prison Rule 54.1.
91. Prison Rule 50g i and ii.
92. Prison Rule 51.4.
93. Prison Rule 55.1.
94. Prison Rule 55.2.
95. P3 and P4 are the Home Office divisions that deal with different aspects of adjudication policy.

96. H.O.P.D. Standing Order 3D34.
97. H.O.P.D. Circular Instruction 2/1988.
98. See Rutherford, A. (1983) "Prison justice", 1983 P.L. 568 at 572.
99. Williams v Home Office 1981, 1 All ER 1151 and Williams v Home Office (No.2), 1981, 1 All ER 1211. See n. 17 supra. The case will be examined in Chapter Three(4).
100. R v Board of Visitors of HM Prison Gartree ex parte Sears, 1985, The Times, 20 March.
101. Ghandi, S. (1986) "Prisoners' rights", Legal Action, April, 50 at 51. Ghandi cites R v Commissioner of the Metropolitan Police ex parte Nahur (1983), The Times, 28 May, in support of this contention.
102. Ghandi, S. (1986) *ibid.*
103. See, eg. that part of the text supported by n.128, Chapter Three(4).
104. H.O.P.D. Circular Instruction 25/1973.
105. H.O.P.D. Circular Instruction 19/1981 (since cancelled and replaced by Circular Instruction 1/1988).
106. H.O.P.D. Circular Instruction 1/1988.
107. Tweedie, J. (1972) "One over the eight", The Guardian, 6 November 1972.
108. Tettenborn, A.M. (1980) "Prisoners' rights", 1985, P.L. 74.
109. Hamner, C. (1986) Private correspondence with the writer, dated 17 September 1986.
110. Plotnikoff, J. (1987) "Prisoners' catch twenty two", Legal Action, May 1987, 8. Cf. Mandaraka-Sheppard (1986) *op.cit.*, n.61 supra.
111. Ditchfield, J., Duncan, D. (1987) "The prison disciplinary system: perceptions of its fairness", 1987, 26 Howard J. 122 at 126.
112. Logan, A.D.W. (1982) "Prisoners' rights", 1982 PSJ No.47 at 13. See too Plotnikoff (1987) *ibid.*
113. Letters from a governor (now retired) sent to P3 division of Home Office dated 28 August 1984 and 30 August 1984. The letters were seen by the present writer during a visit to the division.
114. Cohen, S., Taylor, L. (1978) *op.cit.* 20.
115. Young, H. (1982) *op.cit.*, postscript.
116. Leigh, D. (1980) "How ministry hardliners had their way over control units", The Guardian, 8 April 1980.

117. Home Office v Harman, 1981 2 All ER 349 per Lord Denning, at 364.
118. Ellis v Home Office 1953 2 All ER 149 per Singleton L.J. at 155, 156.
119. Duncan v Cammell-Laird, 1942 1 All ER 587.
120. Conway v Rimmer, 1986 1 All ER 874 per Lord Reid at 880.
121. Burmah Oil Co. Ltd. v Bank of England, 1980 AC 1090.
122. Zuckerman, A.A.S. (1981) "Privilege and public interest" in Tapper, C.F.H. (Ed) (1981) Crime, proof and punishment: essays in memory of Sir Rupert Cross, London, Butterworth, 248 at 270.
123. H.O.P.D. memorandum dated 11 August 1977, ref. PDG 74 58/20/85.
124. Silver v UK, 1983. See n.35 supra.
125. H.O.P.D. Circular Instruction 34/1981.
126. H.O.P.D. (1981) Communications in prison - a short guide, London, Home Office.
127. H.O.P.D. (1985) Standing Order 4 ("Privileges"); Standing Order 3C ("Calculation of sentences"); Standing Order 12 ("Civil Prisoners"); H.O.P.D. (1989) Standing Order 6 ("Work and Pay") London, Home Office.
128. Hansard, Vol.26, 6th Series, 1981-2, written answers c101.
129. Quinn, P.M. (1985) "Prison management and prison discipline" in Maguire, M., Vagg, J., Morgan, M. (1985) Accountability and prisons, London, Tavistock. K
130. The current version of Standing Order 4 bears a warning to this effect, together with advice that up-to-date information may be obtained from the Home Office.
131. Buckman, P. (1982) Letter sent to the law librarian at Bristol Polytechnic datd 24 May 1982 under reference PDG/80 114/5/11, made available to the writer by the latter.
132. Owen, T. (1985) "Representing prisoners before board of visitors hearings". Legal Action, May 1985, 67 at 68.
133. H.O.P.D. Circular Instruction 62/1983 was, eg, printed in full in 1983 POA Magazine 540.
134. Home Office (1985) "Report of the work of the prison department". London, HMSO, Cmnd 9699.
135. Train, C.J. (1985) "Management accountability in the prison service" in Maguire, M., Vagg, J., Morgan, R. (1985) op.cit.
136. Home Office (1985) "Report of the committee on the prison disciplinary system". London, HMSO, Cmnd. 9641-11.

137. Logan, A.D.W. (1986) Private discussion with the writer; 24 April 1986.
138. Owen, T. (1985) op.cit.
- X 139. Cohen, S., Taylor, L. (1978) op.cit. 24.
140. Home Office (1970) Security in the Home Office, London, Home Office, at para.3.3.
141. Leigh, D. (1980) Frontiers of secrecy, London, Junction Books, 89.
142. Leigh, D. (1980) op.cit. 106.
143. Leigh, D. (1980) op.cit. 93.
144. Leigh, D. (1980) op.cit. 92.
145. H.O.P.D. Standing Orders 2A3 and 3E3.

CHAPTER THREE(1)

1. Martin, J.P. (1980) "Maintaining standards: who guards the guards?" in King, R.D., Morgan, R. (1980) ed. The future of imprisonment, Farnborough, Gower, 159 at 163.
2. R v Board of Visitors of Hull Prison ex parte St. Germain 1978 2 All ER 198 (Divisional Court); R v Board of Visitors of Hull Prison, ex parte St. Germain 2979 1 All ER 701 (C.A.), R v Board of Visitors of Hull Prison ex parte St. Germain No.2 1979 3 All ER 545.
3. Blom-Cooper, L. (1984) "Lawyers and public administrators", 1984 P.L. 215 at 220, 221.
4. Quinn, P.M., Hallmark, D.J.S. (1984) "Prisoners and the law". Paper delivered to the third command course for prison governors, Prison Service College, Wakefield, 1 November 1984, unpublished. An example might be that of a prison governor being instructed to follow Prison Department standing orders who found himself in contempt of court for doing so (Raymond v Honey 1982 1 All ER 756). See, too, this study Appendix 4 and n.13, Chapter Three(3).
5. Blom-Cooper (1984) *ibid.*
6. Treasury Solicitor and Cabinet Office (1987) The judge over your shoulder: judicial review of administrative decisions, London, Cabinet Office M.P.O., preface.
7. Evans, S., Le Jeune, M. (1987) "Report on training in legal awareness", London, Cabinet Office M.P.O.
8. Drewry, G. (1984) "Review" 1984 MLR 380.
9. McConville, S. (1982) interviewed in Mangold, T. (1982) "The sentence of the court", BBC Television "Panorama" programme, 22 February 1982.
10. Lawton, L.J. (1982) interviewed in Mangold, T. (1982) *ibid.*
11. Hailsham, L.C. (1982) interviewed in Mangold, T. (1982) *ibid.*
12. Gifford, T. (1986) Where's the justice, Harmondsworth, Penguin, 31.
13. Griffiths, J.A.G. (1986) The politics of the judiciary, London, Fontana, 3rd ed. 175.
14. Fox, L.W. (1952) The English prison and borstal system, London, Routledge and Kegan Paul, 220.
15. Fox, L.W. (1952) *ibid.*
16. Hinds v Home Office, The Times, 17 January 1962.

17. Zellick, G.J. (1981) "Prison rules and the courts", 1981 Crim. L.R. 602.
18. Zellick, G.J. (1974) "Prisoners' rights in England", 1974 Toronto L.J. 331.
- X 19. Hewitt, P. (1982) The abuse of power , Oxford, Martin Robertson, 26.
20. "Shaun" (1982) speaking in "For his own protection", Birmingham, BRMB Radio, prod. King, B., broadcast 19 March 1982.
21. The Times, leading article, 15 July 1983.
22. Home Office (1969) People in prison, London, HMSO, Cmd 4214, para.13.
23. H.O.P.D. (1984) Circular Instruction 55/1984, annex A.
24. Re Rioters 1774 Lofft 436. Per Lord Mansfield.
25. D'Arcy v Prison Commission, The Times, 17 November 1955.
26. Ex parte St. Germain per Shaw, L.J. 1979 1 All ER 701 at 716.
27. Raymond v Honey 1982 1 All ER 756 at 759. A surprising attempt was made, in 1986, to limit the effect of this powerful dictum. In R v Secretary of State for the Home Department ex parte Greenwood, Macpherson, J. refused to apply it in the case of a prisoner who argued various matters relating to his production at court, saying: "It is submitted for the applicant that the Secretary of State's decision was unreasonable and therefore unlawful in that it impeded the applicant's access to a court in breach of his right of unimpeded access. It is true that a convicted prisoner retains all those common law rights which are not taken away expressly or by necessary implication, that he has a right of unimpeded access to a court and that that right can only be taken away by express enactment. But Raymond v Honey from which those principles were culled dealt with the suppression of a prisoner's letters to and from a solicitor and do not assist the applicant." (The Times, 2 August 1986).
28. Prison Rule 56.1.
29. Prison Rule 56.2.
30. H.O.P.D. internal memorandum of 23 November 1953, initialled K.P.B.
31. Hinds v Home Office n.16 supra.
32. Golder v United Kingdom 1975 1 EHRR 524.
33. The former standing order 17B, later revised as 16B, expressly forbade such action in the case of private prosecutions by inmates.

34. Taylor, L. (1980) "Bringing power to particular account: Peter Rajah and the Hull board of visitors" in Carlen, P., Collinson, M. (1980) Radical issues in criminology, Oxford, Martin Robertson, 28.
35. R v Secretary of State for the Home Department ex parte Anderson, 1984 1 All ER 920.
36. Zellick, G.J. (1981) op.cit.
37. Fitzgerald, E. (1984) "Courts rap Home Office for denying prisoners' rights", Rights Magazine, London, N.C.C.L., Autumn 1984.
38. Zellick, G.J. (1985) "Governors' adjudications: a Northern Ireland view", 1985, P.L. 527 at 528.
39. Arbon v Anderson and others 1943 KB 252.
40. For policy relating to internees generally at the time see Gillman, P., Gillman, L. (1980) Collar the lot, London, Quartet. The experience of those interned in prison is described in Lafitte, F. (1940) The internment of aliens, London, Penguin. For a serving prison officer's view of the treatment of "18 Bers", see Cronin, H. (1967) The screw turns, London, Long.
41. Arbon v Anderson, n.39 supra per. Lord Goddard at 253.
42. Arbon v Anderson, n.39 supra per. Lord Goddard at 254.
43. Silverman v Prison Commissioners 1955 Crim. L.R. 116.
44. Zellick, G.J. (1981) op.cit.
45. Ellis v Home Office 1953 2 All ER 149.
46. Egerton v Home Office 1978 Crim L.R. 494.
- ✓ 47. Bailey, S.H., Cross, C.A., Garner, J.F. (1977) Cases and materials in administrative law, London, Sweet and Maxwell, 545.
48. Hancock v Prison Commission 1960 1 QB 117, per. Winn, J. at 128. In this context, see Zellick, G.J. (1980) "Is remission enforceable", 1980 Crim L.R. 695.
49. Hinds v Home Office, n.16 supra.
50. For an examination of "less eligibility" see Mannheim, H. (1940) The dilemma of penal reform, London, George Allen and Unwin, 60-165, and Rutherford, A. (1984) Prisons and the process of justice, London, Heinemann, 92-95. An interesting example of the effects of the principle in relation to prison education may be found in the First Report from the Education, Science and Arts Committee of the House of Commons (Session 1982-83), Vol.1, London, HMSO, H.C. 45-1, xii-xiii.

51. Becker v Home Office 1972 2 All ER 676.
52. Becker v Home Office n.51 supra per Lord Denning M.R. at 681.
53. Becker v Home Office n.51 supra per Lord Denning M.R. at 682. It is difficult to over-emphasise the influence of Lord Denning in the latter years of his career as regards his reinforcement of "hands off" in respect of prisoners. "Long have I associated myself with human rights" he wrote in 1980. But it was an eccentric association "based on his own common law, Anglican, British and Victorian values" (Wilberforce, 1985). Palley (1984) summarised his record of dealing with prisoner cases as follows:
 

"Lord Denning effectively limited their rights to protect their reputations by libel actions, limited their rights to civil jury trial, conferred immunity on their baristers, conferred immunity in suits by them against police officers who extort, or may have extorted, confessions from them by violence, refused to uphold even those limited rights to respect for correspondence enjoyed by them, impeded their rights of access to the European Commission of Human Rights, denied them the right to marry while in prison, denied them the right to enforcement of the prison rules designed for their protection, denied them the right to legal representation in disciplinary proceedings, conferred immunity on boards of visitors should they in disciplinary proceedings wrongfully deny a prisoner remission, and cut down the time and manner within which prisoners may sue to challenge administrative decisions affecting them."

(Lord Denning (1980) Due process of law, London, Butterworth, 101; Lord Wilberforce (1985) "The academics on Denning", 1985 Oxford J. Leg. Stud., 439 at 443; Palley, C. (1984) "Lord Denning on human rights - reassertion of the right to justice" in Jowell, J.L., McAuslan, J.P.W.B. (1984) Lord Denning: the judge and the law; London, Sweet and Maxwell at 307.)
54. Becker v Home Office n.51 supra, per Edmund Davies, L.J. at 683.
55. Williams v Home Office No. 2 1981 1 All ER 1211.
56. Zellick, G.J. 1981 op.cit. 602.
57. Williams v Home Office No. 2, n.55 supra, per Tudor Evans, J. at 1218.
58. Williams v Home Office No. 2, n.55 supra, 1248.
59. Golder v UK, n.32 supra.
60. Evans, P., Berlins, M. (1975) "Prisoners are deterred from complaining against staff", The Times, 21 February 1975.
61. The pre-1981 Standing Order 5 provided for the more open approach in E.C.H.R. applications. The former standing order 5B22 1(e) stated that the prisoner should not be placed on report because of anything contained in his application. This precluded charges under Rule 47.12 of making false and malicious allegations against staff. An indication of Home Office concern that access to the

Commission should be unimpeded can be seen from a letter sent from P3 Division to all establishments on 10 December 1976 (ref. PDG 68 114/5/11). This advised that if inmates were to insist upon making applications in a form other than that required by the Commission, the application should still be forwarded. The scope for prisoners to avoid "false and malicious" charges was not universally favoured by staff: "More facilities seem to have been made available to the prison fraternity to pursue groundless complaints against prison officers. We have been put in this impossible position by the department and the time has come to say 'enough'" (Prison Officer quoted in "Prison staff protest", The Guardian, 24 May 1976.

62. Knechtel v United Kingdom 1969 Case No. 4115/69 Coll.36, 43, Yearbook 13, 730.
63. Golder v UK, n.32 supra.
64. H.O.P.D. Circular Instruction 45/1975.
65. Cohen, S., Taylor, L. (1978) Prison secrets, London, N.C.C.L., 37 et.seq., particularly at 43.
66. Bilton, M. (1980) "Ministers concede victory to prisoner", Sunday Times, 21 September 1980.
67. Reed v United Kingdom 1976 Case No. 7630/76 Year Book 24; 395. D.R. 25, 5.
68. H.O.P.D. Standing Order 16A7 (1981 version).
69. R v Secretary of state for the Home Department ex parte Anderson 1984 1 All ER 920.
- X 70. Under the present standing order 5B34j, simultaneous ventilation still generally applies to expression of grievances to those other than lawyers. See Chapter 2, n.34 supra.
71. The Prison (Amendment) Rules 1976, S.I. 1976, 503.
72. Lillich, R.B., Newman, F.C., (1979) "International human rights: problems of law and policy", Boston and Toronto, Little, Brown and Co., 583-588.
73. Hansard, 887 Parl. Deb. H.C. 5th Series 1975 c.1761.
- X 74. See, eg, Shaw, T. (1975) "Warders concern over prisoners' rights ruling", Daily Telegraph, 2 February.
75. Hansard, 897 Parl. Deb. H.C. 5th Series 1975 cc.147-148.
76. Lillich, R.B., Newman, F.C. (1979) op.cit. 585.
77. Raymond v Honey, n.27 supra.
78. Standing Order 16B was cancelled by H.O.P.D. circular instruction 62/1983. A year had elapsed between the judgment in Raymond v Honey and the publication of the circular putting the judgment into effect.

79. R. v Governor of Brixton Prison ex parte McComb, 29 March 1983, QBD, unreported, save as a news item in The Guardian the following day.
80. McComb v UK European Commission on Human Rights, Application 10621/83.
81. H.O.P.D. Circular Instruction 23/1987.
82. H.O.P.D. Circular Instruction 23/1987, para.12.
83. Fraser v Mudge 1975 3 All ER 78.
84. Fraser v Mudge, n.83 supra, per Lord Denning at 79.
85. Pett v Greyhound Racing Association Ltd. 1969 1 QB 125.
86. Maclean v Workers Union 1929 1 Ch 602.
87. Perhaps Lord Denning's reasoning was the result of his fondness for what he believed the man in the street thought to be right. Prisoners did not merit the same safeguards as ordinary law-abiding folk, (see Palley, C. (1984) op.cit. 307). Certainly it is doubtful that Mr. Fraser, a convicted London gangster of some notoriety would suffer the same loss of reputation or livelihood as Mr. Pett in the face of a finding of guilt. Schmitthoff (1979) has described Lord Denning's reasoning thus:  
  
 "He looks at law as an instrument of doing justice, doing justice now in the case before him, justice which is founded on what the majority of right thinking people regard as a fair solution ... His approach is teleological. He thinks of the result before he considers the legal reasoning on which it has to be founded."  
  
 Lord Denning's unwillingness to entertain the pleas of "disgruntled prisoners" has already been noted (Becker v Home Office, n.51 supra) (Schmitthoff, C.M. (1979) quoted in Robson, P., Watchman, P. (ed. 1981) Justice, Lord Denning and the constitution, London, Gower, 3).
88. Fraser v Mudge, n.83 supra per Roskill, L.J. at 80.
89. See generally de Smith, S.A. (1980) Judicial review of administrative action, London, Stevens (edited Evans, J.M.). A more recent text, which includes reference to the prison cases, is Emery, C.T., Smythe, B. (1986) Judicial review, London, Sweet and Maxwell.
90. Mann, Sir M. (1985) in Gordon, R.J.F. (1985) Judicial review: law and procedure, London, Sweet and Maxwell, foreword.
91. Robson, W. (1979) "Justice and administrative law", 1979 C.L.P., 107, London, Stevens at 111.
92. S.I. 1980 2000.

93. Blom-Cooper, L. (1982) "The new face of judicial review", 1982 P.L. 250 at 258. See, too, Paynter, R. (1988) "Procedural aspects of applications for judicial review in civil matters", Legal Action, Atusut, 11.
94. Blom-Cooper, L. (1984) op.cit. at 217, 218.
95. Gibb, F. (1986) "Judicial review: curb or strengthen?" The Times, 21 March 1986.
96. Reeves, P., Rice, R. (1987) "Fasting Tamils demand to go home", The Independent, 6 August 1987.
97. Sunkin, M. (1987) "What is happening to applications for judicial review?" 1987 50 MLR 432.
98. Sunkin, M. (1987) op.cit. 441.
99. Sunkin, M. (1987) op.cit. 434, 465.
100. Pulhofer v London Borough of Hillingdon 1986 1 All ER 467 at 469, 474.
101. Sunkin, M. (1987) op.cit. 466.
102. O'Reilly and others v Mackman and others 1982 3 All ER 1124.
103. Rose, P.C. (1984) "Natural justice in prison: legal representation", Law Society Gazette, 31 October 1984, 2995.
104. Sunkin, M. (1987) op.cit. The writer showed that the judicial review procedure has become something of a specialisation for practitioners. In 1984, 27 per cent of prisoner applications were handled by two firms. (p.462).
105. R v Home Secretary ex parte Benwell 1985 QB 554 and R v Board of Visitors of Maidstone Prison ex parte Price 23 July 1984, QBD, unreported but cited in the POA evidence to the Departmental Committee on the Prison Disciplinary System, London, POA, 53 (incorrectly dated therein).
106. For concise accounts of the Dartmoor mutiny see Thomas, J.E. (1972) The English prison officer since 1850, London, Routledge and Kegan Paul, 157 et. seq, and Fitzgerald, M. (1977) Prisons in revolt, London, Pelican, 121 et. seq.
107. The official report is the "Report of an Inquiry by the Chief Inspector of the Prison Service into the cause and circumstances of the events at HM Prison Hull during the period 31 August to 3 September 1976" (The Fowler Report) London, HMSO, Cmd. 453 (1977). See too, Thomas, J.E., Pooley, R. (1980) The exploding prison, London Junction Books.
108. Fowler Report, 53.
109. Taylor, L. (1980) op.cit. n.34 supra.

110. Even in more normal and relaxed circumstances, adjudications are completed relatively speedily. A survey at Durham prison conducted on the instructions of P3 Division of the Home Office between 1 March and 31 May 1986 revealed the following. In cases without legal representation, charges heard by the board of visitors were disposed of at an average of 26 minutes per charge, though if those on the male side of the prison are separated out, the average time in those cases was 14 minutes per charge. These figures may be contrasted with the average of 91 minutes per charge in respect of adjudications during the same period, where there had been legal representation. Charges before the governor during the same period were disposed of at an average of eight minutes per charge.
111. R v Hull Prison Board of Visitors ex parte St. Germain 1978 2 All ER 198 QBD (hereafter cited as ex parte St. Germain).
112. Ex parte Fry 1954 1 WLR 730 at 733.
113. Ex parte St. Germain n.111 supra per Cumming-Bruce, L.J. at 205.
114. R v Hull Prison Board of Visitors ex parte St. Germain 1979 1 All ER 701 C.A.
115. This argument will be explored at greater depth in Chapter Three(2).
116. R v Criminal Injuries Compensation Board ex parte Lain 1967 2 All ER 770, per Lord Parker, C.J. at 778.
117. Ex parte St. Germain n.114 supra per Shaw, L.J. at 717.
118. Ex parte St. Germain n.114 supra per Waller, L.J. at 723.
119. R v Hull Prison Board of Visitors ex parte St. Germain No.2 1979 3 All ER 545 hereafter cited as ex parte St. Germain No.2.
120. Home Office (1977) Procedure for the conduct of an adjudication by a board of visitors, London, H.O.P.D. the book has been superceded by the 1984 Manual on the conduct of adjudications in prison department establishments, London, H.O.P.D.
121. Ex parte St. Germain No.2 per Lane, L.J. at 550.
122. Ex parte St. Germain No.2 per Lane, L.J. *ibid*.
123. The writer's own discussions with Ronald St. Germain, in 1978, illustrated the difficulties the prisoner had in attempting to establish a defence and mitigation. He did not know the names of many of the prisoners who were witnesses and who might have assisted him. Of those whose names he knew, he did not know of their locations. It is now accepted that where the prison authorities know of the presence of a witness, that person's

X identity must be revealed to the accused (R v Blundeston Board of Visitors ex parte Fox-Taylor 1982 1 All ER 646. Such a responsibility does not extend to circumstances when the prisoner knows the identity of a potential witness, but refuses to disclose it (R v Liverpool Prison Board of Visitors ex parte Davies 1982 The Times, 16 October).

124. General Medical Council v Spackman 1943 AC 627.

X 125. University of Ceylon v Fernando 1960 1 WLR 223.

126. R v Deputy Industrial Injuries Commissioner ex parte Moore 1965 1 QB 456.

127. Ex parte St. Germain No.2 per Geoffrey Lane, L.J. at 555.

128. Quashed findings of guilt may present problems in terms of restoring the status quo ante. It is usually a simple matter to restore any period of forfeited remission or any monetary penalty imposed. A prisoner will not find any remedy for a period of cellular confinement, non associated labour or loss of privileges he has suffered. It will be seen (in Chapter Three(4) ) that imprisonment in the most spartan of conditions, even in contravention of the Rules, leaves a prisoner without effective remedy (Williams v Home Office No.2 1981 1 All ER 1211). If forfeiture of remission takes a prisoner beyond the earliest date of release (ie. date of release taking into account any period of remission) he would be unable to sustain an action for false imprisonment since the quantity of remission has repeatedly been held to be within the discretion of the Secretary of State (Prison Rule 5 is drafted in permissive terms: remission "may be granted". See Hancock v Prison Commissioners 1960 1 QB 117, R v Governor of Leeds Prison ex parte Stafford 1964 2 QB 625 and Zellick, G.J. (1980) n.48 supra). However, an ex gratia payment may be made as in the case of Mrs. Ali who was punished by forfeiture of remission for making false and malicious allegations, only to be vindicated when the evidence in R v Cairns and Croft (1974 Crim. L.R. 674) became known. (See "Observations", New Society, 11 April 1974 and Evans, P., Berlins, M. (1975) "Prisoners are deterred from complaining against staff", The Times, 21 February 1975). The amount of payment in Mrs. Ali's case was decided by an independent assessor appointed by the Secretary of State. (See "Hindley go between to get compensation" [sic] Daily Telegraph, 24 May 1984. A parliamentary debate about ex gratia payments to those detained in error may be found in Hansard H.C. 1956-7, Vol.569, cc.338, 339. In Weeks v UK before the European Court of Human Rights (Judgment of 2 March 1987), the Parole Board had recommended the return to prison of a life licence revokee in breach of Article 5.4 of the European Convention on Human Rights. The Board lacked one of the principle guarantees of judicial procedure in that Mr. Weeks had not been allowed disclosure of adverse material in its possession. The question of just satisfaction in the way of recompense under Article 50 was found to be "not ready for a decision" and was reserved.

129. Ridge v Baldwin 1964 AC 40.

130. Carroll, A.J. (1983) "Natural justice in prison" 1983 NLJ 703.

131. H.T.V. v Price Commission 1976 ICR 170.

132. R v Barnsley Metropolitan Borough ex parte Hook 1976 1 WLR 1052.
133. R v Liverpool Corporation ex parte Liverpool Taxi Fleet Operators Association 1972 2 QB 299.
134. McInnes v Onslow-Fane 1978 1 WLR 1520.
153. Palley, C. (1980) "Judicial review of prison discipline". Report of a meeting held at Queen Mary College, University of London, 5 June 1980. London, B.I.H.R., January 1981, 6, 7.
136. H.O.P.D. (1984) The Manual, n.120 supra.
137. Hobhouse, S., Brockway, A.F. (1922) English prisons today, London, Longman & Green, private subscription, 405.
138. Maguire, M., Vagg, J. (1984) The watchdog role of boards of visitors, London, Home Office, 159.
139. Hateley, I. (1987) Private correspondence with the writer dated 21 May 1987. Such a practice has been described as "a gross breach of the rules and it would, in all probability have served to set these proceedings aside". (R v Swansea Prison Board of Visitors ex parte Coates and Butterill unreported, QBD, 9 May 1980 per Lane, L.C.J. at transcript, 5).
140. Martin, J.P. (1975) Boards of visitors of penal institutions, Report of a committee under the chairmanship of the Earl of Jellicoe, London, Justice et al. 12. The Report is examined in close detail at Chapter Three(2).
141. Ex parte St. Germain, n.26 supra, per Megaw, L.J. at 713.
142. R v Board of Visitors of Pentonville Prison ex parte Rutherford, The Times, 21 February 1985.
143. R v Board of Visitors of Swansea Prison ex parte Scales. The Times, 21 February 1985.
144. R v Board of Visitors of Wandsworth Prison ex parte Raymond, The Times, 17 June 1985.
145. Rye v Home Office unreported, QBD, 26 February 1981. This case arose before the prison's responsibility to identify witnesses was clarified (n.123 supra).
146. R v Board of Visitors of Nottingham Prison, ex parte Moseley, The Times, 23 January 1981.
147. R v Board of Visitors of Winchester Prison ex parte Cartwright, unreported, QBD, 9 June 1981.
148. R v Board of Visitors of Gartree Prison ex parte Brady and Mealy, The Times, 14 November 1981, sub. nom. R v Board of Visitors of Gartree Prison ex parte Mealy. That brief report is supplemented here by extensive reference to the transcript of the hearing in the Divisional Court on 6 November 1981 (referred to hereafter as ex parte Brady and Mealy).

149. Ex parte Brady and Mealy per Hodgson, J. at transcript 2.
150. Ex parte Brady and Mealy per Hodgson, J. at transcript 7-10.
151. Ex parte Brady and Mealy per Hodgson, J. at transcript 15, 16.
152. Ex parte Brady and Mealy per Hodgson, J. at transcript 17.
153. Ex parte Brady and Mealy per Hodgson, J. at transcript 18, 19.
154. Ex parte Brady and Mealy per Hodgson, J. at transcript 23.
155. Ex parte Brady and Mealy per Hodgson, J. at transcript 23, 24.
156. Ex parte Brady and Mealy per Hodgson, J. at transcript 25.
157. R v Board of Visitors of Dartmoor Prison ex parte Seray-Wurie, The Times, 5 February 1982.
158. R v Board of Visitors of Gartree Prison ex parte Sears, The Times, 21 March 1985.
159. Williams v Home Office No.2, n.55 supra.
160. O'Reilly and others v Mackman and others, n.102 supra.
161. Sirros v Moore, 1974 3 All ER 776 at 785.
162. O'Reilly and others v Mackman and others, n.102 supra, per Lord Denning at 690.
163. Drew, P. (1985) Letter to chairmen of all boards of visitors dated 10 April 1985 under reference PDP/S 4239/1/2.
164. R v Board of Visitors of H.M.P. Walton ex parte Weldon 1985 Crim.L.R. 514 (a more comprehensive report is that in The Times, 6 April 1985).
165. R v Liverpool City Justices ex parte Topping 1983 1 All ER 490.
166. R v Board of Visitors of Frankland Prison ex parte Lewis 1986 1 All ER 272.
167. R v Board of Visitors of Dartmoor Prison ex parte Smith 1986 2 All ER 651.
168. Motion 109 in provisional agenda of the Prison Officers' Association annual conference, 1987, Gatelodge, March 1987, insert, iv.
169. Unattributed (1985) "Smugglers kiss drugs to inmates", Daily Telegraph, 22 May 1985.
170. Mellor, D. (1985) Hansard, 29 October 1985 H.C. written answer cc 819-820.
171. Unattributed (1985) n.169 supra.

172. R v Liverpool Prisons Board of Visitors ex parte Davies n.123 supra. The writer's wider understanding of ex parte Davies results from a discussion with members of the Liverpool board of visitors at a training seminar for members, held at the prison, in 1982.
173. H.O.P.D. (1984) The Manual, n.120 supra, pp.59,60.
174. H.O.P.D. (1987) "Report of the prison security officers' and police liaison officers' conference, 1986", Internal circulation under P5 Division ref. PDG 85/8/11/5 dated 11 May 1987 at Appendix B, para.5.
175. R v Board of Visitors of Highpoint Prison ex parte McConkey, The Times, 23 September 1982.
176. Home Office (1986) Prison statistics, 1985: England and Wales, London, HMSO, Cmnd.9903, tables 9g, 9h, 8i, pp.115-117.
177. R v Deputy Governor of Camp Hill Prison ex parte King 1984 3 All ER 897, hereinafter cited as ex parte King.
178. Waghorn, D. (1987) Private correspondence with the writer dated 10 June 1987. Mr. Waghorn was an assistant governor at Camp Hill at the time of the events at issue in ex parte King.
179. Ex parte King, n.177 supra, per Griffiths, L.J. at 902, 903.
180. "Bang to rights" is a phrase in prison jargon indicating that a prisoner has been caught offending in circumstances where no defence will be sufficient to convince an adjudicator of innocence.
181. H.O.P.D. (1984) The Manual, n.120 supra, p.60.
182. Dyer, C. (1988) "Forensic science reports crippling the courts", The Guardian, 16 February 1988.
183. Stevens, C.P. (1984) Private discussions with the witer in preparation for teaching on the third command course for prison governors, 23 February 1984 at Prison Department Headquarters. Mr. Stevens was then the principal dealing with adjudication matters in P3 Division.
184. Walker, N.D. (1984) Private discussions with the writer, Kings College, University of Cambridge, 24 February 1984.
185. Safer, M. (1983) BBC Television, "Out of court", 3 March 1983.
186. Hoffmann, E., McCoy, J. (1981) Concrete mama, Columbia, University of Missouri Press, 55-73.
187. Palmer, J.W. (1973) Constitutional rights of prisoners, Cincinnati, Anderson, preface.
188. Palmer, J.W. (1973) ibid.

189. Hornsby, P. (1986 "American jails: are we going the same way?" Gatelodge, POA, January 1986, 14.
190. R v Board of Visitors of Blundeston Prison ex parte Norley, unreported, QBD, 4 July 1984, per Webster, J. at transcript p.9.
191. Heywood v Hull Prison Board of Visitors and another 1980 3 All ER 594.
192. Heywood v Hull Prison Board of Visitors, n.191 supra, per Goulding, J. at 598.
193. Borchard, E.M. (1933) Declaratory judgments, Cleveland, Banks-Baldwin, 318.
194. Law Commission (1976) "Report of the Law Commission", Cmnd.6407, London, HMSO, para.34.
195. De Falco v Crawley Borough Council 1980 1 All ER 913, per Lord Denning at 920.
196. Pyx Granite Co. Ltd. v Ministry of Housing and Local Government 1959 3 All ER 1, per Lord Goddard at 8.
197. Heywood v Hull Prison Board of Visitors, n.191 supra, per Goulding, J. at 600.
198. Uppal v Home Office, The Times, 11 November 1978. Goulding, J. quoted from the approved transcript rather than from The Times report.
199. Heywood v Hull Prison Board of Visitors, n.191 supra, per Goulding, J. at 601.
200. Heywood v Hull Prison Board of Visitors, n.191 supra, per Goulding, J. at 602.
201. Heywood v Hull Prison Board of Visitors, n.191 supra, per Goulding, J. at 598.
202. O'Reilly and others v Mackman and others, n.102 supra.
203. O'Reilly and others v Mackman and others, n.102 supra, per Lord Diplock at 1134. See Beaton, J. (1987) "Public and private in English administrative law" 1987 LQR 34, particularly at 39. For comment on the possibility of raising a cross examination of the deponents of affidavit evidence, see Griffiths, J.A.G. (1985) "Judicial decision making in public law", 1985 PL564 at 580 and Peiris, G.J. (1987) LGR 66 at 85. Consensus appears to be that it may be allowed where justice, in a particular case, requires it, but that it should be allowed "sparingly" (per Lord Scarman in I.R.C. v Vossminster 1980 AC 952 at 1027.
204. R v Secretary of State for the Home Department ex parte Dew 1987 2 All ER 1049.
205. R v Secretary of state for the Home Department ex parte Gunnell 1984 Crim.L.R. 170.

206. R v Secretary of state for the Home Department ex parte Findlay,  
The Times, 23 May 1984, later reported sub nom. Findlay v  
Secretary of State for the Home Department 1984 3 All ER 801.
- X 207. R v Governor of Brixton Prison and another ex parte Walsh, 1984  
1 All ER 344 (QBD) and 1984 2 All ER 609 (HL).
208. Jacobs, J.B. (1983) New perspectives on prisons and imprisonment,  
Ithica, Cornell University Press, 54-57.
- X 209. Alpert, G.P. (1978) "Legal rights of prisoners", Lexington, Gower,  
22.

### CHAPTER THREE(2)

1. Iles, S., Connors, A., May, C., Mott, J. (1984) Punishment practices by prison boards of visitors, London, Home Office, 36, 37.
2. Hobhouse, S., Brockway, A.F. (1922) English prisons today, London, Longman and Green, 392.
3. Merrow-Smith, L.W. (1962) Prison screw, London, Herbert Jenkins, 152.
4. Quinn, P.M. (1983) "Who needs a friend? Help for prisoners at adjudication", 1983 Brit. J. Criminol. 270. The description is of an adjudication seen on Granada Television's "Living in Styal", 16 September 1982, director Carr, P.
5. Davies, N. (1985) "Mentally ill on trial in Holloway", The Observer, 10 November 1985. It is now established that boards of visitors do not have to accept the medical officer's certificate that a prisoner is fit to face adjudication. The final assessment and decision as to whether or not to proceed lies with them. (R v Secretary of state for the Home Office, ex parte Lee, 19 February 1987, QBD, unreported).
6. Quinn, P.M. (1983) *ibid.*
7. Vidler, J., Woolff, M. (1964) If freedom fail, London, Macmillan, 89.
8. "Eyeballing" is the evocative word employed to describe the practice, at adjudication, whereby the prisoner was required to stand and face the governor or panel of the board of visitors throughout the hearing. Two prison officers would stand facing him (ie. with their backs to the governor or panel) one immediately to the prisoner's left, the other immediately to his right, often just inches from him. The practice was justified on the spurious ground that it somehow protected the governor or panel from attack. Current instructions prohibit eyeballing. (H.O.P.D. (1984) Manual on the conduct of adjudications in Prison Department establishments, London, Home Office, 18). A recent Report of a Home Office departmental committee described it as "intimidatory and apparently designedly so". (Home Office (1985) "Report of the committee on the prison disciplinary system" (The Prior Report) Vol.1, London, HMSO, Cmnd 9641-1, 77). The practice is known to persist at a number of establishments despite instructions to the contrary. On 13 February 1988, the present writer conducted a training seminar for board of visitors members at the Prison Service College in Wakefield. Four of the 12 members of his seminar group reported that standing and eyeballing was current practice in their prisons.

9. Quinn, P.M. (1985) "The language of prison", 1985, 149 J.P. 218 at 219. The article has a humorous intent. However, the writer describes, with accuracy, the differing practice at adjudication whereby "the accused may stand throughout the hearing, or sit, or as in some prisons, behave like a yo-yo standing and sitting alternately depending upon whether or not he is speaking at the time."
10. Warren, D. (1982) The key to my cell, London, New Park Press, 157.
11. H.O.P.D. (1984) Manual on the conduct of adjudications in Prison Department establishments, London, Home Office, hereafter cited as The Manual.
12. This requirement is laid down in the Manual at 30, 31.
13. Harris, J.E. (1982.1) "Prisoners on trial", New Society, 17 June 1982, 467.
14. Behan, B. (1958) Borstal boy, London, Hutchinson, 84.
15. Purvis, G. (1985) "Behind me door for thirty days" in the anthology Nee gud luck in Dorham jail, Beamish, Pit Lamp Press, 42.
16. Ward, J. (1986) "Can I have me batteries" in Hadaway, T. (ed.) (1986) Prison writers, North Shields, Iron Press, 46.
17. Merrow-Smith, L.W. (1962) op.cit. 139.
18. Martin, J.P. (1974) "Justice in prisons", New Society, 28 March 1974, 766.
19. Unattributed (1879) "The visiting justices and the Prisons Act 1877", London. The Standard, 3 April 1879.
20. Liverman, M.G. (1938) "Prison discipline", 1938 Howard J. 96 at 97, 98.
21. Liverman, M.G. (1938) op.cit. 98.
22. Liverman, M.G. (1938) ibid.
23. Rhys Davies, M.P. (1938) Hansard, 338 HC 53, c.3140.
24. See 1938 Howard J. 89.
25. See Hansard, Official Reports of Standing Committees, 1947-1948, Vol.1, c.1242.
26. Hansard, n.25 supra at c.1243.
27. Hansard, n.25 supra at c.1244.
28. The present day equivalent would be a probation officer seconded to work within the prison.

29. Hansard, n.25 supra at c.1244.
30. Hansard, n.25 supra at c.1246.
31. Hansard, n.25 supra at c.1246.
32. Hansard, n.25 supra at c.1246, 1247.
33. Hansard, n.25 supra at c.1248.
34. Hansard, n.25 supra at c.1249.
35. Hansard, Official Reports, 5th Series, Parl. Debs, H.C. 1947-1948, cc.1266, 1267.
36. Hansard, n.35 supra at c.1267.
37. Hansard, n.35 supra at cc.1269, 1270.
38. Hansard, n.35 supra at c.1270.
39. Hansard, n.35 supra at c.1271.
40. Taylor, C. (1948) "Prison offences and punishments: Paper given to the 1948 prison governors annual conference. Internally circulated minute held at the Public Record Office under reference PCom9/594 8468, at 10, 11.
41. Richards, A.C.W. (1948) "Offences and punishments". Paper given at the 1948 prison governors' annual conference. See n.40 supra. The extract is to be found at 12.
42. Richards, A.C.W. (1948) op.cit. 13.
43. Richards, A.C.W. (1948) op.cit. 14. The speaker proceeded to recommend that, in certain circumstances, forfeited remission might be restored as a signal of improved behaviour. This recommendation was not implemented until 1976 (H.O.P.D. Circular Instruction 58/1976).
44. Richards, A.C.W. (1948) op.cit. 16.
45. Home Office (1951) The Report of a Committee to review punishments in prisons, borstal institutions and remand homes (the Franklin Report) London, H.M.S.O. Cmd.8256, hereafter cited as the Franklin Report.
46. The Franklin Report, Part 1, para.2,
47. The Franklin Report, Part 1, para.37.
48. The Franklin Report, Part 1, paras.95, 96.
49. The Franklin Report, Part 1, para.37.

50. The Franklin Report, Part 1, *ibid.*
51. The Franklin Report, Part 1, para.95.
52. The Franklin Report, Part 1, para.94.
53. The Franklin Report, Vol.1, para.122.
54. The Franklin Report, Vol.1, para.123.
55. The Franklin Report, Vol.1, paras.124, 125.
56. The Franklin Report, Vol.1, para.126.
57. The Franklin Report, Vol.1, para.127.
58. The Franklin Report, Vol.1, para.119.
59. The Franklin Report, Vol.1, para.100.
60. Klare, H. (1951) Letter to the editor, The Times, 28 June 1951.
61. Liverman, M.G. (1951) Letter to the editor, The Times, 30 June 1951.
62. Dawtry, F. (1951) Letter to the editor, The Times, 5 July 1951.
63. Rose, A.G. (1951) Letter to the editor, The Times, 11 July 1951.
64. Hansard, Official Report 1950-1951, H.C. Vol.491, c.640.
65. Hansard, n.64 supra c.642.
66. Hansard, Official Report, 1956-1957, H.C. Vol.572, c.1288.
67. Hansard, n.66 supra c.1289.
68. Hansard, Official Report 1961-1962, H.C. Vol.664, w.a. c.121.
69. Hansard, Official Report 1964, H.C. Debs. Vol.687, c.1413.
70. Merrow-Smith, L.W. (1962) *op.cit.* 153.
71. English, P. (1973) "Prisoners' rights: Quis custodiet ipsos custodes" in Bridge, J.W. (ed.) Fundamental rights, London, Sweet and Maxwell, 211.
72. Hansard, Official Report 1966-1967, Vol.741, H.C. W.9. c.231.
73. Hansard, Official Report 1970, Vol.807, H.C., w.a. c.123.
74. See "Attica: the official report of the New York State special commission on Attica", New York, Praeger, 1972.
75. See, eg, Genet, J. (1949) The thief's journal and (1951) The miracle of the rose, English language editions publ. London, A. Blond, 1965; Jackson, G. (1971) Soledad brother, English edition publ. London, Jonathan Cape; Davis, A. (1971) If they come in the morning, English edition publ. London, Orbach and Chambers.

76. Mathiesen, T. (1974) The politics of abolition, English edition publ. London, Martin Robertson.
77. Jepson, J. (1971 "Krim, Krum, Krom", Prison Service Journal, October 1971, 7-10.
78. The present day PROP appears rather more conservative and rather more effective than during the time of its incarnation. It now styles itself "The National Prisoners' Movement" and undoubtedly possesses more credibility than of old when it was torn apart by inter-personal rivalry between its founders. For a history of PROP see Hepworth, C.M. (1981) "The formation and development of the national prisoners' movement PROP", University of Cambridge, M.Phil. thesis, unpublished and Rutherford, A. (1984) Prisons and the process of justice, London, Heinemann, 85, 86. For an account of the interaction of PROP with other special interest groups, see Light, R.A. (1984) "Pressure groups, penal policy and the gaols", Prison Service Journal, October 1984, 2 at 8.
79. PROP (1972) "Charter of demands", London, PROP.
80. Hansard, Official Report, 1971-1972, H.C. w.a., c.65.
82. PROP (1972) *ibid.*
83. PROP (1972) *ibid.*
84. The Committee of Inquiry into the United Kingdom Prison Services (the May Committee) accepted oral evidence from three PROP members in preparing their 1979 Report (Cmnd. 7673).
85. Dean, M. (1973) "The law's inside job", The Guardian, 3 February 1973.
86. Light, R.A., Mattfield, K.Y. (1988) "The prison disciplinary system: prospects and proposals". Draft article submitted to Howard Journal made available to the writer by Mr. Light. The article reveals that "a course for solicitors on representation before boards planned at Bristol Polytechnic for late 1987 conducted by two of the leading specialists in the field attracted three solicitors from a mail-shot of 1,000."
87. Anon. (1973) Letter to the editor, The Guardian, 16 February 1973.
88. Home Office (1975) "The report of the working party on adjudication procedures in prison", hereafter cited as "The Weiler Report", London, HMSO.
89. The Weiler Report, 1.
90. The Weiler Report, *ibid.*
91. The Prison (Amendment) Rules 1974, S.I. 1974, 713. The brief of the earlier Weiler Committee had been to review rewards and punishments and not to consider questions of representation. Its report was not published and the writer thanks Mr. Weiler for information as to the committee's constitution and relationship with the more widely known working party. (Private correspondence with Mr. Weiler dated 24 August 1987.)

92. The Weiler Report, 22.
93. The Weiler Report, 23.
94. Weiler, T.G. (1987) Private correspondence with the writer, 27 September 1987.
95. The Weiler Report, *ibid.*
96. Harris, J.E. (1982.1) *ibid.* See too Harris, J.E. (1982.2) "Adjudications"; AMBOV Quarterly, April 1982.4.
97. Packham, A. (1984) "An inmate's view of a BOV", 1984, 13 AMBOV Quarterly 8. For something of the social composition of boards, see Vagg, J. (1985) "Independent inspection: the role of the board of visitors" in Maguire, M., Vagg, J. and Morgan, R. (eds.) (1984) Accountability and prison, London, Tavistock, 124 at 125.
- ✓ 98. Harris, J.E. (1982.1) *ibid.*
99. Weiler Report, 24.
100. Weiler Report, 25.
101. H.O.P.D. (1977) "Procedure for the conduct of an adjudication by a board of visitors", London, H.O.P.D.
102. H.O.P.D. (1977) "Procedure for the conduct of a hearing of a disciplinary charge against an inmate by a governor", London, H.O.P.D.
103. Prison Service College (undated) "Adjudication procedure". Copies were sent to all governors and boards of visitors by P3 Division of Home Office, together with a request for written evidence to the Weiler Committee, under reference PDG/69/117/5/3 on 1 November 1973.
104. R v Secretary of state for the Home Department ex parte Tarrant, 1984 1 All ER 799 hereafter cited as ex parte Tarrant, per Webster, J. at 816.
105. Harris, J.E. (1982.2) *ibid.*
106. Lister, G. (1984) Private correspondence with the writer dated 18 October 1984. The same person had previously told the writer that to admit lawyers to a prison for this purpose would be to regard the observance of "legal niceties as more important than seeing justice done", (Lister, G. (1979) quoted in Quinn, P.M. (1985) "Prison management and prison discipline" in Maguire, M., Vagg, J., Morgan, R. (1985) Accountability and prisons, London, Tavistock at 211). Mr. Lister's opinions are quoted with his permission.
107. Fraser v Mudge 1975 3 All ER 78. The case is examined in Chapter Three(1).

108. Martin, J.P. (1975) "Boards of visitors of penal institutions: report of a committee set up by Justice, the Howard League and NACRO", (The Jellicoe Report), Chichester and London, Barry Rose, 7.
109. Martin, J.P. (1975) op.cit. 8, 9.
110. See Weiler Report, 1.
111. Martin, J.P. (1975) op.cit. 9.
112. Smith, D., Austin, C., Ditchfield, J.: (1981) Board of visitor adjudications, London, Home Office Research Unit, H.O.R.U. Paper No.3.
113. Pease, K. (1982) "Boards of visitors: procedural incompetence", The Abolitionist, Winter 1982.
114. Smith, D. et.al. (1981) op.cit. 5.
115. Smith, D. et.al. (1981) ibid.
116. Smith D. et.al. (1981) op.cit. 30 et.seq.
117. Smith, D. et.al. (1981) op.cit. 18.
118. Smith, D. et.al. (1981) op.cit. 31.
119. Smith, D. et.al. (1981) op.cit. 15.
120. Smith, D. et.al. (1981) op.cit. 11. C.f. n.98 supra.
121. Smith, D. et.al. (1981) op.cit. 26, 27.
122. Croft, I.J. (1981) Foreword to Smith, D. et.al. (1981) op.cit.
123. Report of the Committee of Inquiry into the United Kingdom prison services 1979, London, H.M.S.O. Cmnd. 7673 (hereafter cited as The May Report) at 106.
124. The May Report, 107.
125. Royal Commission on Legal Services (1979) Final Report (the Benson Report), London, H.M.S.O. Cmnd. 7648, 96, 97. Page references, and those infra are to those in Vol.1 of the Report.
126. The Benson Report, 99.
127. Prison Rule 50f. For an account of a governor's powers of punishment, see Chapter Two.
- X 128. See: Unattributed (1985) "Clash over prison advice scheme", Legal Action, August 1985, 3. The article contains the inaccurate description of Manchester as a dispersal prison. McConville and Hall-Williams (1985) have recommended a measure going beyond the introduction of duty solicitor schemes to prison. They proposed

that a "legal guardian" should be appointed for each prisoner to advise on a range of legal issues arising through or as a consequence of his imprisonment. This would include representing him at disciplinary hearings (McConville, S., Hall-Williams, E. (1985) Crime and punishment: a radical rethink, London, The Tawney Society, 55, 56. Some prisons, eg, New Hall, whilst not operating duty solicitor schemes, nevertheless offer to prisoners the facilities of a Citizens' Advice Bureau clinic within the institution.

129. H.M. Chief Inspector of Prisons (1987) A review of prisoners' complaints, London, Home Office, 44n.1.
130. Walker, N.D. (1985) reported in the minute of a meeting held at Queen Mary College, University of London, 5 June 1980. London, B.I.H.R. (1981).
131. Palley, C. (1985) as n.130, supra.
132. Sargant, T. (1985) as n.130, supra.
133. House of Commons Home Affairs Committee (1981) Fourth Report, 1980-1981: "The Prison Service", Vol.2, "Evidence and appendices", HC 412ii, 51-75, (hereafter cited as Home Affairs Committee Report).
134. Home Affairs Committee Report, 54.
135. Home Affairs Committee Report, 73.
136. Home Affairs Committee Report, *ibid.*
137. Home Affairs Committee Report, *ibid.*
138. Home Affairs Committee Report, 74.
139. Home Affairs Committee Report, *ibid.*
140. Marchant, B.A. (1986) Private correspondence with the writer dated 14 May 1986. Mr. Marchant was then the governor of H.M. Prison, Pentonville.
141. The draft bill, together with the member's comment upon it may be found at Dubs, A. (1982) "Prisoners' rights", Prison Service Journal, July 1982, 9.
142. R v Board of Visitors of Gartree Prison ex parte Brady and Mealy, The Times, 14 November 1981 sub.nom. R v Board of Visitors of Gartree Prison ex parte Mealy.
- X 143. Fraser v Mudge, n.107 supra. See, too, Quinn, P.M. (1982) "Representation at adjudication", AMBOV Quarterly, July 1982, 1-3 and Quinn, P.M. (1983) "Who needs a friend? Help for prisoners at adjudication", 1983 Brit. J. Criminol. 270.
144. Hansard, Official Report 1982, H.L. Vol.431, w.a. c.90.

145. Faulkener, D.E.R. (1982) "A sense of direction", paper delivered at Prison Service College, Wakefield, 7 July 1982, unpublished.
- X 146. McKenna, B. (1983) Justice in prison, London, Justice. The Chairman of the Justice Committee was Sir Brian MacKenna. The Report was largely drafted by one committee member, Professor Zellick.
147. Justice (1983) op.cit. 58.
148. Justice (1983) ibid.
149. In 1988 an identical recommendation was made by the Chief Inspector of Prisons and was dismissed by the Secretary of State since "it would detract from the board's manifest independence if the governor were to make decisions on prisoners' requests for legal representation before a board" (H.M. Chief Inspector of Prisons (1988) "H.M. Remand Centre, Risley", London, Home Office, 24, 71; Hurd, D. (1988) "Report by H.M. Chief Inspector of Prisons on H.M. Remand Centre, Risley: statement by the Home Secretary", London, Home Office, undated, unreferenced. A copy is in the possession of the writer.)
- X 150. Quinn, P.M. (1985) in Maguire, M., Vagg, J., Morgan, R. (1985) op.cit. 210.
151. Prison Officers' Association (1984) The Prison disciplinary system, London, P.O.A. 46.
152. Campbell and Fell v United Kingdom. Applications 7819/77 and 7878 before the European Commission on Human Rights. (1982 EHRR 207).
153. Ex parte Tarrant, n.104, supra.
154. Fraser v Mudge, n.107, supra.
155. Ex parte Tarrant, n.104, supra, per Webster, J. at 806.
156. Ex parte Tarrant, n.104, supra, per Webster, J. at 813.
157. R v Board of Visitors of Hull Prison ex parte St. Germain No.2 1979 3 All ER 545 at 550, per Geoffrey Lane, L.J. who cited the dicta of Lord Atkin in General Medical Council v Spackman 1943 2 All ER 337 at 341.
158. Here, Webster, J. referred to the Smith, Austin and Ditchfield research (n.112, supra) and to the Justice Report (n.146 supra).
159. Ex parte Tarrant, n.104, supra, per Webster, J. at 816. These criteria closely parallel those put forward by the Widgery Committee of 1966 which considered the need for legal aid to be available to defendants at criminal hearings. They believed representation to be necessary when the charge is grave in the sense that the accused might be in jeopardy of losing his liberty; when substantial questions of law are raised; when the accused is unable through mental, physical or other disability to understand the proceedings or to conduct his own case; when the defence involves the tracing of witnesses or expert

cross-examination or when it is necessary in the case of some third party (eg, in the case of offences against a child). Some of the counter-arguments at the time also found their parallels in the post-Tarrant/pre-Prior debates on representation before an independent adjudicating panel in prison. It was said that the cost to central funds would be prohibitive and that there were too few solicitors and barristers to make the scheme work. (Report of the Departmental Committee on Legal Aid in Criminal Proceedings (1966) London, H.M.S.O., Cmnd. 2934).

160. Ex parte Tarrant, n.104, supra, per Webster, J. Ibid.
161. Campbell and Fell v United Kingdom, n.151, supra.
162. Engel and others v Netherlands, Judgment of the European Court of Human Rights, 8 June 1976, Series A, No.22, paras.80-82. (1976) 1 EHRR 647.
163. Campbell and Fell v UK, n.151, supra, para.71.
164. Thomas, Q.J. (1984) Letter to chairman of all boards of visitors and all governors headed "European Court of Human Rights: judgment in the Campbell and Fell case" dated 12 July 1984.
165. Ditchfield, J., Duncan, D. (1987) "The prison disciplinary system: perceptions of its fairness and adequacy by inmates, staff and members of boards of visitors", 26 Howard J. 122.
166. Report of the committee on the prison disciplinary system (the Prior Report) 1985, London, H.M.S.O. Cmnd. 9641-II, Vol.2, 134.
167. Livingstone, S. (1987) "Prisoners and board of visitors' hearings: a right to legal representation after all?" 1987 38 N.I.L.Q. 144 at 152.
168. R v Board of Visitors of Blundeston Prison ex parte Norley, 4 July 1984, QBD, unreported, hereafter cited as ex parte Norley. References are to the approved transcript.
169. Ex parte Norley, n.168 supra, per Webster, J. at 4.
170. R v Board of Visitors of H.M. Prison Swansea ex parte McGrath, 9 November 1984, QBD, unreported, hereafter cited as ex parte McGrath. References are to the approved transcript.
171. Ex parte McGrath, n.170 supra, per Forbes, J. at 9.
172. Ex parte McGrath, n.170 supra, at 4.
173. Ex parte McGrath, n.170 supra, ibid.
174. Associated Provincial Picture Houses v Wednesbury Corporation, 1948 1 KB 223.
175. Ex parte McGrath, n.170 supra, per Forbes, J. at 6, 7.
176. The Manual, n.11 supra, 32.

177. The writer's experience of attending very many adjudications suggests that boards, in general, are meticulous in adhering to the model procedure. From time to time there may be spectacular departures. In 1984, the Secretary of State remitted a punishment awarded by the Long Lartin board. The chairman had interrupted the prisoner's solicitor's cross examination to advise him that prison officers did not attend such hearings to tell lies. The spectre of bias was thus raised (confirmed in private correspondence with the chairman, Mrs. Houghton, dated 16 October 1987). In 1985, the writer observed an adjudication where the chairman advised a prisoner who had asked to be legally represented: "If you can't explain yourself to the board of visitors, how on earth will you explain yourself to a solicitor". In 1987 the Home Office received a number of petitions from prisoners at Risley Remand Centre after the chairman of the board had told "The Independent" newspaper that a particular group of prison demonstrators would be unlikely to be granted representation before his board thus, it was alleged, placing an improper fetter on the discretion of the panel to decide the need for representation in the circumstances of each case and not "extra-murally" in respect of a class of prisoner. (Hulme, S. (1986) quoted in Helm, S. (1986) "Robust view of Risley life", The Independent, 3 November).
178. Council of Civil Service Unions v Minister for the Civil Service 1984 3 All ER 935.
179. C.S.S.U. v Minister for the Civil Service, n.178 supra, per Lord Diplock at 949. Lord Diplock cited Findlay v Secretary of State for the Home Department 1984 3 All ER 801 (the parole case) as an example of the latter.
180. Yeats, I.M. (1985) "Prisons" 1984 All ER Review 232 at 234.
181. The Manual, n.11 supra, 10.
182. Hone v Maze Prison Board of Visitors McCartan v Same 1988 1 All ER 321, hereafter cited as Hone and McCartan.
183. Hone and McCartan, n.18 supra, per Lord Goff, 326, 327.
184. Hone and McCartan, n.18 supra, per Lord Goff, 327.
185. Hone and McCartan, n.18 supra, per Lord Goff, ibid.
186. Hone and McCartan, n.18 supra, per Lord Goff, 328, 329.
187. R v Deputy Governor of Parkhurst Prison and another ex parte Leech and another 1988 1 All ER 485. The case is considered in detail in Chapter Three(3).
188. McKenzie v McKenzie 1970 3 All ER 1034. See, too, Goldstone, H.J. (1984) "Of McKenzies and others", 40 The Magistrate No.6, 85, 86.
189. Collier v Hicks 1831 2B and Ad. 633 per Lord Tenterden at 699.
190. Ex parte Tarrant, n.104 supra, per Webster, J. at 814, 815.

191. The more appropriate term "assistant" is employed to describe the person performing this function by Morgan, R., Macfarlane, A. (1984) After Tarrant, Bath, AMBOV, 826.
192. Ex parte Tarrant, n.104 supra, per Kerr, L.J. at 826.
193. Ex parte Tarrant, n.104 supra, per Kerr, L.J. ibid.
194. Morris, T. (1975) in British Institute of Human Rights (1975) Detention: minimum standards, Chichester and London, Barry Rose, 29.
195. R v Deputy Governor of Camp Hill Prison ex parte King 1984 3 All ER 897, hereafter cited as ex parte King, per Lawton L.J. at 901, 902.
196. Ex parte King, n.194 supra, per Griffiths, L.J. at 902.
197. Fitzgerald, M., Sim, J. (1982) British prisons, London, Basil Blackwell, 2nd ed., 81. The quotation was taken from a BBC radio programme, "The prisoners: the local prison", broadcast on 22 December 1977.
198. Owen, H.G. (1987) Private correspondence with the writer dated 9 September 1987.
199. Fitzgerald, M., Muncie, J. (1983) System of justice, London. Basil Blackwell, 183.
200. Martin, J.P. (1975) n.108 supra, 72.
201. The May Report, n.123 supra, 105.
202. Campbell and Fell v UK, n.152 supra. Judgment, 33.
203. An example of a board of visitors exercising what appears to be prima facie a management function would be should they invoke their powers under Prison Rules 94.4 and 94.5. After consulting with the governor they may suspend any officer from duty in the case of urgent necessity.
204. Drzemczewski, A., Warbrick, C.J. (1985) "The European Convention on Human Rights" in Jacobs, F.G. (ed.) (1985) Yearbook of European Law, Oxford, Clarendon Press, 432, 433.
205. It has, nevertheless, been suggested that a board member who displays too conspicuous an independence may be likely to pay the penalty of dismissal. In 1984, a barrister, Nigel Seed, found that his appointment to the Holloway board of visitors was not renewed. Mr. Seed had, in his professional capacity, represented prisoners in their applications for judicial review of board of visitor adjudications. Mr. Seed told the Daily Telegraph that, had he been at some sort of fault, he should have been told and that "obviously some of my remarks have been critical of the Home Office, but prison boards are supposed to be independent. I think the independence of the board is impugned if members can be removed without consultation or explanation". (Shaw, T. (1984) "Protest over sacked jail visitor", Daily Telegraph, 10 March

1984). When, as a result, AMBOV sought clarification of the general reasons for non-reappointment, the Secretary of State replied "there is no automatic right to reappointment and it is not my practice to disclose the individual reasons for the decision in his particular case". (Hurd, D. (1986) Private correspondence with Mrs. Ruth Wainwright, chair of AMBOV, dated 16 April 1986, circulated to members by the latter). For Mr. Seed's own account of events, see Seed, N. (1984) "Triennial review: the case of Nigel Seed" 1984 13 AMBOV Quarterly 7.

206. Cambell and Fell v UK, n.152 supra, 35.
207. Milton, C. (1976) "Appellants perceptions of the tribunal process" in Alder, M., Bradley, A. (eds.) (1976) Justice, discretion and poverty, London, Professional Books, 134. The research examines Supplementary Benefit Appeals Tribunals.
208. The Franklin Report, n.45 supra, para.99.
209. The Franklin Report, n.45 supra, para.100.
210. The Franklin Report, n.45 supra, para.110.
211. The Franklin Report, n.45 supra, para.111.
212. The Franklin Report, n.45 supra, para.112.
213. The Franklin Report, n.45 supra, para.113.
214. The Franklin Report, n.45 supra, para.114.
215. The Franklin Report, n.45 supra, para.115.
216. The Franklin Report, n.45 supra, para.116.
217. The Franklin Report, n.45 supra, *ibid*.
218. The Franklin Report, n.45 supra, para.117.
219. The Weiler Report, n.88 supra, paras.52, 53.
220. See n.8 supra.
221. The Weiler Report, n.88 supra, para.55.
222. The Weiler Report, n.88 supra, para.56.
223. The Weiler Report, n.88 supra, para.59.
224. See nn.101, 102 supra.
225. The Weiler Report, n.88 supra, para.69.
226. The Weiler Report, n.88 supra, para.77.
227. The Weiler Report, n.88 supra, para.74.

228. R v Board of Visitors of Dartmoor Prison ex parte Smith, The Times, 12 July 1984. The case is considered in Chapter Four.
229. Lever, E. (1980) Letter to the editor, The Times, 1 February 1980.
230. Funding of AMBOV is presently provided by the Hilden, Cadbury and Noel Buxton Trusts and from subscriptions.
- × 231. Macfarlane, A.L., Morgan, R. (1981) AMBOV Handbook, Bath, Association of Members of Boards of Visitors.
232. Halward, R.P., Owen, H.G., Quinn, P.M. (1984) Memorandum to P3 Division of the Home Office, 9 May.
233. Sankey, C. (1981) "A P.O.A. View", 1981 1 AMBOV Quarterly, 2-6.
234. See Macfarlane, A.L., (1981) "Chairman's note", 1981, 1 AMBOV Quarterly, 2. Although a meeting was convened between the officers of AMBOV, the Minister of State for prisons (Lord Belstead) and departmental officials on 21 March 1981, the Association "was not welcomed with open arms by the Home Office" (Wainwright, R. (1987) Private correspondence with the writer dated 23 September 1987). On the one hand it was agreed that copies of circular instructions and standing orders would be provided to the Association so that a quarterly precis could be prepared for their periodical. Individual members would have had access to the originals in any case (Prison Rule 96.3). On the other hand, there was a refusal to supply the names and addresses of board members so that a recruitment drive could take place. It was seen as a matter for individual boards, many of them resistant to the idea of AMBOV in the first place, to decide whether or not to approach the Association. On 31 March 1981, the Home Secretary declined an invitation to write for AMBOV Quarterly (Boyle, M.D. (1981) Private correspondence between the Home Secretary's Private Secretary and Andrew Macfarlane, dated 31 March 1981, made available to the writer by AMBOV. The Association's existence is acknowledged in the present "Notes for guidance for chairmen" (Home Office, undated, para.9.2), together with a note that it "is not sponsored by the department". In 1982, Home Office agreed to release the names of board members to AMBOV, but their addresses were not revealed until 1987 (Wainwright, R. *ibid*).
235. Morgan, R., Macfarlane, A.L. (1984) After Tarrant, n.186, *supra*. Despite the Manual (n.11, *supra*) bearing the publication date "October 1984", it was not made available to boards of visitors or governors until May 1985.

CHAPTER THREE(3)

1. See this study, Chapter Two.
2. Home Office (1986) Prison statistics 1985, London, HMSO, Cmnd.9903 at 108.
3. Home Office (1987) Prison statistics 1986, London, HMSO, Cm.210 at 115.
4. Fraser v Mudge, 1975 3 All ER 78, per Lord Denning at 79.
5. R v Board of Visitors of Hull Prison ex parte St. Germain, 1979 1 All ER 701, per Megaw, L.J. at 711 (hereafter cited as ex parte St. Germain).
6. R v Deputy Governor of Camphill Prison ex parte King, 1984 3 All ER 897, per Lawton, L.J. at 902 (hereafter cited as ex parte King).
7. H.O.P.D. (1987) "Note of a meeting held on 12 February 1987 with the S.C.P.S. (Governors' Branch)", London, H.O.P.D. (P8 Division), internal circulation.
8. Jenkins, M.J. (1987) "Control problems in dispersals" in Bottoms, A.E., Light, R. (eds.) (1987) Problems of long term imprisonment, Aldershot, Gower, 261 at 264.
9. Ex parte St. Germain, n.5 supra, per Megaw, L.J. at 711.
10. Ex parte St. Germain, n.5 supra, per Waller L.J. at 722.
11. Ex parte St. Germain, n.5 supra, per Shaw, L.J. at 716.
12. Ex parte St. Germain, n.5 supra, per Shaw, L.J. at 717, 718.
13. Mr. Ewing's application is unreported, save as a footnote in 1984 24 Brit. J. Criminol. 398. A detailed note about the circumstances of the application appears at Appendix 4 which should be considered in conjunction with Chapter Three(1). It presents a model of the way in which the administrator may perceive judicial concepts within a purely administrative framework. The decision to restore forfeited remission to Mr. Ewing was taken largely because it was expedient so to do for reasons of policy. Irrespective of any merit in the applicant's arguments, it was not seen as the correct time to risk a judgment that might have exposed governors' hearings to scrutiny by the courts.
14. Ex parte King, n.6 supra.
15. Peiris (1987), for example, concluded that "the chief element of the spirit of self restraint pervading the judgment was the court's appreciation of the negative policy consequences attendant on the exercise of review". (Peiris, G.L. (1987)) "Wednesbury unreasonableness: the expanding canvass". 1987 CLJ 53 at 77).

16. Ex parte King, n.6 supra, per Lawton, L.J. at 900.
17. Ex parte King, n.6 supra, per Lawton, L.J. at 902.
18. Ex parte King, n.6 supra, per Lawton, L.J. ibid. Cf. the dicta of Megaw, L.J. in ex parte St. Germain, n.5 supra, at 711.
19. Ex parte King, n.6 supra, per Lawton, L.J. ibid.
20. Ex parte King, n.6 supra, per Lawton, L.J. ibid.
21. Ex parte King, n.6 supra, per Griffiths, L.J. at 903.
22. Ex parte King, n.6 supra, per Griffiths, L.J. ibid.
23. Ex parte King, n.6 supra, per Browne-Wilkinson, L.J. at 905.
24. Zellick, G.J. (1984) "Prison adjudication", 1984 PL 513.
25. Note, for example, the power of the board of visitors to suspend any officer from duty in the case of urgent necessity (Prison Rule 94.4).
26. Zellick, G.J. (1984) op.cit. 516.
27. Palley (1980) had previously considered this aspect and had concluded that, even acting as a manager, there was vested in the governor the duty to act fairly. Within a prison, she observed: "If you actually analyse it, there is not a decision maker who is not exercising a judicial or quasi-judicial function". (Palley, C. (1980) "Judicial review of prison discipline". Record of a meeting held at Queen Mary College, University of London, 5 June 1980. London, British Institute of Human Rights, January 1981, 6.)
28. See, eg, dicta of Shaw, L.J. in ex parte St. Germain, n.5 supra, at 716.
29. Boyle, K., Hadden, T., Hillyard, P. (1975) Law and state, London, Martin Robertson, 119.
30. R v Secretary of State for the Home Department ex parte Tarrant 1984 1 All ER 799, hereafter cited at ex parte Tarrant.
31. Ex parte St. Germain, n.5 supra, per Waller, L.J. at 725.
32. Byrne, R., Hogan, G.W., McDermott, P. (1981) Prisoners' rights: a study in Irish prison law, Dublin, Co-op Books, 58.
33. The State (Gallagher) v Governor of Portlaoise Prison, 18 May 1977 in the High Court, unreported.
34. The State (Fagan) v Governor of Mountjoy Prison, 6 March 1978 in the High Court, unreported.
35. The State (Richardson) v Governor of Mountjoy Prison, 1980 ILRM 82.

36. R v Governor of the Maze Prison ex parte McKiernan, 1985 NIJB 6, hereafter cited as ex parte McKiernan.
37. Ex parte Fry 1954 2 All ER. The court had refused certiorari in respect of a disciplinary hearing within a fire brigade.
38. Ex parte St. Germain, n.5 supra, per Megaw, L.J. at 710.
39. R. v Army Council ex parte Ravenscroft 1917 2 KB 504.
40. Ex parte KcKiernan, n.36 supra, per Lowry, L.C.J. at 8, 9.
41. Ex parte KcKiernan, n.36 supra, per Lowry, L.C.J. at 25.
42. Ex parte KcKiernan, n.36 supra, per Lowry, L.C.J. at 27.
43. Ex parte KcKiernan, n.36 supra, per Lowry, L.C.J. at 10.
44. Ex parte KcKiernan, n.36 supra, per Lowry, L.C.J. ibid.
45. Ex parte KcKiernan, n.36 supra, per Lowry, L.C.J. at 19.
46. Zellick, G.J. (1985) "Governors' adjudications: the Northern Ireland view" 1985 PL 527 at 528.
47. R v Governor of Pentonville Prison ex parte Herbage (No.2), 1987 2 WLR 226, hereafter cited as ex parte Herbage (No.2).
48. Ex parte Herbage (No.2), n.47 supra, per May, L.J. at 233.
49. Ex parte Herbage (No.2), n.47 supra, per Purchas, L.J. at 240.
50. See Morris, P. (1986) "Prison discipline and the Ombudsman", 1986 (February) Legal Action, 6 and the letter from the same writer published in 1986 (March) Legal Action, 7. See, generally, Werner, G.M. (1982). "The part played by the PCA in improving prison discipline", M.Phil. thesis, University of Cambridge.
51. R v Deputy Governor of Parkhurst Prison and another ex parte Leech and another, The Times, 5 February 1988, later reported sub.nom. Leech v Parkhurst Prison Deputy Governor, 1988 1 All ER 485 hereafter cited as ex parte Leech.
52. Ex parte Leech, n.51 supra, per Lord Bridge at 496.
53. Ex parte Leech, n.51 supra, per Lord Bridge at 497, 498.
54. Ex parte Leech, n.51 supra, per Lord Bridge at 499.
55. Ex parte Leech, n.51 supra, per Lord Bridge, ibid.
56. Ex parte Leech, n.51 supra, per Lord Bridge at 500.
57. Ex parte Leech, n.51 supra, per Lord Bridge at 500, 501. Cf. the argument of Boyle, K., Hadden, T., Hillyard, P. (1975) at n.32 supra.

58. Unattributed (1988) "Prisoners granted right of challenge", The Independent, 5 February 1988.
59. Ex parte Tarrant, n.30 supra, per Webster, J. at 816. The criteria are considered fully in Chapter Three(2).
60. Hone v Maze Prison Board of Visitors, McCartan v Same, 1988 1 All ER 321.
61. Associated Provincial Picture House Ltd. v Wednesbury Corporation, 1948 1 KB 223, per Lord Greene, M.R. at 229.
62. Ex parte Leech, n.51 supra, per Lord Bridge at 497.
63. H.O.P.D. (1988) Circular Instruction 6/1988,.
64. Prevot v Long Larton (sic) Prison Deputy Governor, 1988 1 All ER 485.

### CHAPTER THREE(4)

1. Klare, H.J. (1960) Anatomy of a prison, London, Pelican, 17. See too Leigh, D. (1980) The frontiers of secrecy, London, Junction Books, 92 et.seq.
2. Barker, P. (1986) "Those other prisoners", Sunday Telegraph, 4 May 1986. See, too, Stern, V. (1987) "Bricks of shame: Britain's prisons", London, Penguin, Cap 5 and particularly 79-81.
3. Prison Officers' Association (1987) Gatelodge Magazine, March 1987, front cover.
4. Bardsley, B. (1987) Flowers in hell: an investigation into women and crime, London, Pandora Press, 69.
5. McDermott, K., King, R.D. (1988) "Mindgames: where the action is in prisons", 1988 Brit. J. Criminol. 357, 359.
6. Sykes, G. (1958) Society of Captives, Princetown University Press, 15.
7. Fitzgerald, M. (1977) Prisoners in revolt, London, Pelican, 35.
8. Klare, H.J. op.cit. 91-2.
9. See, eg, "ghosting", this chapter infra. Consider, too, the effective emasculation of PROP (Preservation of the Rights of Prisoners) as a negotiating body, simply by the refusal by the Prison Department to recognise it as "official" (HQM 3 of 1972, addressed from P3 and P4 Divisions to all governors under reference PDG/72 303/24/6).
10. Harding, C., Hines, B., Ireland, R. and Rawlings, P. (1985) Imprisonment in England and Wales, Beckenham, Croom Helm, 230.
11. Bramham, P. (1980) How staff rule: structures of authority in two community schools, Westmead, Saxon House, Chapter 3.
12. Dobash, R.P., Dobash, R.E. and Gutteridge, S. (1986) The imprisonment of women, Oxford, Basil Blackwell, 147. See too Colvin, M.L. (1981) "The contradictions of control: prisons in a class society". The insurgent sociologist magazine, University of Oregon, Department of Sociology. Summer 1981, 33 at 36.
13. Low, C. (1980) Foreword to Bramham, P. (1980) op.cit., vi.
14. Goffman, E. (1961) Asylums, London, Pelican.
15. Leigh v Gladstone and others 1909 26 TLR 139 at 140.
16. McKenna, B. (1983) Justice in prison, London, Justice, at 67.
17. Fitzgerald, M. op.cit. 79.
18. Garfinkel, H. (1956) "Conditions for successful degradation ceremonies" 61 American J. Sociol. 420.

19. See, eg, Mangold, T. (1977 "The crisis inside", The Listener, 3 March, London, BBC Publications, 258.
20. See, eg, Cohen, S. and Taylor, L. (1972) Psychological survival London, Pelican, 132 et.seq. and O'Dwyer, J. (1985) in Carlen, P. et al. (1985) Criminal women, Cambridge, Polity Press, 174.
21. McVicar, J. (1979) "The liquid cosh" in Rights, Vol.4, No.2., (London, N.C.C.L.) Many accounts of the forcible drugging of prisoners for reasons of control and the maintenance of discipline emanate from prisoners' memoirs or from the press of the radical pressure groups. They tend to be colourful and alarmist. In the only decided case on the point (Freeman v Home Office 1983 3 All ER 589) it was found as a question of fact, that the prisoner had consented to the administering of drugs to him. See too Brazier, M. "Prison doctors and their involuntary patients" 1982 PL 282.
22. See, eg, Brazil, D. (1974) "Warders beat remanded men", Irish Press, 14 December 1974; Gibson, B. (1976) The Birmingham bombers, Chichester, Barry Rose, at 142 and Mullen, C. (1986) Error of judgments: the Birmingham bombings, London, Chatto and Windus, passim.
- × 23. Hunter v Chief Constable of the West Midlands 1981 3 WLR 906, 914.
24. See Thomas, J.E. and Pooley, R. (1980) The exploding prison, Chapter 6, London, Junction Books; Coggan, G. and Walker, M. (1982) Frightened for my life, London, Fontana, at 197 and Coote, A. (1979) "Screws' rights", New Statesman, 13 April 1979.
- × 25. Report of an Inquiry by the Chief Inspector of the Prison Service into events at HM Prison, Hull, 31 August - 3 September 1976 (The Fowler Report) (London, HMSO) 1977, Cmd 453. See, too, McDermott, K., King, R.D. (1988) op.cit. 367.
26. Coggan, G. and Walker, M. (1982) op.cit. 19-43.
27. Fitzgerald, M. and Muncie, J. (1983) Systems of justice, London, Basil Blackwell, 184.
28. Hamner, C. (1986) Private discussion with the writer, confirmed correspondence of 17 September.
29. Rayner, R. (1974) "Anxiety in a remand prison", Psychology Unit, HMP Brixton internal circulation, 1.
- × 30. Richards, A.C.W. (1948) "Offences and punishments". Paper given to the prison governors' annual conference, minutes circulated internally. Public Record Office reference PCOM 9/594.8468, 12. The same suggestion was raised by McDermott and King (1988) op.cit. 367.
31. Hancock v Prison Commissioners, 1960 1 QB 117 per Winn, J. at 128.

32. Jones, H. and Cornes, P. (1975) Open prisons, London. Routledge and Kegan Paul, 211, 212. The writers draw attention to the rivalry and physical "horseplay" in prison - described as "a man's world", which occasionally gets out of hand with undesirable consequences.
33. Halsbury's Laws of England, 4th edition (1982) London, Butterworth, para.1173.
34. Morris, P.E. (1986) "Administrative powers and prison discipline", 1986 130 Sol.J. 350.
35. See generally Davies, P. and Steadman-Allen, R. (1979) "The psychology of rule 43" Prison Service Journal, April 1979. A most valuable source of information about the use of rule 43 is the Report of H.M. Chief Inspector of Prisons (1986) A review of the segregation of prisoners under rule 43, London, Home Office.
36. Gruner, H. (1982) A good and useful life, London, Howard League.
37. Gruner, H. (1982) *ibid.*
38. Williams v Home Office No.2, 1981, 1 All ER 1211 hereinafter cited as Williams No.2.
39. Personal, if peripheral, involvement in the cases of Mr. Wakefield and Mr. Mawdesly, both examples quoted at length, suggests to the writer that apart from the "good order and discipline" aspect of their segregation, both men were likely to be at risk from their fellow prisoners. Both had killed inmates whilst serving their present sentence.
40. Report of the Advisory Council on the Penal System (1968) London, HMSO, 63.
41. Mangold, T. (1977) *op.cit.* 260. See too Shaw, E. (1987) "Doing time with the governors", Sunday Telegraph, 2 August 1987, particularly at cl.
42. Anderson, M.E., O'Dwyer, E. (1987). Letter to an Irish republican prisoners' support group, dated 5 November 1987 circulated as part of an information pack relating to a picket of Durham prison by members of the Irish Republican P.O.W. Campaign Committee, 13 March 1988.
43. Gruner, H. (1982) *op.cit.* 10.
44. Correspondence between Lord Belstead and Lord Avebury, 1 October 1981. Quoted in Gruner, H. (1982) *ibid.*
45. Williams No.2, *supra*, at 1235.
46. Gruner, H. (1982) *op.cit.* 14. The Chief Inspector of Prisons (1986) has recently suggested that a prisoner should be informed, in writing, of the reasons for his segregation (*op.cit.*).
47. Williams No.2, *supra*, at 1247.

48. Mandaraka - Sheppard, A. (1986) The dynamics of aggression in women's prisons in England. Aldershot, Gower, 89.
49. Dispersal Prisons Support Group (1986). Minutes of the 4th meeting, 12 August 1986. London, H.O.P.D., para.17, 5 (Prison Department, internal circulation).
50. Under Prison Rule 48.2 a prisoner who is to be charged with an offence against discipline may be kept apart from other prisoners pending adjudication.
51. Brown, S., (1985) Private note made available to the writer.
52. Gruner, H. (1982) op.cit. 17.
53. Home Office Prison Department (1982) Report of a review within P2 Division into the operation of Rule 43, para.50 (internal circulation). This paragraph concerns those segregated for their own protection. It is suggested that the comments apply equally in the case of others who are segregated.
54. R v Secretary of State for the Home Department ex parte Herbage (No.2), 1987 2 WLR 226 per May, J. at 229. Note should be taken of Article 3 of the European Convention of Human Rights ("No-one shall be subjected to torture or to inhuman or degrading treatment or punishment.") In 1971 the European Commission declared admissible a complaint that a prisoner had been subjected to "inhuman and degrading treatment" in that he had been detained for two weeks in a closed ward of a psychiatric hospital whilst remanded in custody before trial when he was not mentally ill. It had been contended that since he suffered from poliomyelitis the hospital had been the only place where he could be examined and where a high level of security existed. A friendly settlement was reached (Simon-Herald v Austria, No.4340/69, 38 Coll.18, 14 Yearbook of the European Convention of Human Rights, 352. See too Duffy, P.J. (1983) "Article 3 of the European Convention on Human Rights", 1983, 32 I.C.L.Q. 316 at 330, 335.)
55. Genders, E., Player, E. (1988) "Women lifers: assessing the experience" in Morris, A.M., Wilkinson, C. (1988) Women and the penal system: papers given at the 19th Cropwood Conference", Cambridge, University of Cambridge Institute of Criminology, 138 at 143.
56. Genders, E., Player, E. (1988) op.cit. 155.
57. Zellick, G.J. (1981) "Prison discipline and preventive confinement", 1981 Crim. L.R. 218 at 222.
58. Trevelyan, D.J. (1982) Boards of Visitors: Notes for Guidance, London, H.O.P.D., foreword.
59. Trevelyan, D.J. (1982) *ibid.*
60. See Morgan, R. (1984) "Just visiting", The Times, 7 April 1984.
61. Silburn, K. (1982) "Rule 43: A view from Wandsworth", 1982, 7 AMBOV Quarterly 3.

62. Maguire, M. and Vagg, J. (1984) The Watchdog role of boards of visitors, London, Home Office, 140, 141.
63. Gruner, H. (1982) op.cit. 12.
64. Silburn, K. (1982) ibid.
65. R v Hull Board of Visitors ex parte St. Germain, 1979 1 All ER 701 at 725 hereinafter cited as ex parte St. Germain.
66. Williams No.2, supra.
67. Williams No.2, supra, at 1231.
68. Ex parte St. Germain supra.
69. Arbon v Anderson (1943) KB 252.
70. Becker v Home Office 1972 2 All ER 676. For an analysis of this case, and those referred to in the two previous footnotes, see Chapter Three of this study.
71. Payne v Home Office, 2 May 1977, unreported. The case is considered by Tudor Evans, J. in Williams No.2 supra, at 1241, 1242.
72. The four security categories of sentenced prisoner are as follows:  
 Category A: prisoners whose escape would be highly dangerous to the public or to the police or to the security of the state.  
 Category B: prisoners for whom the very highest conditions of security are not necessary but for whom escape must be made very difficult.  
 Category C: prisoners who cannot be trusted in open conditions but who do not have the ability or resources to make a determined escape attempt.  
 Category D: those who can reasonably be trusted to serve their sentence in open conditions.  
 These definitions are given in the white paper People in prison (1969) London, Home Office Cmnd 4214 at 69. The procedure and decision making processes in classifying prisoners have been described by the Chief Inspector of Prisons (1984 Report into prison categorisation procedures, London, Home Office). A fifth category ("U" or unclassified) was introduced in 1988, to be applied to all remand prisoners and those convicted but unsentenced, other than those provisionally in category A (H.O.P.D. (1988) Circular Instruction 7/1988). Leigh, D. (1980, op.cit. 96) and McKenna (1983, ibid.) raise the possibility of recategorisation, itself presenting an oblique disciplinary device to punish prisoners.
73. Owen (1987) has argued that Cantley, J.'s dicta should not be taken to mean that categorisation can never be reviewed by the courts. He prefixed the dictum cited with stressing the need for fairness in such procedures. Owen continues: "In reaching categorisation decisions, the Home Office relies largely on reports from governors and prison staff. Where there is evidence that such reports are unfair, inaccurate, or possibly motivated by

bad faith, then arguably a decision based on such material could attract a remedy." Owen, T. (1987) "Prison Law 2", Legal Action, March 1987, 11.

74. Williams No.2, supra, at 1242. See too, in this context, the decision of the Northern Ireland Court of Appeal in McKeirnan v Governor of HM Prison Belfast and another. (1983, N.I.L.R. 83), particularly the judgment of Lord Lowry, LCJ. at 102-3.
75. Zellick, G.J. (1981) *ibid*.
76. Home Office (1984) Managing the long term prison system: Report of the Control Review Committee, London, H.M.S.O.
77. Hattersley, R. (1988) "Captive audience", The Listener, 24 March 1988. See, too Barwick, S. (1988) "Women prisoners treated worse than men", The Independent, 21 November.
78. The writer's source of information is a member of the governor grade at Wandsworth at the time, who conducted investigations into these allegations. They were found to have no substance. The example is included to illustrate the significance allocation has for prisoners, and the degree of power that staff have over them in that respect.
79. Morris, P. (1965) Prisoners and their families, London, George Allen and Unwin, at 291.
80. Vercoe, K. (1970) Family visits to prison, London, NACRO.
81. Prison Reform Trust (1983) The effects of separation on the prisoner and his family, London, P.R.T. Some of the practical difficulties facing prisoners' families who wish to visit are recounted in Smith, S. (1988) "Rights of prisoners' families", Legal Action, January, 9.
82. Quinn, P.M. (1985) "Prison discipline and prison management" in Maguire, M., Vagg, J., and Morgan, R. (1985) Accountability and prisons, London, Tavistock, 204 at 213.
83. Morris, P. (1965) *ibid*.
- X 84. The writer has lost count of the number of times that he was told by Durham staff that Leeds were sending all their trouble makers to Durham at the time that the latter prison was receiving weekly overcrowding drafts during 1984-85.
85. H.O.P.D. Circular Instruction 10/1974.
86. Pickering, I.G.W. (1970) Preface to Parker, T. (1970) Out of the frying pan, London, Hutchinson. See too Leigh, D. (1980) *op.cit.* 90, 91.
87. Adams, P. and Cooklin, S. (1984) Knockback, London, B.B.C. Publications, 116.
88. Budge, D. (1985) "Barred from studying", Times Educational Supplement, 12 pril 1985.

89. Curtis, D. 1973 From Dartmoor to Cambridge, London, Hodder and Stoughton, 90.
90. Sutcliff, J. (1987) "Prisoners barred from taking "O" level", Times Ed. Supp., 23 January 1986.
91. Wavell, S. (1988) "White wedding at Long Lartin", The Guardian, 12 February 1988.
92. R v Secretary of state for the Home Department ex parte McAvoy (1984) 3 All ER 417 per Webster, J. at 424. The case is hereinafter cited as Ex parte McAvoy.
93. Per Lord Parker in The Zamora 1916 2 AC 77 at 107.
94. Council of Civil Service Unions v Minister for the Civil Service 1984 3 All ER 935.
95. Per Lord Fraser of Tullybelton at 944.
96. Per Lord Diplock at 952.
97. R v Secretary of State for the Home Department ex parte Ruddock and others, 1987 2 All ER 518.
98. R v Secretary of State for the Home Department ex parte H, The Times, 24 March 1988.
99. See n.72, supra.
100. R v Brown, 1975 Crim. L.R. 293.
101. See, generally, Hood, R. (1965) Borstal reassessed, London, Heinemann.
102. Quoted in Mitford, J. (1974) The American prison business, London, George Allen and Urwin, 80-81.
103. See, eg, Longley, D.G. (1969) "An end to borstal training?" Prison Service Journal (Old Series), No.30, 26.
104. Mitford, J. (1974) op.cit. 83.
105. Atkinson, D. (1984). Mr. Atkinson was a prison governor who worked in the life sentence section of P2 Division, H.O.P.D. I quote from private correspondence between him and Mr. R.O. Crichfield of the Middlesex Probation Service dated 16 July 1984, of which he has given me sight. The concept expressed was adopted in H.O.P.D. Circular Instruction 2/1986, para.15.
106. See, generally, Cameron, I. (1983) "Zero option", The Abolitionist, No.15, 6. The article presents a case study of prisoner Frank Marritt and demonstrates the vagaries of getting through a life sentence.

107. Wickham, D.W. (1978) Black borstal boys, (M.Sc. thesis, Cranfield Institute of Technology), 55-56.
108. Fleet, D.M. (1986). Private correspondence with the writer, dated 16 August 1986. It will be recalled that Prison Department Standing Order 5 is one of those available to prisoners.
109. A similar experience has been noted by a prisoner who served a determinate sentence. See Padel, V., Stevenson, P. (1988) Insiders, London, Virago, 10, 123, 124.
110. Sapsford, R. (1978) "Life sentence prisoners: psychological changes during sentence", 1978 Brit. J. Criminol., 128.
111. R v Secretary of State for the Home Department ex parte Hanscomb and others, 1987 86 Cr. App. R., 59.
112. H.M. Chief Inspector of the Prison Service (1977) Report of an inquiry by the Chief Inspector into the security at H.M. Prison, Leicester, and the arrangements for conducting prisoners to courts (escape of William Thomas Hughes on 23 January 1977), London, HMSO, ref.202 at 27.
113. H.M. Chief Inspector of the Prison Service (1977) *ibid.* Current practice regarding the strip searching of women, including menstruating women, was given by John MacKay, M.P. in response to a parliamentary question on 12 March 1986 (Official Report, Parliamentary Debates (Hansard) H of C, 6th series, Vol.93, Col.486).
114. H.O.P.D. Standing Order 1B9 (1).
115. Standing Advisory Committee on Human Rights (1986) Searching of women prisoners in Northern Ireland. Belfast, A.C.H.R., 5.
116. Hansard, H.C. Debs. Vol.93, col.306, written answers, 7 March 1986.
117. H.O.P.D. (undated) Manual on Security, para.8. The writer has, to hand, a copy of the paragraph. In view of the restriction referenced at the footnote immediately above, only general reference is made thereto. The "Manual" conveys nothing of the spirit of the controls, for example, upon police officers in similar situations. The Police and Criminal Evidence Act 1984, ss.54, 55, as well as laying down safeguards for the subject of the search, impresses upon the searcher and his superior officer the requirement to have reasonable grounds to conduct the search.
118. McAleese, M. (1985) Submission to the enquiry into the strip searching of women prisoners in Armagh women's prison conducted by the Irish Congress of Trade Unions, at 5.
119. National Council for Civil Liberties (1986) Strip Searching, London, N.C.C.L., at 30.
120. Jenkins, J. (1985) "Now Brixton has its strip search scandal", London, New Statesman, 13 September 1985, 7.

121. Fisher, M. (1985) Letter from Messrs. Christian Fisher and Co., Solicitors, 18 Russell Street, London WC2B 5HP, dated 7 November 1985. The extract is reproduced with the permission of the writer.
122. Glenarthur, Lord (1985). Letter to Jo Richardson, MP, dated 9 September 1985, lodged in the Library of the House of Commons.
123. Glenarthur, Lord (1985) *ibid*.
124. R v Governor of H.M. Prison, Brixton, ex parte Anderson and O'Dwyer, 1 May 1986. Q.B.D. (Lexis CO/582/86(7) ).
125. R v Deputy Governor of Camp Hill Prison ex parte King, 1984 3 All ER 897.
126. R v Governor of the Maze Prison ex parte McKiernan, 1985 N.I.J.B. 6.
127. R v Governor of Pentonville Prison and another ex parte Leech and another, 1988 1 All ER 485.
128. Fisher, M. (1988) Private discussion with the writer, 4 November, quoted by permission. This would appear to be the prisoners' only avenue whereby some sort of redress might be sought. It is unlikely, for example, that an application to the European Commission on Human Rights would prove successful. In McFeeley v United Kingdom in 1977 "close body searches" which were described as "searching the prisoner while he is naked and examining his rectum with a mirror" were found not to constitute degrading treatment under Article 3 of the European Convention on Human Rights (McFeeley v United Kingdom, C.D. 8317/77, 3 E.H.R.R. 161.)
129. Anderson, I. (1986, 87) quoted in Troops out newspaper, December/January 1986/7.
130. Quigley, L. (1984) interviewed in the documentary video "Strip searching - security or subjugation", Derry Film and Video Cooperative.
131. Browne, I. (1984) *ibid*.
132. Davis, D.R. (1988) "Strip searching, protecting the health of prisoners", 1988, 30 AMBOV Quarterly, 4, 5.
133. Anderson, M.E., and O'Dwyer, E. (1987) quoted in Women's imprisonment - breaking the silence, London, Women's Equality Group/London Strategic Policy Unit, 161, 162.
134. Ditchfield, J., Duncan, D. (1987) "The prison disciplinary system: perceptions of fairness and adequacy by inmates, staff and members of boards of visitors", 1987, 26 Howard J., 122 and 127.
135. Mezey, G. (1987) in the television documentary "Strip searching - security in the raw" in the Open Space series, directed by Jenson, E., BBC2 TV, 13 April 1987.

136. Head of Police Monitoring and Research Group (1986) Report to the Police Sub-committee of the London Strategic Policy Committee, London, L.S.P.C., paras. 1, 4. The report considered searching of male as well as female prisoners within wider parameters than prison alone.
- X 137. Society of Civil and Public Servants (1987) National women's advisory committee report, London, SCPS, 12. The debate is reported more fully at Society of Civil and Public Services (1987) Opinion, London SCPS, 7. Opinion is the monthly newspaper of the Society. A newly formed Prison Governors' Association has been founded to represent the interests of governors. See Watt, G. (1988) "Out in the cold" in New Insider, Spring 1988. New Insider is the journal of the Home Office branch of the National Union of Civil and Public Servants.
138. Rutherford, A. (1983) "Prison Justice", 1983 P.L. 568 at 571.
- X 139. The writer, together with another governor, M.A. Mogg, conducted two training seminars for members of the Birmingham prison board of visitors during July 1983.
140. Kendrick, R.J. (1982) Private correspondence with the writer dated 11 August 1982.
141. Quinn, P.M. (1985) in Maguire, M., Vagg, J. and Morgan, R. (1985) op.cit. at 212, 213. See, too, the evidence of the Board of Visitors of Erlestoke Youth Custody Centre to the departmental Committee on the Prison Disciplinary System, 20 July 1984, unpublished, but reviewed in the final section of this work.
142. Ditchfield, J. and Duncan, D. (1987) op.cit. 126.
143. R v Board of Visitors of H.M. Prison Wandsworth, ex parte Reid, 28 June 1985, Q.B.D. (Lexis CO/942/84(4)).
144. Baldwin, R. and Hawkins, K. (1984) "Discretionary Justice", 1984 P.L. 560 at 584. Reporting style is considered in the context of probation. The argument is applied here, by analogy, to prison reports. See too, McDermott, K., King, R.D. (1988) op.cit., passim.
145. See H.O.P.D. Standing Order No.4 and n.77 supra.
146. R v Angell, 1964 Crim. L.R. 553, per Lord Parker.
147. Williams No.2, supra, per Tudor Evans, J. at 1240.
148. Hallmark, D.J.S. (1986) Private correspondence with the writer dated 30 September 1986. A confidential memorandum or "lifer summary" is prepared in the Home Office, on each life sentence prisoner. In short, it states something of the prisoner's social history and the circumstances of the offence. The pro forma memorandum under which copies of the summary are sent to the

prison for the use of the governor and the medical officer requires that existence should not be acknowledged to the prisoner (P2 Division memo, ref. CRI/68 436/4/12). Since 1986, probation officers assigned to the prisoner's case, may have sight of the summary (H.O.P.D. Circular Instruction 2/1986).

149. R v Governor of Pentonville Prison and another ex parte Herbage No.2, 1987 2 WLR.

150. Golder v UK, 1975 1 EHRR 524.

X 151. Whether or not a prisoner in such circumstances could sustain an action against Home Office remains in doubt. In Allison v Home Office, in 1984 a prisoner who had been made aware that he was described in his record as "subversive" sought damages in defamation and an injunction to prevent further publication. Counsel for the defendant argued that the prisoner had embarked upon a "fishing expedition" to determine exactly what information was held about him and to prevent it being passed to the Parole Board. The substantive matter of the application was not considered since, under Rules of the Supreme Court Order 18, Rule 19, Master Waldman, struck out the action as not disclosing a reasonable cause, as being frivolous and vexatious and as an abuse of process. Mr. Allison's appeal against striking out was turned down. (Allison v Home Office, unreported, QBD, 1 March 1984). The appeal against striking out was heard before Sir Douglas Frank, in chambers, on 5 October 1984.

152. R v Wandsworth Prison Board of Visitors ex parte Rosa, 1979 1 All ER 701, per Waller, L.J. at 724. This case was joined with ex parte St. Germain supra.

153. The Times, 14 November 1981, sub.nom. R v Board of Visitors of Gartree Prison ex parte Mealy. The reference quoted is taken from the full transcript of the hearing at 27.

154. Leech v Parkhurst Prison Deputy Governor, 1988 1 All ER 485.

155. Per Lord Bridge at 487.

156. Per Lord Bridge at 500.

X 157. An example of this may be seen from the following sequence of entries in a prisoner's record, of which the writer has had sight:

" 7.6.85: Pre-parole home leave granted for 29.7.85-1.8.85.  
10.7.85: Transfer to H.M.P. Durham agreed... Unsuitable for open conditions. Above pre-parole home leave cancelled. Note sent to parole unit re possible drugs involvement at Haverigg.  
11.7.85: Durham: From H.M.P. Haverigg. Suspected of drug dealing via visits/home leave returners. No evidence yet proved worthwhile."

158. Logan, A.D.W. (1982) "Prisoners' rights", Prison Service Journal, July 1982, 12. See, too, McDermott, K., King, R.D. (1988) op.cit. 373.

159. See Bevins, A. (1982) "Prison staff are told to stop racist comments", The Times, 6 September 1982.
160. H.O.P.D. (1988) Addendum 1 to circular instruction 56/1983 under the signature of B.M. Caffery, dated 6 October.
161. Ellis v Home Office, 1953 2 All ER 149, per Lord Singleton at 154.
162. Eg, Ellis v Home Office, supra, D'Arcy v Prison Commissioners, The Times, 17 November 1955. Egerton v Home Office, 1978 Crim. L.R. 494.
163. H.O.P.D. Circular Instruction 32/1979.
164. Howard League (1985) Unlawful sex: report of a Howard League working party, London, Howard League for Penal Reform, 44. Those quoted are Coggan, G. and Walker, M. (1982) op.cit. 219 and Wright, M. (1982) op.cit. 61.
165. Anon (1982) in King, B. (1982) "For his own protection", B.R.M.B. Radio documentary. It is important to remember that the 'blind eye' may also be turned to the benefit of the prisoner (Rhymes, 1988). Even so it remains an element of the informal control structure of the prison. (Rhymes, D.A. (1988) "The homosexual in prison", Prison Service Journal, October, 20 at 22).
166. McDermott, K., King, R.D. (1988) op.cit. 364.
167. Genders, E. and Player, E. (1986) Age mixing in female establishments, Oxford, Centre for Criminological Research. Unpublished research paper commissioned by Home Office, 95.
168. Anderson, J.M.H. (1987) Private correspondence with the writer, 19 January 1987. Inmates' private justice systems are likely to be more widespread than in the example given. Whilst treating the source with some circumspection, Finlay, S. (1989) cited a former Wandsworth prisoner, a Mr. Edwards, as telling him of the existence of "kangaroo courts" amongst prisoners there. The more restrained former prison governor and present chairman of the House of Commons Select Committee on Home Affairs, John Wheeler, also acknowledged, in 1989, that "most of the discipline in prisons is carried out by the prisoners themselves". (Finlay, S. (1989) "Prison perverts face death row: inmates plan rough justice for beasts in kangaroo court", Sunday Sport, 5 February; Wheeler, J. (1989) "Warder load of rubbish" [sic], Daily Mirror, 2 February).
169. Fitzgerald, M. and Muncie, J. (1983) *ibid.*
170. Alexander, N. (1988) "Robben Island: our university", Channel Four Television, 10 April 1988, directed by Lindy Wilson.
171. McDermott, K., King, R.D. (1988) op.cit. 368.
172. Jenkins, M.J. (1987) Control problems in dispersals, in Bottoms, A.E., Light, R. (eds. (1987) Problems of long term imprisonment, Aldershot, Gower, 261 at 265-270.

173. Maguire, M. and Vagg, J. (1984) op.cit. 124.
174. Searle, H.D. (1984) Clergy in crisis - a study of vocational conflict among prison chaplains (M.Sc. thesis, Cranfield Institute of Technology), 162.
175. Maguire, M. and Vagg, J. (1984) op.cit. 160.
176. Carlen, P. et al. (1985) op.cit. 183.
177. Warren, D. (1983) The key to my cell, London, New Park Press, 165.
178. Burgo, M.R. (1986) Statement in defence at adjudication at H.M.P. Durham, 30 October 1986 (Charge No. 0750/86) quoted with the permission of Mr. Burgo.
179. Fleet, D.M.S. (1986) op.cit. The writer confirmed the substance of this passage with the prisoner concerned who asked not to be identified.
180. R v Secretary of state for the Home Department ex parte Hickling and another, The Times, 7 November 1985 (1985) 129 Sol. J. 830.
181. Warren, D. (1983) op.cit. 86.
182. See, eg, Vale, E. (1978) "Who's on a Bender", Daily Mirror, 28 April 1978; White, R. and Hughes, G. (1980) "The baron and the bent screw" and "The great escape", Daily Mirror, 21 and 22 January 1980 about Sudbury Prison; Osborn, K. and King, H. (1986) "Open all hours", Daily Mirror, 20 January 1986 and Hill, G., Hudson, D. (1988) "Blonde in prison romp", The Star, 6 August 1988 about Rudgate Prison; Lashmer, P. (1987) "Gangland boss paid bribe for jail luxury", The Observer, 25 January 1987 and Lewthwaite, J. (1988) "How Mr. Big got his bubbly in jail", The Sun, 20 September 1988 about Ford Prison; Kane, P. and Hay, G. (1988) "Lester's champagne cell party" and "My drug shame prison"; Daily Mirror, 3 and 4 March 1988, about Highpoint prison.
183. Bailey, S.H., Harris, D.J. and Jones, B.L. (1985) Civil liberties: cases and materials, 2nd Ed., London, Butterworths.
184. Wheatley, P. (1981) "Riots and serious mass disorder", Prison Service Journal, October 1981.
185. Wheatley, P. (1981) *ibid.* Zellick (1982) wrote of the aftermath to the 1979 riot at Wormwood Scrubs: "The governor's managerial discretion was severely limited by the P.O.A.'s implacable opposition. Any relaxation of the punitive regime was determined by the P.O.A. committee." Deer (1986) reported that "Although governors are largely in charge of prisons, the highly disciplined Prison Officers' Association effectively controls most institutions". Thomas (1986) and Light (1986) reflect this. Thomas wrote of "prisoners being at the receiving end of the officers' caprice" (Zellick, G.J. (1982) "Who runs the prisons?" 1982 P.J. 346; Deer, B. (1986) "Hard to break prison power", Sunday Times, 21 December 1986; Thomas, J.E. (1986) "Prisoner abuse", New Society, 9 May 1986; Light, R. (1986) "Prisoners' rights, prison numbers and the courts", 1986 N.L.J. 817). See too

- Kirby, T. (1987) "The great divide in British prisons, The Independent, 14 August 1987 and Anon (1987) "The prison wardens (sic) who influence the inmates"", Letter to the editor, The Guardian, 25 August 1987.
186. Ditchfield, J. and Duncan, D. (1987) op.cit. at 131-134.
187. Clemmer, D. (1940) The prison community, New York, Hold Rinehart and Winston, 149.
188. H.O.P.D. (1973) Circular Instruction 66/1973.
189. H.O.P.D. (1973) *ibid.*
190. See Standing Order 3E 13-15.
191. Prison Officers' Association 1984) The prison disciplinary system, London, P.O.A., 53.
192. Wood, W.A. (1983) "Dealing with difficult prisoners", Informer Magazine, London: Society of Civil and Public Servants (Governors' Branch). This view was recently endorsed by Argyle, H.H.J. writing in The Daily Mail. He believed that prison officers often felt that they were treated worse than prisoners: "Any complaint by a prisoner is instantly taken up by one or other of the organisations, or the press, but the prison officers' complaints get lost in the bureaucracy." Argyle, M. (1988) "Prison officers: a case for our concern", Daily Mail, 12 August.

#### CHAPTER FOUR

1. R v Board of Visitors of Hull Prison ex parte St. Germain No.2, 1979 3 All ER 545 hereinafter cited as ex parte St. Germain No.2.
2. R v Secretary of State ex parte Tarrant and another, 1984 1 All ER 799 hereinafter cited as ex parte Tarrant.
3. Folk-myths exist in many prisons that lawyers who undertake predominantly legally aided criminal work or who address civil liberties issues are, in some way, suspect. They are seen as taking on work of a dubious character for clients of a dubious character.
4. See Prison Officers' Association Magazine, April 1984, 197.
5. See Prison Officers' Association Magazine, April 1984, 207-210.
6. Home Office Press Release, 24 October 1983.
7. Hansard, 6th Series, Vol.33, 1984-5, c.20 written answers.
8. Hansard, 6th Series, Vol.56, 14 March 1984, c.152 written answers.
9. Hansard, 6th Series, Vol.59, 8 May 1984, c.281 written answers.
10. H.O.P.D. Notice to Staff 26/1984. See Appendix 5.
11. The Tarrant judgment was first reported in The Times on 9 November 1983.
12. Hansard, 6th Series, Vol.49, 22 November 1983 H.C. c.91 written answers.
13. Legal Advice and Assistance (Amendment) Regulations, 1984 S.I. 1984 No.241.
14. See, eg, POA (1984) The Prison Disciplinary System, London, POA, 46.
15. Thomas, Q.J. (1983) "Legal representation at adjudications", letter to the chairmen of all boards of visitors. London P3 Division H.O.P.D., 9 November.
16. Thomas, Q.J. (1983) *ibid*.
17. In Associated Provincial Picture Houses v Wednesbury Corporation (1948 1 KB 223) the plaintiff company failed to obtain a declaration that certain conditions imposed by the defendant licencing authority were ultra vires since it was claimed that they were "unreasonable". Considering "unreasonableness" Lord Greene said: "The word "unreasonable" ... is frequently used as a general description of things that must not be done. For instance, a person entrusted with a discretion must ... direct

himself properly in law. He must call his own attention to the matters which he is bound to consider ... If he does not obey those rules he may truly be said to be acting unreasonably" (at 229).

18. Wheeler v Leicester City Council 1985 2 All ER 151 per Browne-Wilkinson, L.J. at 158 (in considering Wednesbury).
19. Thomas, Q.J. (1983) "Legal representation at adjudications", letter to governors, London, P3 Division, H.O.P.D., 9 November 1983.
20. Langdon, A.J. (1983) "Adjudications: Tarrant case", memorandum to regional directors, London, H.O.P.D., 29 November 1983.
21. R v Board of Visitors of Dartmoor Prison ex parte Smith, The Times, 12 July 1984 (judgment delivered on 5 July 1984), hereinafter cited as ex parte Smith.
22. Langdon, A.J. (1983) *ibid.*
23. Ewing's Application 1984 Brit. J. Criminol. 398, n.31. See Appendix 4.
24. R v Grant, Davis, Riley and Topley 1957 All ER 694, per Lord Goddard at 696, *passim*.
25. Some two years later, this matter came to be considered, albeit obliquely in R v Dumbrell ex parte Raymond (3 July 1985, QBD, (Lexis CO/1049/85(4) ). Here, charges of assault by Mr. Raymond upon a prison officer had "lapsed" since he had been released at the end of his sentence before a board of visitors panel could be convened to hear them. During a subsequent sentence repeated attempts were made by the P.O.A. and by the aggrieved officer to have the hearing resurrected. Home Office refused, but the prisoner was fearful of a change of mind. He sought to ensure that, if this were to occur, no punishment should be inflicted upon him until such time as he might seek judicial review of the decision to proceed with the charge. Watkins, L.J. refused the application, finding no power in the court to grant the relief sought. However, comments made obiter would, it is argued, have substantial influence upon whether or not it would be proper to reinstate the proceedings. He said: "There is nothing we can do by way of order to assist him, but we can ensure that a copy of what we say goes to the Home Secretary ... In my judgment it would be wholly undesirable, indeed unfair, if there is any change of mind, that Mr. Raymond be given a proper opportunity, before any action is taken as a result of it, to come to this court and seek judicial review." (Transcript, 3). Woolf, J. concurred.
- X 26. Thomas, G.J. (1984.1) "Guidance to governors' representatives"; letter to governors and the chairmen of all boards of visitors; London, P3 Division, H.O.P.D., 11 January 1984.
27. Sharp, M.J. (1985) "Legal representation at adjudications: a field view" 1985 Prison Service Journal, No.57, 16-17.

28. Thomas, Q.J. (1984.1) *ibid.*
29. Thomas, Q.J. (1984.2) "Board adjudications: requests for facilities"; letter to all chairmen of boards of visitors, London, H.O.P.D., P3 Division, 11 January 1984.
30. Thomas, Q.J. (1984.2) *ibid.*
31. Thomas, Q.J. (1984.2) *ibid.*
32. Morgan, R., Macfarlane, A. (1984) After Tarrant, Bath, Association of Members of Boards of Visitors.
33. See particularly Morgan, R. (1984) "The Tarrant judgment and the need for AMBOV", 1984, 12 AMBOV Quarterly 6.
34. Thomas, Q.J. (1984.3) Letter to all chairmen of boards of visitors, London, H.O.P.D., P3 Division, 1 May 1984.
35. R v Board of Visitors of Blundeston Prison ex parte Norley, 4 July 1984, QBD, unreported.
- X 36. R v Board of Visitors of HM Prison Swansea ex parte McGrath, 9 November 1984, QBD, unreported.
37. Thomas, Q.J. (1984.3) *ibid.*
38. Under H.O.P.D. circular instruction 27/1984 governors were charged with considering temporary transfer as an alternative to long term segregation pending adjudication.
39. Thomas, Q.J. (1984.3) *ibid.*
40. Langdon, A.J. (1984) "Adjudication: Tarrant case"; London H.O.P.D.; memorandum to regional directors, 21 May 1984.
41. Thomas, Q.J. (1984.4) Letter to chairmen of boards of visitors, London, H.O.P.D., P3 Division, 12 July 1984.
42. Ex parte Smith, n.21 *supra*.
43. Thomas, Q.J. (1984.5) Letter to chairmen of all boards of visitors. London, H.O.P.D., P3 Division, 17 July 1984.
44. Thomas, Q.J. (1984.6) Letters to chairmen of boards of visitors and to governors, London, H.O.P.D., P3 Division, 15 October 1984.
45. Thomas, Q.J. (1984.6) *ibid.*
46. H.O.P.D. (1985) Manual on the conduct of adjudications in prison department establishments, London, H.O.P.D., hereinafter cited as "the Manual". The main body of the Manual is reproduced at Appendix 6. (The contents and index sections are omitted.)
47. H.O.P.D. circular instruction 2/1985, para.7.
48. H.O.P.D. circular instruction 2/1985, para.10.

49. Collier v Hicks, 1831 2B and Ad. 665, per Lord Tenterden at 699.
50. Ex parte Tarrant n.2 supra, per Kerr, L.J. at 826.
51. The Manual; n.6 supra at 6-7.
52. Weiler Report, 9, reproduced in the Manual at 6-7.
53. Russell, D.J. (1985) "Prison service chaplaincy - adjudication McKenzieman", internal circulation, 14 October 1985.
54. See, eg, Thomas, J.E. (1972) The English prison officer since 1850, London, Routledge and Kegan Paul, 193-210 and particularly 198-199.
55. A resolution to this effect was carried at the 1981 annual conference of the National Association of Probation Officers held at Bridlington. Similar resolutions have been carried since.
56. H.O.P.D. (1985) Memorandum from P7 Division sent to training officers in prisons, copied to governors under reference DPG/81 57/28/7, dated 4 September 1985.
57. Nye, A.R. (1986) Private correspondence with the writer dated 26 February 1986.
58. Written evidence of the board of visitors of HMP Wandsworth to the Departmental Committee on the Prison System, (1984) (The Prior Committee) 3.
59. Prior Report, Vol.1, 65 and Vol.2, 90 (table 4). Ironically, the individual concerned was a probation officer at Ford prison.
60. See correspondence in Legal Action, July 1987, 23 and September 1987, 23.
61. R v Secretary of State ex parte Anderson, 1984 1 All ER 920.
62. Lutterloch, P. (1986) Private correspondence with the chairman of the Durham board of visitors, dated 11 September, made available to the writer by latter.
- X 63. Quinn, P.M. (1983) "Who needs a friend? Help for prisoners at adjudication", 1983 Brit. J. Criminol. 270 at 274.
64. The Manual, 15.
- X 65. Fitzgerald, E. (1984) "Legal representation before boards of visitors: the aftermath of Tarrant", 1984, 13 AMBOV Quarterly 1 at 5.
66. Haynes, P. (1986) Letter to the editor, 1986, 21AQ2.
- X 67. Whalley, R.M. (1986) Private correspondence with the chairman of AMBOV, published in 1986 21AQ2. Mr. Whalley was an assistant secretary in P4 Division at the time.
68. Kilgour, J.L. (1985) Letter to all managing medical officers in

prison department establishments dated 7 August 1985 under reference PDG/80 324/40/27.

69. Ex parte St. Germain No.2, n.1 supra, per Geoffrey Lane, L.J. at 550.
70. Ex parte Tarrant, n.2 supra, per Webster, J. at 819, 820.
71. R v Board of Visitors of Blundeston Prison ex parte Fox-Taylor, 1982 1 All ER 646.
72. The Manual, 17.
73. The Manual, *ibid*.
74. The Manual, *ibid*.
75. Morris, T. (1975) in British Institute of Human Rights (1975) Detention; minimum standards, Chichester and London, Barry Rose, 24.
76. The Manual, 21.
77. Dilling, J. (1980) reported in the minutes of a meeting of the British Institute of Human Rights, Queen Mary College, University of London, 5 June 1980, 25-26.
78. Owen, H.G. (1984) Address to Midland Region prison governors' conference, 12 April 1984. Undated minute, ref. R11/2/4, internal circulation.
79. Morris, P.E. (1986) "Boards of visitors and judicial review: the importance of practice", 1986, J.P. 728 at 729. Morris cites Currie v Chief Constable of Surrey 1982 1 All ER 89) in support of this view. The Director of Prison Medical Service wrote to all prison medical officers on 7 August 1985 and informed them that they could be compelled to attend a hearing if under subpoena. This is now accepted as the Home Office view, confirmed in private correspondence between the writer and P3 Division (Loudon, D., letter dated 7 October 1985).
80. Morris, P.E. (1986) *ibid*.
81. The Manual, 23.
82. R v Secretary of state for the Home Office ex parte Lee, 19 February 1987, QBD, (Lexis CO/1644/86(7) ).
83. Fitzgerald, E. (1987) "In court", 1987, 26 AMBOV Quarterly 6.
84. The Manual, 15.
85. Burns, T., Stalker, G.M. (1966) "The management of innovation", London, Tavistock, quoted in Quinn, P.M. (1985) "Prison management and prison discipline" in Maquire, M., Vagg, J., Morgan, R. (1985) Accountability and Prison, London, Tavistock, 204.

86. Fraser v Mudge, 1975 3 All ER 78.
87. Logan, A.D.W.(1982) "Prisoners' rights", Prison Service Journal, No.47, 12.
88. Quoted in Quinn, P.M. (1985) n. supra at 206.
89. Pearson, A.J. (1983) Private correspondence with the writer dated 10 October 1983.
90. Wood, W.A. (1983) "Dealing with difficult prisoners", Informer, London, S.C.P.S. November.
91. See Prison Officers' Association Magazine passim, but particularly the editorial of April 1984.
92. Walsh, L. (1984) "Without fear or favour", P.O.A. Magazine, April 1984, 246.
93. H.M. Chief Inspector of Prisons (1983) Annual Report, 1982. London, H.M.S.O.
94. Milligan, J.E., Rajcoomar, J., Lees, J.K., Whelan, T.P. (1984) "Litigation; the case for training". Paper presented to the 40th Assistant Governors' Training course, Prison Service College, Wakefield, unpublished, 10.
95. Carter, P.D. (1984) Memorandum to the governor of the HM Prison Albany, dated 6 July 1984, made available by the then governor.
96. Evans, D. (1984) Letter to P7 Division of Home Office dated 12 January 1984.
- X 97. Honey, C.P. (1984) Letter in response to that at n.96 dated 24 January 1984.
98. Honey, C.P. (1984) Letter to regional directors dated 9 February 1984 referred to in Milligan et al., op.cit. 8.
99. The institutions were Hollesley Bay Colony Youth Custody Centre and Channings Wood and The Verne prisons.
100. See Quinn, P.M. (1985) n.85, supra at 211.
101. Prison Service College (1984) Adjudications training package, internal circulation.
102. Thomas, Q.J. (1984.7) "Adjudications some developments". Paper given to The Chief Officers' National Conference, 19 September 1984 at Loughborough University. Internal circulation.
103. Morgan, R. (1987) "More prisoners denied lawyers' help", New Society, 31 July 1987, 5.
104. Mattfield, K.Y. (1987) "Natural justice in the prison disciplinary system and the need for reform", LL.B. (Hons) thesis, Bristol Polytechnic, 27.

105. Mattfield, K.Y. (1987) op.cit. 47-48.
106. Mattfield, K.Y. (1987) *ibid.*
107. Quinn, P.M. (1988) "The pains of imprisonment: getting by and fighting back". Paper given to boards of visitors' training course, Prison Service College, Wakefield, 13 February 1988.
108. Stern, V. (1987) Bricks of shame, London, Penguin, 76.
109. Ditchfield, J., Duncan, D. (1987) "The prison disciplinary system: perceptions of its fairness and adequacy by inmates, staff and members of boards of visitors. 1987, 26 Howard J. 122.
110. Ditchfield, J., Duncan, D. (1987) op.cit. 125-126.
111. Ditchfield, J., Duncan, D. (1987) op.cit. 130.
112. Ditchfield, J., Duncan, D. (1987) op.cit. 125-126.
113. The adjudication of charges brought against a Mr. Jones in 1986 and against a Mrs. Pearson in 1987 before the board of visitors of HM Prison, Durham.
114. Logan, A.D.W. (1987) Private correspondence with the writer dated 14 September 1987.

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1. Ditchfield, J., Duncan, D. (1987) "The prison disciplinary system: perceptions of its fairness and adequacy by inmates, staff and boards of visitors", 1987, 26 Howard J. 122.
2. Home Office (1985) Report of the committee on the prison disciplinary system, London, HMSO, Cmnd 9641 (1 and 2) - hereinafter cited as the Prior Report. The present reference is to Vol.1, 4-5.
3. National Association for the Care and Resettlement of Offenders (1985) A review of submissions to the Home Office departmental committee on the prison disciplinary system, London, N.A.C.R.O.
4. Prior Report, Vol.2, 1-2. In addition, the special interest group "Justice" indicated that it had nothing to add to its 1983 report (McKenna (1983) Justice in prison, London, Justice).
5. Private correspondence with Sharples, P. clerk to the board of visitors, H.M. Y.C.C. Aylesbury, dated 14 November 1986.
6. Private correspondence with Webb, J., clerk to the board of visitors, H.M. D.C. Kirklevington, dated 12 March 1987.
7. Private correspondence with Eskdale, P.J., Chair to the board of visitors, H.M. Prison Parkhurst, dated 18 November 1986.
8. Private correspondence with Graham, M.E., Chair to the board of visitors, H.M. Y.C.C. Portland, dated 11 March 1987.
9. Private correspondence with Wade, P., Chair to the board of visitors, H.M. Y.C.C. Hatfield, dated 27 November 1986.
10. Private correspondence with Roscoe, J.R.M., Chair to the board of visitors, H.M. Y.C.C. Wetherby, dated 20 November 1986.
11. Private correspondence with Brown, M., Chair to the board of visitors, H.M. D.C. Buckley Hall, dated 7 April 1987.
12. Private correspondence with Willis, A., Chair to the board of visitors, H.M. D.C. Aldington, dated 14 June 1984.
13. Private correspondence with Pendred, G.L., Chair to the board of visitors, H.M. D.C. North Sea Camp, undated. Group Captain Pendred submitted individual evidence which is considered later in this chapter.
14. Private correspondence with Thornhill, G.O., Chair to the board of visitors of H.M.P. (formerly H.M. D.C.) Foston Hall, dated 6 March 1987.
15. Memorandum submitted to the Prior Committee by Brown, M., Chair to the board of visitors, H.M. Y.C.C. Guy's Marsh, dated 18 July 1984.

16. Board of visitors H.M.P. Gloucester (1984) "Response of the board of visitors of Gloucester prison to the Prior Committee"; unpublished.
17. Board of visitors, H.M. Y.C.C. and D.C. Usk (1984) "Written evidence to the departmental committee on the prison disciplinary system"; unpublished.
18. Board of visitors H.M.P. Leicester (1984) Memorandum submitted to the Prior Committee by the board of visitors, H.M.P. Leicester, dated 10 July 1984.
19. Board of visitors, H.M.P. Wymott (1984) "Written evidence to the committee"; unpublished, 31 July 1984.
- X 20. Savill, M. (1984) Private correspondence with Mr. Prior, dated 12 July 1984, expressing the collective view of the board of visitors, H.M.P. Rudgate.
21. Durrant, R.L. (1984) Private correspondence with Burgess, A.D., secretary to the Prior Committee, expressing the collective view of the board of visitors, H.M.P. Norwich.
22. Board of visitors, H.M.P. and Y.C.C. Bullwood Hall (1984) "Guidance to the committee submitted by the board of visitors"; unpublished.
23. Dunn, C.S.J. (1984) Private correspondence with Burgess, A.D., Secretary to the Prior Committee, expressing the collective view of the board of visitors, H.M. Prison, Grendon Underwood.
24. The writer comments upon the "strangeness" of the recommendation of a return to formality in view of the fact that the Grendon prison regime approximates to that of a therapeutic community.
25. Board of visitors, H.M.P. Featherstone (1984) Untitled written evidence to the Prior Committee, dated 18 September 1984; unpublished.
26. Board of visitors of H.M.P. Stafford (1984) Untitled written evidence to the Prior Committee; unpublished.
27. R v Board of Visitors of Blundeston Prison ex parte Fox-Taylor, 1982 1 All ER 646.
- X 28. Board of visitors, H.M.P. Cardiff 1984) "Comments"; unpublished.
29. Board of visitors, H.M. R.C. Brockhill (1984) "Evidence from the board of visitors"; unpublished.
- X 30. A board member is already empowered to attend governors' adjudications of their own motion under Prison Rule 96.2. The Long Lartin board of visitors, in their evidence to Prior, recorded that they had experience of observing them. The Glen Parva board made a similar recommendation in this respect, though their concern was that the observed governor should be placed in a quasi-tutorial role whereby they could learn from his expertise.

31. R v Secretary of State for the Home Department ex parte Tarrant and another 1984 1 All ER 799, per Webster, J. at 816.
32. Board of visitors, H.M. Y.C.C. Dover (1984) "Written evidence of the board of visitors"; unpublished.
33. Allen, E. (1984) Private correspondence with Burgess, A.D., secretary to the Prior Committee, expressing the collective view of the board of visitors, H.M. Y.C.C. Rochester.
34. Board of visitors, H.M.P. Leeds (1984) "Written evidence to the Committee"; unpublished.
35. Board of visitors, H.M.P. Winchester (1984) "Minute of a meeting held on Tuesday, 7 August 1984"; unpublished.
36. Board of visitors, H.M. Y.C.C. Castington (1984) "Written evidence to the committee"; unpublished, 24 August 1984.
37. Campbell and Fell v United Kingdom 1982 5 E.H.R.R. 207.
38. Board of visitors, H.M.P. Long Lartin (1984) "Draft of evidence to the Prior Committee"; unpublished.
39. Mottram, J. (1984) Private correspondence with Prior, P.J. expressing the collective view of the Liverpool board of visitors, dated 18 July 1984.
40. Board of visitors, H.M.P. Reading (1984) "Evidence to the departmental committee on the prison disciplinary system"; undated, unpublished.
41. Whalley, I. (1984) "Comments". The views of an individual member of the board of visitors, H.M.P. Preston, submitted on behalf of the board.
42. Norris, G.B. (1984) Letter to Prior, P.J. dated 28 July 1984 expressing the collective view of the board of visitors, H.M. Y.C.C. Glen Parva.
- 42A. Board of visitors, H.M. R.C. Ashford (1984) "Evidence of the Ashford Remand Centre board of visitors to the departmental committee on the prison disciplinary system"; unpublished, 2 August 1984.
43. Board of visitors, H.M. Y.C.C. Erlestoke (1984) "Departmental committee on the prison disciplinary system"; unpublished, 20 July 1984.
44. Board of visitors, H.M. Y.C.C. Everthorpe (1984) "Report to the departmental committee"; unpublished.
45. Board of visitors, H.M.P. Wandsworth (1984) "Written evidence to the departmental committee on the prison disciplinary system". Published as part of the board's annual report to the Secretary of State, 1984.

46. This view may be contrasted with that of the governor of one large local prison who commented upon the policy of the Treasury Solicitor who:  
 "has adopted the practice of instructing the same local agent in all cases involving legal representation both at Durham and Frankland. This is particularly helpful since it means that the prisons' representative is building up a level of expertise in a new area of the law's involvement."  
 Papps, A.H. (1986) "Annual report to the regional director by the governor of Durham prison", internal circulation, 5 June 1986, 8.
47. Hulme, S.K. (1984) Letter to Burgess, A.D. secretary to the Prior Committee, expressing the collective view of the board of visitors, H.M. R.C. Risley;. unpublished, dated 17 July 1984.
48. Board of visitors, H.M.P. Camp Hill (1984) "The scope of the disciplinary system and the formulation of offences"; unpublished, undated.
49. This was one of only two such schemes to operate. The other, at Manchester prison, has ceased to function (see Anon (1985) "Clash over prison legal advice service", Legal Action, August 1985, 3. The Citizens' Advice Bureau operates an independent advice clinic once per week at New Hall prison and remand centre. The member of parliament in whose constituency lies H.M. Prison Dartmoor conducts surgeries there during the parliamentary recess.
50. Board of visitors, H.M.P. --- (1984) "Departmental committee on the prison disciplinary system: report by a sub committee of the board of visitors". Unpublished, 4 July 1984. (This board asked that its comments should not be attributed to source.)
51. Home Office (1984) "Manual on the conduct of adjudications in prison department establishments", London, H.O.P.D., 29.
52. As it is, panels have the power to remand a hearing if it is believed that the prisoner before them has not had sufficient time to prepare his case.
53. Private correspondence with Ross, H.S., General Secretary, A.C.P.O., dated 28 October 1986.
54. Private correspondence with Wilkinson, J.H. of the Treasury Solicitors' Office, dated 20 October 1986.
- X 55. Private correspondence with Rudin, T.R.P., Secretary of the Magistrates' Association, dated 6 November 1986.
56. Private correspondence with di Mambro, L., of the Lord Chancellor's Department, dated 9 March 1986.
57. Confirmed in personal discussion with Tchaicowski, C., director of W.I.P. at Prison Service College, Newbold Revel, 13 October 1987.
58. Private correspondence with Ashken, K.R., head of the policy division of C.P.S., dated 18 December 1986.

59. Private correspondence with Horsnell, J.S., secretary of the committee, dated 27 January 1987.
60. Association of Chief Officers of Police (1984) Written evidence to Prior; unpublished, 27 July 1984.
61. Association of Members of Boards of Visitors (1984) Written evidence to Prior; July 1984. (Precis published as "AMBOV's evidence to Prior", 1984, 14 AMBOV Quarterly 3.
62. Central Council of Probation Committees (1984). Written evidence to Prior; unpublished, June 1984.
63. General Synod of the Church of England (1984) Written evidence of the Church of England Board for Social Responsibility; unpublished.
64. Commission for Racial Equality (1984) Written evidence to Prior; unpublished, 3 August 1984.
65. H.M. Inspectorate of Prisons (1984). Written evidence to Prior; unpublished, August 1984.
66. Free Church Federal Council (1984). Written evidence to Prior; unpublished, June 1984.
- 7 67. It is presently the practice of P2 Division of the Home Office (the Parole Unit) to seek the governor's view in individual cases.
68. Society of Civil and Public Servants (1984) Written evidence of the Prison Governors' Branch to Prior; unpublished.
69. Home Office (1985) Written evidence to Prior; published in Volume 2 of the Prior Report (1985, Cmnd 9641-II, 10-91), London, HMSO.
70. Home Office (1985) op.cit., 10.
71. Home Office (1985) op.cit., 51.
72. Home Office (1985) ibid.
73. Home Office (1985) op.cit. 52. It was noted, in evidence, that powers given under Prison Rule 56.2 are subject to the directions of the Secretary of State and are not vested in any inherent jurisdiction of the governor or board of visitors.
74. Home Office (1985) op.cit. 54-57.
75. Home Office (1985) op.cit. 58-60.
76. Home Office (1985) op.cit. 61-63.
77. R. v Secretary of State for the Home Department ex parte Anderson 1984 1 All ER 920.
78. Home Office (1985) op.cit. 63.

79. Home Office (1985) op.cit. 75-78.
80. The Howard League (1984) Written evidence to Prior; unpublished.
81. Institute of Legal Executives (1984) Written evidence to Prior; unpublished.
82. The Justices' Clerks' Society (1984) Written evidence to Prior; unpublished.
83. The Law Society (1984) Written evidence to Prior; unpublished.
84. In a subsequent letter, the Law Society agreed that the appointment of a barrister or solicitor of 10 years' standing would be an adequate substitute for a circuit judge or recorder for this purpose. (Lockley, A.(1984) Private correspondence with Burgess, A.D., Secretary to the Prior Committee, 1 October 1984.)
85. Legal Action Group (1985 (sic) - this is likely to be a misprint). Written evidence to Prior; unpublished.
86. National Council for the Care and Resettlement of Offenders (1984) Written evidence to Prior; unpublished, July 1984.
87. Home Office (1975) "Report of the working party on adjudication procedures in prisons" (The Weiler Report) London, HMSO, 9. For a review of Weiler, see Chapter Three.
88. National Association of Probation Officers (1984) Written evidence of the Criminal Justice Committee of N.A.P.O. to Prior; unpublished, July 1984.
89. National Association of Senior Probation Officers (1984) "Submissions of evidence to the departmental committee on the prison disciplinary system", 1984 N.A.S.P.O. News, Vol.4, No.3, 5.
90. National Council for Civil Liberties (1984) Written evidence to Prior; unpublished, August 1984.
91. Northern Ireland Office (1984) Note by the prison department of N.I.O. to Prior; unpublished, 21 August 1984.
92. The paper, as a whole is informed by the awareness that 75 per cent of the prison population of the Province comprises those convicted of "terrorist type crimes".
93. X Kilroy-Silk, R. (1985) Private correspondence with Brittan, L., Secretary of State, dated 23 November 1983 and made available to the writer by the clerk to the group.
94. Parliamentary Commissioner for Administration (1985) The writer did not have access to the written evidence of the P.C.A. to Prior. This information is extracted from private correspondence with Randall, M.D., Director of the Office of the P.C.A., dated 3 November 1986.

95. Religious Society of Friends (1984) Written evidence of the Penal Affairs Committee of the Religious Society of Friends to Prior. unpublished, August 1984.
96. Prison Officers' Association (1985) "The prison disciplinary system: submission to the Home Office departmental committee on the prison disciplinary system". London, P.O.A., 71-90.
97. Prison Officers' Association (1985) op.cit. 77-78.
98. Prison Officers' Association (1985) op.cit. 80.
99. Prison Officers' Association (1985) op.cit. 87.
100. Prison Reform Trust (1984) Written evidence to Prior; unpublished, July 1984.
101. Prosecuting Solicitors' Society (1984) "Memorandum of evidence" to Prior; unpublished, 12 September 1984.
102. Radical Alternatives to Prison (1984) Written evidence to Prior, undated, received under cover of a letter from Ward, T., administrator, R.A.P., dated 10 November 1986.
103. Criminal Bar Association (1984) Written submission to Prior, 25 July 1984.
104. Pendred, G.L. (1984) Letter to the secretary of the Prior Committee, dated 26 July 1984.
105. Logan, A.D.W. (1984) Written submission to Prior; unpublished.
106. Logan, A.D.W. (1984). "Changes in the law relating to disciplinary hearings"; unpublished; private circulation.
107. Logan, A.D.W. (1984) Written submission, etc. n.105 supra, 4.
108. Logan, A.D.W. (1984) *ibid.*

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1. Home Office (1984) Report of the committee on the prison disciplinary system, Volume 1 (hereinafter cited as the Prior Report), Cmnd 9641-1, London, HMSO.
2. Prior Report, 6-10.
3. Prior Report, 11-15.
4. Prior Report, 18-26.
5. Campbell and Fell v UK, 1982 5 EHRR 207; 10/1982/56/85-6.
6. Prior Report, 23.
7. Prior Report, 25.
- X 8. A precis of the recommendations, along with those of other inquiries into internal disciplinary systems, may be found at Appendix 3.
9. Prior Report, 28-32.
10. These functions are presently vested with administrators in P3 and P4 divisions of Home Office Prison Department.
11. Prior Report, 32-43.
12. Prior Report, 35.
13. Prior Report, 44-54.
14. Prior Report, 45.
15. Prior Report, 49.
- X 16. Home Office Prison Department (1976) Circular Instruction 58/1976.
17. Prior Report, 58-65.
18. Prior Report, 66-78.
19. Copies of the relevant forms are reproduced at Appendix 2.
20. Prior Report, 79-86.
22. Prior Report, 79.
23. Prior Report, 87.
24. Prior Report, 88-89.
25. Prior Report, *ibid.*

### CHAPTER FIVE(3)

1. Prior, P.J. (1985) interviewed in "Law in action", BBC Radio 4, 1 November 1985.
2. Bach, J. (1985) interviewed in "Law in action", BBC Radio 4, 1 November 1985.
3. Owen, R. (1985) Private discussion with the writer, confirmed in correspondence of 10 March 1988.
4. Home Office (1984) Report of the committee on the prison disciplinary System, Volume 2 (hereinafter cited as the Prior Report) Cmnd 9641-1, London, HMSO, 19.
5. Prior Report, *ibid.*
6. Prior Report, 21.
7. Prior Report, 50.
8. Prior Report, *ibid.*
9. Prior Report, 48.
10. Prior Report, *ibid.*
11. Prior Report, *ibid.*
12. Cretney, S.M. (1986) The committee and its recommendations, Address to NACRO seminar, 9 June 1986.
13. H.O.P.D. (1976) Circular instruction 58/1976.
14. Prior Report, 28.
15. Prior Report, *ibid.*
16. Gifford, T. (1986) Where's the justice, Harmondsworth, Penguin, 30-31.
17. Gifford, T. (1986) *ibid.*
18. Prior Report, 55.
19. These were devices whereby a prisoner was required to accomplish a certain number of revolutions of a machine in order to earn enough marks to secure an adequate diet. See Priestley, P. (1985) Victorian prison lives, London, Methuen, 125-130.
20. Prior Report, 6.
21. Prior Report, 55-56.
22. Prior Report, 62.

23. R v Deputy Governor of Parkhurst Prison ex parte Leech, 1988 1 All ER 485, per Lord Bridge.
24. Prior Report, 72n.2.
25. Prior Report, 73.
26. Cook, M.T., Lewis, J., Nowill, W.E. (1986) Prior committee report: synopsis of replies from boards of visitors; unpublished, but circulated to all boards of visitors. London, Coordinating Committee of Boards of Visitors.
27. Durrant, R. (1985) Correspondence with Appleton, H.J., chairman of the Board of Visitors Coordinating Committee, dated 30 December 1985.
28. Durrant, R. (1985) *ibid.*
29. Watson, M.F. (1985) Correspondence with Appleton, H.J., as above, dated 30 December 1985.
30. Watson, M.F., (1985) *ibid.*
31. Earl, P. (1985) Correspondence with Appleton, H.J., as above, dated 8 December 1985.
32. Wilson, P. (1985) Correspondence with Appleton, H.J., as above, dated 19 December 1985.
33. Wilson, P. (1985) *ibid.*
34. Cook, M.T., et al., (1986) *op.cit.*
35. Cook, M.T., et al., *op.cit.* 1.
36. Cook, M.T., et al., *op.cit.* 3-4.
37. Cook, M.T., et al., *op.cit.* 4.
38. Cretney, S.M. (1986) *op.cit.*
39. Dean, M. (1985) "Home Office officials oppose independent prison tribunals", The Guardian, 30 November 1985.
40. Appleton, H.J. (1986) "Prior: a personal view", Prison Service Journal, July, 18-20.
41. Home Office (1986) The prison disciplinary system in England and Wales (hereinafter cited as the "White Paper"), 1.
42. White Paper, 9.
43. White Paper, 10.
44. White Paper, 13.

45. Dr. Acres, chairman of the Magistrates' Association, said that he had no wish for magistrates or their clerks to be used as "cheap labour"; nor would he collude with being a party to "secret justice" (quoted in Morton, J. (1986) "Boards of visitors", 1986 Sol. J. 463).
46. White Paper, *ibid.*
47. White Paper, *ibid.*
48. White Paper, 14.
49. Home Office (1987) A review of prisoners' complaints: a report by H.M. Chief Inspector of Prisons, London, Home Office. The Chief Inspector recommended the removal of this from the list of offences under Prison Rule 47 (at 92). As this thesis is submitted, a Home Office working party is presently considering this Report, including the question of whether or not the "false and malicious" charges should be retained. The recommendation that it should not has been accepted by ministers and the charge will be dropped from the 1989 revision to the Rule.
50. White Paper, 15-17.
51. White Paper, 18-19.
52. White Paper, 19.
53. White Paper, 20.
54. White Paper, 20-22.
55. White Paper, 4.
56. Memorandum sent to governors, from P3 Division of Home Office Prison Department, under reference PDG/86 129/23/2, dated 14 February 1986.
57. Potter, A. (1985) Correspondence with Appleton, H.J., as above, dated 11 November.
58. Howard League (1987) Information, London, Howard League, broadsheet dated January 1987.
59. Law Society Standing Committee on Criminal Law (1986) The prison disciplinary system in England and Wales: a response to the White Paper, London, Law Society.
60. Prison REform Trust (1987) Annual Report 1986-7, London, P.R.T.
61. Hurd, D. (1986) Minutes of the annual conference of boards of visitors, 1986. London, Home Office, private circulation, 18.
62. Whalley, R.M. (1987) "Future role of boards of visitors". Paper given at the boards of visitors annual chairmen's study group. London, Home Office, private circulation.

63. Caithness, Lord (1987) Text of address to annual conference of boards of visitors, 1987. London, Home Office, internal circulation, 27.
64. Caithness (1987) op.cit. 29.
65. Caithness (1987) op.cit. 30.
66. Caithness (1987) op.cit. 30-31.
67. Light, R., Mattfield, K. (1988) "The prison disciplinary system: prospects and proposals". Draft of article submitted to Howard J. in January 1988. (Published 1988, 27 Howard J., 266.)
68. Shaw, S. (1987) "No prior commitments", Legal Action, November 1987, 5.
69. Shaw, S. (1987) *ibid.*

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2. Home Office (1969) "People in prison", London, HMSO, Cmnd.4212, 7.

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730.

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and another, 1988. The Times, 5 February.  
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Pvx Granite Co. Ltd. v Ministry of Housing and Local Government, 1959 3 All ER 1.  
  
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evidence submitted to: Very much of the evidence made available  
to the Prior Committee was also made available to the present  
writer. Individual acknowledgement is given through footnote  
reference in Chapter Five(1).

Private correspondence: the writer has been greatly assisted through a  
good deal of correspondence with those with an interest in the  
present field of study. their contributions are acknowledged  
through a footnote reference in each case.

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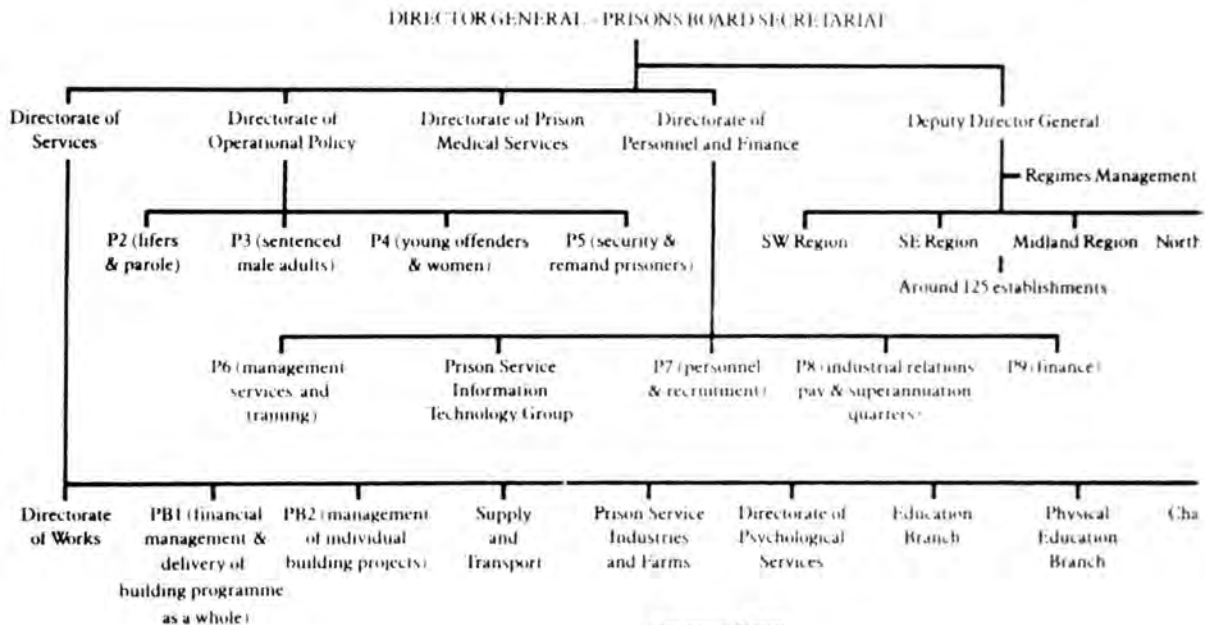
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APPENDIX ONE

The organisation of the prison department  
and of typical institutions



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Illustration of Charting A Large Establishment (2)

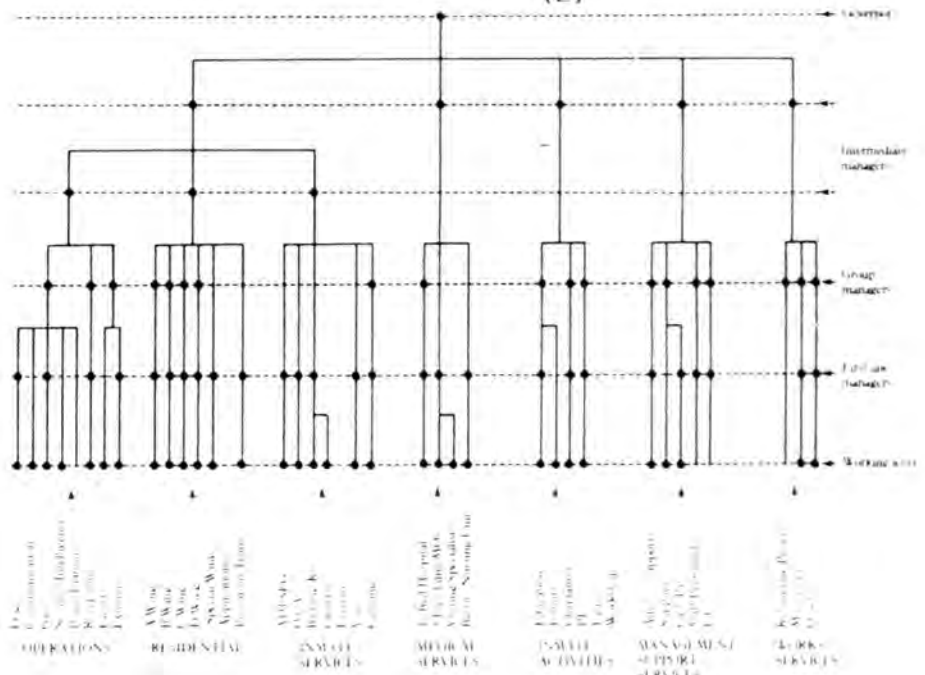
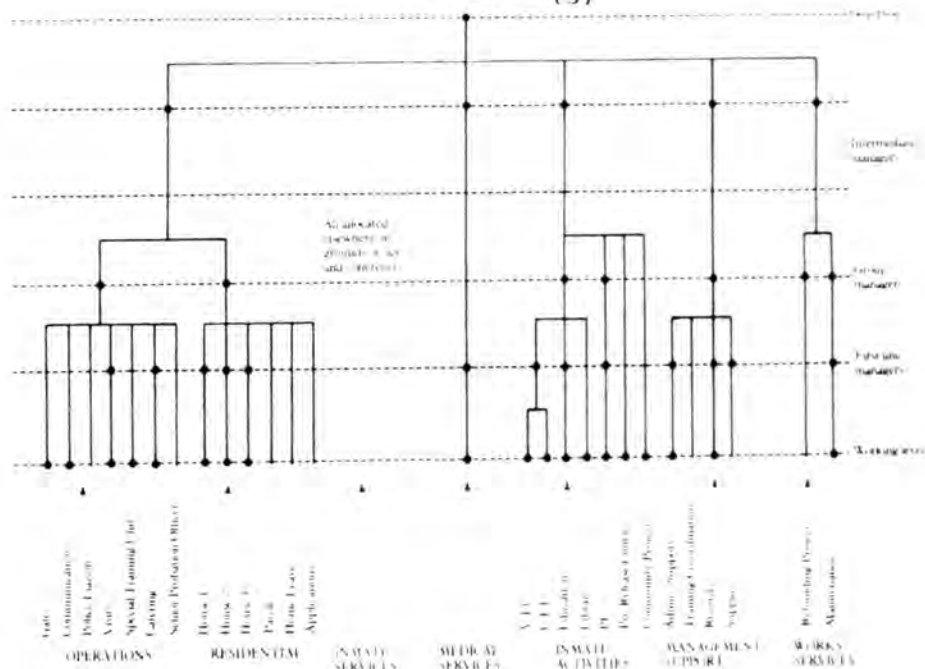


Illustration of Charting A Small Establishment (3)



APPENDIX TWO

H.O.P.D. Circular Instruction 35/1985  
and adjudication forms

To: All Prison Department Establishments

ADJUDICATIONS: REVISED FORMS 256, 1127 AND 254

This Instruction introduces the revised form 256 which was tested in a range of establishments in August 1985 and will be brought into use on 1 January 1986 for the recording of adjudications in all establishments, and the forms 1127 and 254 which will be introduced shortly. (A copy of the revised F256 is enclosed.)

2. An initial supply of the revised F256 will be sent direct to establishments by the Caxton Store. You will note when you receive them that the new forms are not prenumbered. Each charge should be allocated a number which will be recorded in a logbook and entered on the F256 (see Annex B for details). Further supplies of the form should be ordered from the Store on your monthly stationery demand using Form 1715.
3. A revised version of F254 (Report to Governor of Alleged Offence by Inmate) and a revised and combined version of the F1127 and F1127A (Notice of Report) are being printed. Supplies of both forms should be available at the Caxton Store in April 1985 and will be supplied against stationery orders as soon as possible. When received, establishments should take the new forms into use straight away and any stocks of the existing forms should be used as scrap paper.
4. The following arrangements will apply for charges laid or hearings commenced in 1985 but not completed until 1986:
  - a. the space for charge number on all forms should be used to record the old case number;
  - b. if an old F256 has been started in 1985 for the substantive hearing, then the record of proceedings will continue on that form until the adjudication is completed;
  - c. if the Governor referred a charge to the Board of Visitors in 1985 which will then begin to be heard by the Board in 1986, the Clerk should take the record on the new F256 but using the old case number as described in 4a above;
  - d. references to Part 6 (box 14) to charge numbers of earlier suspended awards should quote the date of the previous award if it was imposed in 1985 (ie. before the logbook assigning charge numbers was opened).
5. Any F256 in use at the end of 1985 will therefore continue to be used; the new forms will be used for charges laid in 1986 and for those cases referred to the Board or an officer of the Secretary of State where the first hearing by the latter commences in 1986.
6. Unused copies of the old F256 and F256A should if suitable be used for scrap paper or, if unsuitable, be destroyed.

7. Annexes A and B to this Instruction give details of the way in which the forms should be completed. Further information on the recording of charges and adjudications is to be found in the Manual on the Conduct of Adjudications issued to all establishments earlier this year with Circular Instructions 2/1985 and 19/1985.

8. For the purposes of this Instruction, the word "prisoner" should be taken to describe any person in custody in a prison, remand centre, detention centre or youth custody centre, and any reference to the Prison Rules to include the equivalent Youth Custody or Detention Centre Rule.

9. Any queries on this Instruction or the new forms should be addressed to the contact points in P3 Division, Cleland House, who are at present Mrs Rolfe (01-211 8405) or Miss Aye Mounq (01-211 8751).

A J BUTLER

12 December 1985

P3 Division  
Prison Department  
Cleland House

PDG/81 129/8/6

Index under: Adjudications  
Forms 256, 1127 and 254 - issue of revised forms and instructions  
on completion

RECORD OF HEARING AND ADJUDICATION FORM 256 - INSTRUCTIONS FOR COMPLETION

General Points

The form (copy attached) should be completed legibly in black ink. All relevant sections must be fully completed.

2. A separate form should be used to record the hearing of each charge. If an incident results in more than one charge against the same prisoner, a separate form should be raised for each charge. Part 3 (Record of Hearing) may be completed on only one form, but a note should be made in Part 3 of each form to indicate which number form contains the full record. If the charges arising from a single incident are heard separately, then each F256 will record the proceedings separately in Part 3.

Part 1

3. When a Notice of Report (Form 1127) is prepared for issue to a prisoner it will be assigned a charge number (see the instructions on the use of the revised F1127 at Annex B). This number should be inserted in the box at the top right hand corner of the F256 for the Governor's hearing and, if the charge is referred to the Board of Visitors, onto the F1127 and F256 for the Board proceedings. All documentation relating to a single charge will therefore bear the same charge number.

4. Box 1 - The date of adjudication will be the date on which the hearing before the Governor or Board opened. The dates of any subsequent resumptions of the hearing after adjournments should be recorded in Part 3.

5. Box 2 - For the purposes of this form, "Lifer" can be taken to mean all those serving indeterminate sentences including young offenders sentenced under Section 53 of the Children and Young Persons Act.

6. Box 3 - The details of the charge should include the wording of the appropriate paragraph of the Rule under which the charge has been laid, and then the details of the charge using the same wording as that on the form 1127 issued to the prisoner.

7. Box 4 - When certifying a prisoner before an adjudication, the medical officer will always mark two of the three boxes unless the prisoner is unfit for both adjudication and cellular confinement. If only the "Fit for adjudication" box is marked, then no award of cellular confinement may be made until the medical officer certifies the inmate is fit for it. This section must be signed and dated. Space is provided for further certification if required because the hearing was adjourned.

8. Box 5 - the last category ("Other") should only be marked when the adjudication is carried out by an officer of the Secretary of State appointed under Prison Rule 51(5) or its equivalent.

## Part 2 - Preliminaries

9. The time at which the adjudication starts should be recorded in the top right hand corner. The revised form 1127 requires the time issues to be recorded, and together the two documents will therefore show how long a prisoner had to prepare his defence.

10. Box 6 - If the inmate charged is present, a response must be recorded for every question. If a prisoner refuses to plead or attend, Box 9 or 10 should be used, and Part 3 should show that the proper steps have been taken to advise the prisoner of what will happen. If a prisoner asks for legal representation or assistant, the details should be recorded in Part 3 (see paragraph 12 below).

## Part 3 - Record of Hearing

11. Box 7 - This part of the form should be used to record the main points of the adjudication; the record need not be verbatim. If further space is required, additional sheets of A4 size paper should be inserted inside the cover with the charge number from the outer cover written in the top right hand corner. The forms 1127 and 254, written statements and any other material produced in evidence should also be placed within the cover and all papers joined by a tag through the holes provided.

12. Part 3 should be used to record the details of a prisoner's application for legal representation or assistance, the consideration given to it and the decision reached. It should also record the steps taken if a prisoner refuses to plead or attend; the reason for not proceeding with a charge (see paragraph 14 below); adjournments and the reasons for them; and the date and time of the resumed hearing following an adjournment.

## Part 4 - Referrals

13. Box 8 - This section is only to be completed on the F256 for a Governor's hearing. Referrals to the Regional Director will include charges described in Rules 51(1)c and 52(1).

## Part 5 - Outcome

14. Box 9 - If a charge is not proceeded with, the appropriate box in this section should be ticked and the reason recorded in Part 3. The commonest reasons may be that an inmate's EDR passes before the hearing can be completed, or an unsentenced prisoner is discharged at court, acquitted or given a non-custodial sentence. There may be other cases which fall into this category, eg. because the prisoner is medically unfit for adjudication.

15. Box 10 - In every case where a prisoner is found guilty of a disciplinary offence, he should be asked if he wishes to say anything in mitigation. This section should record that he was given an opportunity to comment and what (if anything) he said.

15. Box 11 - The number of previous findings of guilt on disciplinary charges in the current sentence should be entered in the space provided. Any case in which

the whole award was remitted by the Secretary of State under Rule 56(1), or where the finding of guilt was quashed by the order of a court, should be excluded. The conduct report should be restricted to the current sentence, it should not refer to behaviour during a previous sentence or to previous criminal convictions. The prisoner should be given an opportunity to comment on the report or to ask questions about it, and this should be recorded.

#### Part 6 - Punishment Awarded

17. Box 12 - The duration of any award made should be entered clearly in the space provided, as should the length of any period of suspension of an award. It should be noted that an award of prospective forfeiture of remission (Prison Rule 54) may not be suspended. A single element of an award (eg. forfeiture of remission) may not be partially suspended.

18. A "blanket" award of forfeiture of all privileges will not normally be imposed, and the form provides space to record which privileges are affected.

19. Box 12 should only refer to the disciplinary awards available under the relevant Rules, it should not be used to record administrative decisions that are not included in the punishments available to adjudications, eg. the disposal of exhibits, closed visits, removal from working party, etc.

20. Box 13 - This section should be used to record whether punishments imposed at the same time for separate offences are to run cumulatively (ie. consecutively) or concurrently.

NOTICE OF REPORT FORM 1127 and  
REPORT TO GOVERNOR OF ALLEGED OFFENCE BY INMATE FORM 254

Form 1127

When a decision is taken to lay a disciplinary charge, a Notice of Report Form 1127 will be prepared for issue to the prisoner. The charge will be assigned a number which should be recorded in a separate adjudications log book, starting with 0001 for the first charge laid from 1 January 1986, continuing in sequence and starting from 0001 at each new year. (Non-significant zeros should be entered to accord with the method of recording used for statistical purposes on Form 1376A.) The log book should record:

- i. inmate's name and number;
- ii. charge number;
- iii. date on which the charge was laid (ie. on which the F1127 was handed to the prisoner; and
- iv. date of the initial hearing of the charge (Rule 48(3)).

2. Establishments may find it useful to record further information, such as the date of the Governor's finding or referral to the Board etc., and any such details may of course be included, and who should maintain the record. Separate log books may be maintained in establishments with separate units with different functions (eg. remand centre, local prison, closed youth custody centre).

3. The form 1127 should then be completed legibly in black ink.

4. The assigned charge number should be inserted in the space provided in the top right hand corner of the F1127, this number will then be transferred to all relevant documents associated with that charge.

5. The time, date and location of the alleged offence should be recorded in the spaces provided. The lines after "offence committed" should then be used to record the wording of the appropriate paragraph of the Rule under which the charge is laid, for example

"Has in his possession any unauthorised article

Contrary to Rule 47 Para 7 Prison Rules"

6. The details of the alleged offences should then be recorded, giving sufficient explanatory detail to leave the accused in no doubt as to the precise nature of the charge against him. This information will be transferred to Box 3 of form 256 (see paragraph 6 of Annex A to this Instruction), and should therefore be clear but concise. This is not the place for the reporting officer's full statement of evidence.

7. When completing the form, it should be checked that the details of the charge disclose an offence under the specific paragraph of the Rule quoted, and that a general paragraph is not used where a more specific charge could be laid. A charge involving the possession or passing of a controlled drug should be laid under paragraph (7) or (8), not (20), as it will be noted from the revised form 1376A (see Circular Instruction / ) that there is now provision to record drugs related offences. (The only circumstances in which paragraph (20) is appropriate for a drugs-related offence are those described in Circular Instruction 17/1983 of wilfully encouraging others to commit a drugs offence; these are likely to be rare and there is no provision for the statistical recording of such cases.)

Form 254

8. This form has been revised and expanded to allow it to be used for the officer's statement of evidence should a disciplinary charge be laid.

9. The charge number from the adjudications log book should be inserted in the top right hand corner if the prisoner is subsequently placed on report. If after consideration of the circumstances and consultation is appropriate (Standing Order 3D 6c refers) it is decided that disciplinary action is not necessary, then this space should be left blank.



**Part 2 PRELIMINARIES**

Time commenced: \_\_\_\_\_ hours

Once the inmate has been identified as the accused, he should be asked the following questions:  
(Please TICK appropriate box)

- |   | Yes                      | No                       |
|---|--------------------------|--------------------------|
| 1 Have you received the Notice of Report form F1127   | <input type="checkbox"/> | <input type="checkbox"/> |
| 2 Have you received F1145   | <input type="checkbox"/> | <input type="checkbox"/> |
| 3 Do you understand the procedure   | <input type="checkbox"/> | <input type="checkbox"/> |
| <b>CHARGE TO BE READ OUT AT THIS STAGE</b>  |                          |                          |
| 4 Do you understand the charge  | <input type="checkbox"/> | <input type="checkbox"/> |
| 5 Have you made a written reply to the charge   | <input type="checkbox"/> | <input type="checkbox"/> |
| 6 Have you had sufficient time to prepare your answer                                       | <input type="checkbox"/> | <input type="checkbox"/> |
| 7 <b>BOARD OF VISITORS ONLY</b> Do you wish to apply for legal representation or assistance | <input type="checkbox"/> | <input type="checkbox"/> |

- 8 How do you plead: Guilty  Not Guilty
- 9 Not guilty owing to refusal to plead
- 10 Not guilty – Inmate refused to attend

**Part 3 RECORD OF HEARING**

Continue on loose sheet(s) if necessary. Write charge number in top right hand corner of each additional sheet and attach to inside of cover on completion.

**Part 4 REFERRALS ( Governor's hearings only)**

Charge referred to Regional Director	<input type="checkbox"/>	Date _____
Charge referred to police	<input type="checkbox"/>	Date _____
Police decide to prosecute	<input type="checkbox"/>	Date _____
Police decide not to prosecute	<input type="checkbox"/>	Date _____
Charge referred to Board of Visitors	<input type="checkbox"/>	Date _____

**Part 5 OUTCOME**

9

Date \_\_\_\_\_

Charge proved  Charge dismissed  Charge not proceeded with (give reason in Part 3)

10 If the finding was one of guilt, prisoner's plea in mitigation:  
(If none, state none)

Blank area for providing mitigation details.

11 Report on conduct and previous disciplinary record during the current sentence:

Number of previous disciplinary reports (Findings of guilt only) \_\_\_\_\_

Blank area for reporting on conduct and previous disciplinary record.

**Part 6 PUNISHMENT AWARDED**

		If suspended state for how long (max 6 months)
Cautious	_____ tick	
Forfeiture of remission	_____ days	
Prospective forfeiture of remission	_____ days	
Cellular confinement/confinement to room	_____ days	
Exclusion from associated work	_____ days	
Stoppage of earnings	_____ days /amount	
Forfeiture of privileges		
Remand or trial privileges; ie _____	_____ days	
Canteen/facilities to purchase/use of private cash	_____ days	
Association/dining/recreation/entertainment/classes	_____ days	
Tobacco	_____ days	
Publications	_____ days	
Radio	_____ days	
Occupations in cell	_____ days	
Possessions in cell	_____ days	
Reduction in grade (DC)	_____ days	
Removal from activity (DC/YCC)	_____ tick	
Extra work (DC/YCC)	_____ days	
Removal from wing/unit (DC/YCC)	_____ days	
Other punishment, please specify _____		

3

If the award above is **consecutive** to another,  
insert other charge numbers: \_\_\_\_\_

If the award above is **concurrent** with another,  
insert other charge numbers: \_\_\_\_\_

4

Are there any existing suspended awards      Yes          No          *tick box*

If yes: Charge number \_\_\_\_\_      Action taken \_\_\_\_\_

5

**INMATE INFORMED OF AWARD AND ACTIVATION**

Signature of Governor/Chairman \_\_\_\_\_

Name (*use block capitals*) \_\_\_\_\_      Date \_\_\_\_\_

Signature of other member \_\_\_\_\_

Name (*use block capitals*) \_\_\_\_\_      Date \_\_\_\_\_

Signature of other member \_\_\_\_\_

Name (*use block capitals*) \_\_\_\_\_      Date \_\_\_\_\_

Finding and award, if any, entered in record (F1150)

Officer's Signature \_\_\_\_\_      Date \_\_\_\_\_

Charge  
Number

**NOTICE OF REPORT**

Name ..... No .....

You have been placed on report by Officer .....  
for the following alleged offence committed:-

Time ..... hrs Date .....

Place .....

Offence committed .....

.....

.....

Contrary to Rule ..... Para ..... Prison\*/YCC\*/DC\* Rules

**Details of alleged offence**

Your case will be heard at an adjudication at ..... hrs on .....  
before the Governor/Board of Visitors\* when you will be given every opportunity to make your defence. If you  
wish to write what you want to say, you may do so on the back of this form.

Issued at ..... hrs Date .....

\* Delete if inapplicable

## EXPLANATION OF THE PROCEDURE AT A HEARING OF A DISCIPLINARY

### CHARGE BY A GOVERNOR OR BOARD OF VISITORS

When you appear before the Governor or the Board of Visitors\* at the hearing of a disciplinary charge the procedure will be as described below. Statutory Rules about discipline are set out in your copy of the General Information Booklet for Prisoners. If you want any advice before the hearing about the procedure, ask your officer about it.

1. The Governor  
Chairman will ask you whether you received the notice of Report (Form 1127) showing the charges(s) against you.
2. You will be asked whether you have received this card which explains the procedure at the hearing of a charge. If you do not understand the procedure then you should say so.
3. The charge(s) will be read out to you. If there is any difference between the charge(s) read out and the charge(s) on the Notice of Report, or if you are in any doubt about any charge, this will be your opportunity to say so.
4. You will be asked whether you have had enough time to prepare your defence to the charge(s). If you consider you need more time, you should say so and give your reasons so that it can be considered whether the hearing should be adjourned to allow you more time.
5. You will be asked whether you have made a written answer to the charge.
6. If the hearing is before the Board of Visitors, you may ask the Chairman if you can be legally represented or assisted by a friend or adviser. The panel will consider your request and if they agree to it the hearing may be adjourned to a suitable date. If a request for legal representation is granted by the panel the Governor will allow you facilities to contact a solicitor of your choice. If you do not know a solicitor who will act for you the legal aid designated officer will show you the Law Society's regional legal aid solicitors list so that you may choose a solicitor. Your solicitor will advise you about how his costs might be met from the legal aid fund.
7. If a request for legal representation or assistance is refused the panel will almost certainly wish to proceed with the adjudication and you should be prepared for this.
8. The Governor  
Chairman will ask you, taking each charge separately if there is more than one, whether you plead guilty or not guilty. You will be treated as having pleaded 'Not guilty' unless you plead 'Guilty'.
9. The officer who reported you will give his evidence. You will be allowed, after the officer has completed his statement, to question him on what he has said or on any relevant matter.

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 also.

You may be required to put your questions through the Governor.  
Chairman

Do not argue with witnesses. If you do not feel able to frame questions to bring out your point, explain it to the Governor, who will assist you by asking them for you.  
Chairman

\*In practice, the adjudication will be conducted by a panel of between 2 and 5 members of the Board.

10. You will then be invited either to:

- (a) make your defence to the charge(s) – if you have not pleaded guilty;  
or
- (b) offer an explanation of your conduct and say why you think you should be treated leniently – if you have pleaded guilty.

11. This will be the time for any written statement you have made of your defence or in explanation to be read out; and – unless you want to call witnesses – for you to comment on the evidence given and point out anything you think is in your favour.

12. If you want to call witnesses, ask for permission to call them and say who they are, even if you have named them before the hearing.

If they are witnesses in your defence, say what you believe their evidence will prove. If the Governor Chairman is satisfied that their evidence may help to establish exactly what happened, the witnesses will be called (but remember that witnesses who are inmates cannot be compelled to give evidence).

You will be allowed to question the witnesses on their evidence or any relevant matter, and they may also be questioned by others present.

13. After your witnesses have been heard you will be given the opportunity to say anything further about your case, to comment on the evidence and point out anything you think is in your favour.

14. The Governor Chairman will announce the finding of guilty or not guilty for each charge.

15. If you have pleaded not guilty but are found guilty, the Governor Chairman will invite you to say, before any punishment is awarded, why you think you should be treated leniently.

You may ask to call someone to support a plea for leniency.

The Governor Chairman will ask for a report to be read out on your conduct and record since you last came into custody, and will ask you whether you want to add anything or ask any question in connection with the report.

16. The Governor Chairman will announce the award(s) for each offence proved. If you do not understand how the award will affect you, you should ask for it to be explained to you.

17. The Governor Chairman may adjourn the hearing, or the Governor may bring a hearing to an end, at an intermediate stage – for example, to await the outcome of any police investigation into the case or to await directions from higher authority, or so that an essential witness may be present. The reason for any adjournment or termination will be given to you



REPORT TO THE GOVERNOR OF ALLEGED OFFENCE BY INMATE

Inmate's name ..... Number .....

**Details of alleged offence**

Time ..... hrs Date .....

Place .....

Offence committed .....

.....

Contrary to Rule ..... Para ..... Prison † /YCC † /DC † /Rules

**Officer's report**

(Continue overleaf  
if necessary)

Signature of officer ..... Date .....

Name (in capitals) ..... Rank .....

\*To be completed if and when a Disciplinary charge is Laid  
† Delete if inapplicable

APPENDIX THREE

Summary of the recommendations of the inquiries  
into prison discipline reviewed in the text

1. Report of a committee to review punishments in prisons, borstal institutions, approved schools and remand homes (The Franklin Report) 1951  
(London, H.M.S.O. cmd 8256 Part 1)

Prisons:

1. The earnings scheme should be revised so that the earnings of the average prisoner will amount to 2s. 6d. per week.
2. The instruction of prison officers in judo should be resumed.
3. Restricted diet No.1 should be retained in its present form but restricted diet No.2 should be replaced as soon as an alternative punitive diet which is adequate for the maintenance of health can be devised.
4. Governors should be relieved of the necessity of stating reasons in any case where they do not award forfeiture of remission for a prison offence.
5. Governors, visiting committees and boards of visitors should be invited to bear in mind that it is undesirable for an adjudicating authority to deprive a prisoner of a substantial part of his remission in the early stage of sentence.
6. Adjudicating authorities should exercise careful judgment in deciding the privileges to be forfeited for misconduct.
7. The provision of a special establishment for cases which can properly be regarded as medical responsibilities is already approved in principle by the prison commissioners and the committee strongly advocate that meantime part of an existing prison should be taken over for a pilot experiment. In addition urgent action should be taken to make the conditions of the prison medical service more attractive.
8. A special establishment should be set aside for prisoners who by engaging in wholesale trafficking or gangster activities interfere with the smooth running of prisons and prejudice the comfort and training of their fellows.
9. Every prisoner reported for an offence should in good time before the adjudication be given written notice of the offence charged against him and be allowed, if he so wishes, to make his defence or explanation in writing. In no circumstances should a prisoner be allowed to remain in ignorance of the charge against him until he is actually brought before the Governor for adjudication.
10. All benches possessing power of appointment to visiting committees should be invited to give most careful consideration to the selection of the justices who are best qualified for this important duty.
11. It should be incumbent on each committee and board, at its first meeting, to appoint a panel of the best qualified members who would undertake the duty of adjudicating on all prison

offences remitted to the committee or board. From these panels not less than two and not more than five members would be called on, in rotation, to adjudicate as occasion arose. The chairman or the vice-chairman of the visiting committee or board or body should, wherever possible, take part in adjudication.

12. Visiting committees and boards of visitors should follow the practice of courts of summary jurisdiction in dealing with prison offences.
13. At the time a prisoner is remitted to the visiting committee or board of visitors charged with a prison offence he should be supplied with a notice setting out in plain terms the procedure which will be adopted at the hearing of the case against him.
14. Governors should not be closeted with the visiting committee or board of visitors when they are deliberating the finding and sentence.
15. Prisoners charged with offences against prison discipline should not be allowed legal representation.

**Borstals:**

1. The authorities should aim to achieve a higher standard of smartness and deportment generally in borstal institutions. They should make arrangements for cutting and keeping the hair of male inmates decently short.
2. Governors and senior officers should be careful to avoid giving the impression that they wish reports to be suppressed or withdrawn.
3. Reporting officers should not be excluded from the adjudication room.
4. Discipline in general requires tightening.
5. In the list of borstal offences the term "absconding" or "running away" should be substituted for "escape".
6. The punishment of "removal from house" should include complete segregation, hard useful work, forfeiture of all normal amenities.
7. Governors in framing awards for offences against discipline should pay strict regard to the terms of the statutory rules and should in no circumstances depart from them.
8. The power to award restricted diet No.1 should be restored to governors and boards of visitors.
9. Restricted diet No.2 should be abolished.

10. A special closed institution should be established with all possible speed for lads who by persistent misconduct or subversive activities interfere with the training of others and lower the tone of their institution.
11. Seeing the medical officers can make so vital a contribution to borstal training, and that there is at present a grave shortage of them, conditions of pay and service for medical officers should be examined and revised in the light of circumstances today.
12. For persistent absconders the special corrective institution advocated above should replace the borstal wing at Wandsworth as soon as it is ready. Absconders should be dealt with by boards of visitors.
13. Disciplinary proceedings should be formal and follow the normal judicial pattern. A notice of the offence for which he has been reported should be served on an inmate in good time before adjudication.
14. The governor should be obliged to remit to the board of visitors every case where an inmate is reported for assaulting an officer, gross personal violence to an officer or another inmate, or mutiny or incitement to mutiny.
15. Boards of visitors should adopt the practice and procedure of magistrates' courts when dealing with offences against discipline; not less than two nor more than five members should adjudicate; the governor should not remain in the adjudication room while the board are deliberating on questions of finding and sentence.
16. Housemasters should continue to deal with minor offences within the limits of their delegated authority but should be careful to avoid any form of punishment not expressly sanctioned by the borstal rules.

2. Report of the working party on adjudication procedures in prisons (The Weiler Report) 1975  
(London, H.M.S.O.)

There should be a standard procedure for adjudications. All boards of visitors should adopt and follow this. It should be included in the revised edition of "Notes for the Guidance of Boards of Visitors". A parallel standard procedure for governors' adjudications should replace the present provision in Prison Standing Orders. A single all purpose form should replace the three at present in use for adjudications.

Our other conclusions and recommendations are as follows:-

Preliminaries to an adjudication

1. Governors should encourage all their officers to seek advice before preferring a charge.

2. The Prison Rules require that the charge must be laid as soon as possible after the alleged offence, and the governor must normally inquire into the charge not later than the following day. The governor should continue to use his discretion as to whether notice should be served on the prisoner the night before the hearing. But if the notice is served on the day of the hearing and the prisoner represents that he has not been given reasonable time to prepare a defence it should be normal practice to grant a remand.
3. Where a prisoner is in the segregation unit, and the initial hearing by the governor results in a remand, the governor should consider whether it is still necessary to keep the prisoner apart. Similarly, where the board remand a case, and the prisoner is segregated, they should consider asking the governor whether this is still necessary. Where a prisoner has been segregated prior to an adjudication the governor or board should hear this in mind in making their award and so inform the prisoner.
4. A report from the medical officer on any relevant matter affecting the prisoner's physical and mental condition and on whether or not he would be fit for cellular confinements should continue to be made.
5. When a case is referred to the board the adjudication should be held as soon as practicable, but care should be taken to ensure that the prisoner has sufficient time to prepare his defence for the board hearing. He should be asked to name in advance any witnesses he wishes to call.

#### Composition of adjudicating panels

6. All members of boards of visitors should have the opportunity of taking part in adjudications; new or inexperienced members should sit as observers or additional members before adjudicating; and particular care should be taken in forming the panel for the more serious or complicated cases, especially when the plea is to be "not guilty".
7. The arrangements for each adjudication should take account of the availability of members at the time; the need for a proper balance of greater and less experience including experience as a magistrate; a degree of continuity sufficient to assist consistency; and as wide a participation of members of the board as possible, subject to availability.
8. There are advantages in either the chairman or vice-chairman of the board acting as chairman of all adjudicating panels but this should not be an absolute rule.
9. It would be undesirable for all adjudications to be conducted by virtually the same panel. But there is an advantage if one member of each panel has served on the previous one as this helps towards consistency of awards.

10. Where an adjudication under Rule 51 involves serious or complex charges, at least three members should be present if practicable, and the clerk should consult the chairman before approaching possible candidates for the panel. He should also do so in the case of "graver" or "especially grave" offences.
11. Boards should discuss and decide the arrangements they propose to make for adjudications at their first meeting each year, and include a note of their arrangements in their annual reports.

#### Assistance for the prisoner

12. The prisoner should continue to be responsible for presenting his defence, but those conducting adjudications must be sure that the prisoner's side of the case is fully developed.
13. There should be an experiment in three or four representative establishments to test the effect of offering to the prisoner whose case is going to be referred to the board assistance from an officer or assistant governor in preparing his defence (as against presenting it).
14. If boards think, after further consideration, that it would assist them to have an experienced court clerk as their clerk for particularly difficult or complex cases the Prison Department should give it further consideration.

#### The contribution of the governor

15. The governor (or a senior member of his staff representing him) should be present at all board adjudications.
16. The governor should be seated apart from the members of the board, and he should not be called upon to take any part or make any comment unless the chairman needs to consult him on a point of fact on procedure or practice at the establishment in order to clarify some aspect of the evidence. The governor should not be present while the board are considering their decision whether the case is proved or not.
17. If the board have found the charge proved, the governor should be asked for a report covering all the relevant background, the prisoner being given an opportunity to comment or to ask for any question to be put to the governor.
18. The governor should not be present while the board are considering their award. He should not be consulted about the award, except that there would be no objection to the board asking him whether there would be any difficulty about a particular award or combination of awards, provided that this is done in the presence of the prisoner and he is asked whether he wishes to make any comment.
19. Assistant governors and senior members of the discipline staff should have the opportunity to attend board adjudications as observers.

### Consistency of awards

20. The level of an award should be decided in the light of all the circumstances of the offence, the offender, and the establishment, and not by a "standard tariff".
21. When prisoners who abscond together are afterwards adjudicated upon by different boards, the details of the award made by the first board to adjudicate should be made available to the board adjudicating later.
22. It will assist consistency of awards within an establishment if:
  - a. the adjudicating panel has available to it an annotated list of previous offences and awards;
  - b. the monthly meeting of the full board includes a discussion of offences and awards made by adjudicating panels;
  - c. the governor is invited to provide details of his awards during the previous month.
23. It will assist consistency of awards between establishments if:
  - a. board members returning from central training courses draw their colleagues' attention to any relevant discussions about the level of awards;
  - b. members are encouraged to attend the monthly meetings of other boards when recent adjudications are to be discussed;
  - c. the central training courses at the Staff College for boards of visitors are supplemented by other courses, preferably regional, concentrating on adjudications;
  - d. boards of new establishments are given a special induction course which should include assistance with establishing their level of awards.

### Forfeiture of privileges

24. Award of loss of privileges should specify the particular privileges to be forfeited. A blanket award of "loss of all privileges" is inappropriate.
25. The list in Prison Standing Orders of privileges liable to be forfeited should be extended to include personal radios, extra visits and additional letters, and the withdrawal of other articles the prisoner is allowed to keep in his cell. But apart from restrictions on canteen purchases, and loss of association, privileges should only be forfeited if the offence demonstrates an abuse of the particular privilege. The new all purpose form should take account of this.

26. The award of cellular confinement should be reserved for offences of a particularly serious and antisocial kind; in less serious cases some form of forfeiture of association and/or exclusion from associated work should be sufficient.

#### Training

27. Training in adjudication procedure should continue to form an integral part of the Staff College courses for boards of visitors. The material used should be reviewed in the light of this report.
28. The Prison Department should consider how additional training at regional level can best be arranged.
29. Training in adjudications for members of the governor grades will also need some revision in the list of this report. Assistant governors should be invited from time to time to attend board adjudications in a training capacity.
30. The training in adjudications given to prison officers during their initial and development course should be supplemented at local level on a systematic basis.
31. Local training in adjudication proceedings should be given to other staff, such as night patrols and civilian instructors.
32. The Staff College courses for clerks to boards of visitors should be continued and, if possible, extended. They should be followed up by practical training at the desk. The possibility of providing training for other members of the clerical staff who may be called upon to undertake the clerk's duties should be considered by the Prison Department.

3. Boards of visitors of penal institutions: Report of a Committee set up by Justice, the Howard League and N.A.C.R.O. (The Jellicoe Report) 1975  
(Chichester and London, Barry Rose)

1. Boards should be retained but reformed.
2. The body responsible for supervision should not have a disciplinary function.
3. Improving communication between the institution and the outside world should be recognised as a definite function to be undertaken by boards and by individual members.
4. Board members should continue to be involved in release procedures provided this is on a minority basis and that the board itself has no responsibility for their actions in this capacity. The responsibility of borstal boards recommending release should be brought into line with the local review committee procedure.

5. In order to give the supervisory bodies for penal institutions a new start they should be given the name of councils.
6. A national association of councils of penal institutions should be formed with the tasks, among others, of reducing the isolation of councils, of representing them at a national level, of encouraging and participating in the training programme, and of stimulating the recruitment of new members.
7. The clerk of the council should be appointed by a council and constitute its staff rather than be a member of the establishment's clerical staff. The establishment would continue to provide accommodation and the necessary office facilities. Training courses for clerks should be developed.
8. Councils should make a practice of meeting in private, either for part of their regular meetings or periodically.
9. Councils and their members should maintain a balanced attitude as between staff and inmates, treating each situation on its merits and recognising that close identification with either side will reduce their effectiveness.
10. Prison Department, regional directorates and individual boards should make every effort to reduce the isolation in which the present boards work. This should be continued when they are converted to councils.
11. Plans of operations should be prepared by all councils, at a level of detail appropriate to the size and problems of each establishment.
12. The frequency of visits by members should be increased in order to ensure that members have a reasonably close knowledge of all or parts of their institutions.
13. A system of "clinic" hearings should be established so that inmates may have an opportunity of making applications at a known time of one day each week. Councils should take care to see that inmates are clearly informed of the results of their applications.
14. Councils, like the present boards, should concern themselves with staff morale because of its important bearing on the welfare of inmates. They should, however, avoid getting involved in matters of industrial relations and confine themselves to a listening and advisory role.
15. Reports of governors and of the Prison Department Inspectorate should be made available to councils as of right.
16. Adequate administrative support should be provided for all councils.
17. Some innovations, attempted by existing boards are listed for boards to consider.

18. The general policy in the recruitment of members of councils should be to attain a membership whose experience and interests should cover all aspects of the life of the establishment.
19. At least one third of the membership of each council should be of the opposite sex to that of the inmates.
20. Importance should be attached to the recruitment of some members with experience of manual work.
21. The desirability of ensuring a wide range of experience and interests should not obscure the need for members to have appropriate personal qualities of integrity, perceptiveness, imagination and an interest in penal matters.
22. Councils should arrange their work to make it as easy as possible for employed members to participate.
23. More publicity should be given to the fact that members can be recompensed for loss of earnings.
24. The possibility of becoming a member of a council should be advertised locally, and interested people should be able to apply, in addition to the traditional procedure of nomination.
25. Younger people should be recruited, possibly by having a rule of thumb that each appointment of a new member of 35 or above should be balanced by appointment of someone below the age. There would be no other restriction on the appointment of older members apart from the present age limit of 70.
26. We consider that an explicit procedure of "sounding" potential new members should be introduced, and we support the present practice whereby final decisions on appointment are taken by the Home Office. Governors and chairmen should have a right to comment but not to veto.
27. Where possible a council should include a few members with current or recent experience of councils for other establishments.
28. The maximum period for which a person may be a member of the council of a particular penal establishment shall be 12 years.
29. The chairman of a council shall be elected annually, but no member shall be eligible who has already held office as chairman for five complete years, or is already chairman of another council.
30. Councils should be required to produce annual reports, not only to the Secretary of State but for publication in order to increase and inform public awareness of the work of their establishment.
31. Councils should not be expected to undertake enquiries into incidents likely to involve major dispute on factual matters.

32. That the present policy of sending serious criminal offences to be tried in the courts be continued, but that discussion on the sentencing of such cases should take place between the prison department and the judiciary in order to reach agreement on the principles to be followed.
33. Serious offences against discipline should be tried by professional adjudicators drawn from lawyers of the standing required for appointment to circuit judges or recorders. We hope that a lead in this work might be taken by circuit judges. The panel of adjudicators would be appointed by the Lord Chancellor and the administration of the scheme would be coordinated by governors and circuit administrators.
34. If possible the professional chairman would sit with two lay members, preferably local magistrates, who were not members of the establishment's council.
35. The rules should be revised to preclude loss of remission in excess of one year being imposed in internal disciplinary proceedings on one occasion.
36. The procedure of restoring lost remission be re-examined with a view to reducing inconsistencies between establishments. Whatever system is devised should not involve the councils of establishments.
37. Those rules giving the board executive powers should be amended to remove those powers, to strengthen the requirements for the board to be informed and for members to visit, in all cases where special measures of control are employed under these rules.

4. Justice in prison: a report by Justice (1983)  
(London, Justice)

Part I, General Rights

1. The prison rules should be revised as soon as possible so that they state precisely and clearly the rights and obligations of prisoners and their custodians. Restrictions on the exercise of rights should be no greater than is necessary to maintain discipline and should, so far as possible, be of specific and not general application.
2. All standing orders, other than those whose publication would affect security or undermine discipline, should be made available to prisoners through prison libraries.
3. In order to reduce overcrowding, the Home Secretary should be given power to release prisoners before the expiry of their sentences and should be under an obligation to use it if he cannot otherwise prevent overcrowding.

4. In order to occupy inmates' time, workshops should be re-established in local prisons, education expanded and recreation facilities provided.
5. Prisoners' letters should not be censored except on reasonable suspicion that they contain objectionable material (as specified in the rules) but they may be examined for contraband.
6. The minimum entitlement to ordinary visits should be one per fortnight. This principle should be stated in the rules. There should be no restriction on the type of person who may visit a prisoner, except for a necessary reason. In general, visits should be out of the hearing of prison officers.
7. Greater consideration should be given to facilitating communications between prisoners and their families - in their allocation, by the greater availability of travel warrants and the use of the telephone.
8. Duty solicitor schemes should be introduced into prisons.
9. Prisoners should be able to obtain a second opinion on medical matters from outside the Prison Medical Service. Where possible a prisoner's GP should be consulted about his medical condition.
10. The ethical problems involved in the prison medical officer's being part of the prison administration should be examined by the medical profession and the prison authorities.
11. Compensatory arrangements should be made for prisoners segregated under rule 43 in order that they do not suffer greater loss of rights and privileges than non-segregated prisoners.
12. The rights to vote should be restored to prisoners.
13. The rules should permit prisoners to retain certain personal possessions as a matter of right and not privilege. The system of privileges should be examined to see whether some of them can be re-classified as rights.

#### Part II, Complaints and Supervision

14. The Prison Act should specify which of the prison rules are actionable in the courts.
15. In most instances, the county courts should be given jurisdiction to try such cases on affidavit evidence.
16. Prisoners should be entitled to initiate private prosecutions.
17. The disciplinary and supervisory functions of boards of visitors should be separated.
18. The use of staff and prisoner committees should be extended to all prisons and placed on a formal basis.

19. Allegations of ill-treatment by staff should be dealt with by internal investigation in minor cases and by police investigation in the more serious ones.
20. The Chief Inspector of Prisons should always be appointed from outside the Prison Department, as should some of his staff.
21. Prisoners should not be entitled to see the Inspector on a visit but should be able to write uncensored letters to him.
22. The scope of the matters contained in his reports (all of which should continue to be published) ought to be at the discretion of the Chief Inspector.
23. Board of visitors should have free communication with the Chief Inspector and, on his visits, should see him without the governor being present.
24. Consideration should be given to varying the intervals between full inspections and to increasing the staff of the Inspectorate.
25. A Prisons Ombudsman should be established with power to investigate the complaints of individual prisoners about their treatment in prison with the object of ensuring that it was fair, reasonable and just. He should deal with the merits of any decision giving rise to complaint and have adequate powers of investigation. He should make recommendations in respect of each complaint to the appropriate authority and should report on his activities to the House of Commons. Prisoners should be able to communicate their complaints to him uncensored and without fear of punishment for so doing. He should have discretion about which complaints to take up: he should not normally take up a complaint unless the prisoner has failed to obtain redress under the complaints procedure laid down in the Prison Rules. Boards of visitors and prison officers should also be able to communicate with him about administrative matters affecting prisoners.

### Part III. Discipline

26. The disciplinary system should strike a fairer balance between the need to control prisoners and the requirements of legality and fairness.
27. A number of the prison disciplinary offences should be modified in order to make them more specific, to introduce the element of mens rea, to eliminate unnecessary duplication, to remove arbitrariness and to provide for the general defences available in the criminal law and in particular, the offence of making false and malicious allegations against an officer should be abolished.

28. The scale of penalties available to governors should be rationalised in order to make them consistent with each other and in the interests of fairness. His power to award cellular (ie. solitary confinement) should be increased from three to seven days. His power to order loss of remission should be reduced from 28 to 14 days.
29. The maximum period of loss of remission which can be ordered for a disciplinary offence should be 180 days. If misconduct is thought to warrant a more serious penalty, it should be tried in the courts.
30. The maximum period of cellular confinement should be reduced from 56 to 28 days; that should also be the maximum for a combined award of forfeiture of association at work and recreation.
31. The maximum period of deprivation of privileges should be 56 days.
32. There should be no "blanket" loss of privileges: each one lost should be specified individually. Only in exceptional circumstances should cellular confinement be combined with loss of privileges and the maximum period should be for seven days.
33. The medical officer should be required to pay a daily visit to a prisoner punished with cellular confinement to ascertain his continued fitness to undergo it.
34. Greater use should be made of suspended awards of punishment, and the disciplinary body should have power to make a partially suspended award.
35. The Rules should be amended so that the aggregate penalty for offences arising out of the same transaction does not exceed the maximum for a single offence.
36. A procedure for considering subsequent restoration of lost remission should be instituted.
37. The adjudication of the more serious disciplinary charges should no longer be carried out by boards of visitors or a Home Office official but by a panel of local magistrates.
38. Legal representation should be available before such a panel in certain circumstances, eg. that the prisoner faced serious charges possibly involving substantial loss of remission.
39. Prisoners should be allowed to take notes and remain seated at adjudications, and time spent segregated pending the hearing should be taken into account in facing the penalty.
40. There should be not right of appeal or of review in the case of awards by governors, but a review procedure should be established in respect of awards by the adjudication panel.

41. Removal from association for the maintenance of good order and discipline should only be effected where it is necessary for the purpose and unavoidable in the circumstances. The medical officer should certify that a prisoner is fit for segregation and, if segregated, should visit him daily. The governor should have power to order segregation for up to 48 hours. Any longer period should require the approval of the adjudication panel. Over 180 days segregation should require the approval of the Home Secretary in addition. A prisoner should enjoy procedural safeguards where the governor initiates the segregation (which should never be used without move as a disciplinary measure). These requirements should be reflected in the Rules.
  42. The powers to impose temporary confinement in a special cell and to use physical restraints on refractors or violent prisoners should be combined in a single rule providing adequate safeguards in respect of procedures and time limits.
  43. Oblique disciplinary devices, such as re-categorisation or transfer, should not fall within the procedure for disciplinary review, but that for general complaints.
5. Report of the committee on the prison disciplinary system (The Prior Report) 1985  
(London, H.M.S.O., cmd 9641-1/2)

#### THE ADJUDICATION SYSTEM

##### a) Governors

1. Governors should continue to deal with most offences against discipline.
2. Little change in governors' adjudication procedure.
3. Governors should have power to delegate adjudications to deputy governors or governor grades not below Governor IV.

##### b) The Prison Disciplinary Tribunal

4. More serious charges should be heard by an independent body to be called the prison Disciplinary Tribunal.
5. A Tribunal panel to consist of a legally qualified chairman and two lay members.
6. The Tribunal should normally sit in private.
7. Statutory rules to define salient features of the Tribunal's powers and procedure, other matters in guidance from Tribunal President as flexible as possible.
8. A circuit judge to be appointed as president of the Tribunal.

9. President to publish an annual report.
10. President's duties to include maintenance of consistent standards, giving procedural guidance, appointing lay members, and supervising appeal arrangements.
11. The legally qualified chairmen to be appointed by the Lord Chancellor from solicitors and barristers of not less than seven years standing.  
They should be part-time appointments, committed to between 25 and 50 days.
12. Regional chairmen designated to deal with pre-hearing procedural questions.
13. Lay members to be appointed by the President of the Tribunal.  
They should be committed to not less than 25 sittings a year.
14. They should not at the same time have other functions connected with management of the prison system such as membership of a board of visitors or local review committee.
15. Lay members should be engaged on the same financial basis as magistrates; and should have a statutory right to time off work.
16. Tribunal members should be indemnified against liability for torts committed in the exercise of their functions.
17. Administration of the Tribunal should be independent of the Home Office.

c) Forfeiture of remission

18. The punishments available to the prison disciplinary system still should include forfeiture of remission.  
The maximum punishment available to the Tribunal for one offence should be 120 days forfeiture of remission.
19. The maximum for related offences should be 180 days.
20. The maximum punishment available to the governor should be 28 days forfeiture of remission (whether for a single offence or as the cumulative punishment for related offences).
21. There should be a right of appeal when the punishment of forfeiture of remission imposed at one sitting exceeds seven days.
22. Adjudicators able to recommend that life sentence prisoners' review dates should be deferred by a period equivalent to the period of forfeiture of remission which they would have imposed on a determinate sentence prisoner.

d) Disciplinary offences and criminal prosecution

23. The Prison Department and the prosecuting authorities to establish and keep under review the criteria for prosecuting in the courts offences committed in prison.
24. Prisoners should not be proceeded against in both the criminal justice and disciplinary systems for the same offence.

e) Code of offences

25. There should be a criminal offence of prison mutiny, with a maximum punishment of ten years imprisonment.
26. There should be a summary criminal offence of assaulting a prison officer in the execution of his duty.
27. Our proposed code of disciplinary offences abolishes the existing offences of mutiny and gross personal violence.
28. There should be a single offence of assault.
29. There should be new offences to deal specifically with:
  - hostage-taking
  - barricading
  - fighting
  - endangering the health and safety of others
  - taking part in a concerted act of indiscipline
  - obstructing a prison officer
30. There should be an offence of making an allegation of misconduct against an officer which the prisoner knows to be false or does not believe to be true.
31. The offence of failing to comply with any rule or regulation should be supported always by written local rules, so that the prisoner will know what constitutes an offence.  
There should also be a defence for the prisoner to show that he did not know of a rule.
32. Charges of offending against good order and discipline should be dealt with only by the governor, and the maximum punishment of forfeiture of remission should be seven days.

PROCEDURE

a) Representation

33. There should not be a right to legal representation before the Tribunal. It should be granted at the Tribunal's discretion based on Tarrant criteria; but there are advantages in legal representation in appropriate cases.
34. The Tribunal should enquire at the hearing whether a defendant wishes to apply for legal representation.

35. The Tribunal to record reasons for refusing an application.
36. Most legally represented cases should be dealt with within four to six weeks. Action to ensure speedy handling should include:

Consideration of applications for representation by regional chairmen in advance of the hearing.

Firm action by tribunal staff in setting hearing dates in consultation with legal representatives.

Improved supply of solicitors known to specialise in prisoners' cases.

Local appointment of the establishment's legal representatives.

A certificate that legal representation has been granted to avoid delays in granting legal aid.

37. The establishment should have a right to be represented where a prisoner is granted representation, but this right should not be exercised automatically; it should be a matter for management decision according to the requirements of each case.
38. Where the establishment is not legally represented and in all cases where the prisoner is not represented, the case against the prisoner should be presented by a member of the governor grades.
39. The governor of the establishment is the prosecutor. The reporting officer's role should be as a witness, but he should be allowed to remain in the hearing after giving evidence.
40. There should be no provision for legal representation at governors' hearings.

b) Pre-hearing procedure

41. The chief officer should decide whether an alleged offence should be dealt with as a disciplinary charge.
42. Prisoners' right to obtain legal advice before a hearing should be made known more widely.
43. Prison officers should give advice to prisoners and assist with the preparation of the defence in appropriate cases.
44. The written explanation of hearing procedure to be revised taking account of:

- i. prisoners' standard of literacy
- ii. the requirements of minority languages.

Prisoners should be allowed to keep the explanatory note during the hearing.

45. Two hours normally sufficient notice of the charge before a governor's hearing whether they have had sufficient time to prepare a defence.
46. Formal notice of the charge in cases committed to the Tribunal should be given as soon as possible after the governor's hearing.
47. For the hearing before the governor the prisoner to be given, with the notice of charge, a copy of the reporting officer's statement; any other statement to be provided on request.  
In cases committed to the Tribunal, the prisoner or representative should be provided with:
  - i. copies of all statements on which the prosecution will rely.
  - ii. the record of the governor's hearing.
48. A charge once accepted should not be withdrawn before hearing by the governor. It should be possible to indicate an intention to offer no evidence on a case already committed to the Tribunal.
49. The governor should normally grant the prisoner or representative access to prospective defence witnesses.
50. Segregation pending adjudication should require the approval of a member of the board of visitors after seven days (and successive periods of seven days) and by the Tribunal after 28 days; the prisoner or representative should have a right of access to the Tribunal to make representations.
51. Every prisoner charged with an offence should be examined by the medical officer before the hearing.  
The adjudication record form should provide for the medical officer to certify separately:
  - i. whether the prisoner is fit for adjudication
  - ii. whether the prisoner is fit for cellular confinement
  - iii. whether there is other relevant medical evidence.
52. The adjudication record form needs urgent revision.

c) Hearing procedure

(Points marked \* in this section should be established by the Tribunal's statutory rules of procedure.)

53. The accused should normally be seated; and should be permitted to take notes.
54. "Eyeballing" should be forbidden.

55. The evidence to be admitted in each case should be a matter for the Tribunal; they should give such weight to it as seems appropriate.\*
56. Evidence before the Tribunal should normally be given on oath.\*
57. The prisoner to have a general right to call witnesses;\* there should exceptionally be power to refuse such a request for reasons which must be recorded.\*
58. The Tribunal should have power to compel the attendance of witnesses and the production of documents\* understanding however the difficult position of prisoners called as witnesses.
59. The standard of proof should be beyond reasonable doubt.\*
60. The prisoner or representative to have the right to address the Tribunal finally before they consider the verdict.\*
61. It should not be possible to find a prisoner guilty of an offence other than that charged.
62. Reports on the prisoner after a finding of guilt should be given openly as evidence by an officer other than the one who prosecutes.  
Local background evidence, eg. the prevalence of a particular offence, to be given only at the request of the Tribunal.
63. The general law of contempt should apply to the proceedings of the Tribunal.
64. Witnesses before the Tribunal should have absolute privilege against civil actions arising from their evidence.
65. It should be a duty of the Tribunal panel chairman to take a note. The clerk's duty is essentially to arrange the hearing.
66. A copy of the record to be sent to the governor. The Tribunal should draw the governor's attention to any substantial procedural errors committed by staff. It may draw attention to any points arising from the offence requiring further inquiry.
67. Suitable accommodation must be provided for Tribunal hearings.

d) Minor reports and other procedures

68. Minor reports should be retained in youth custody and detention centres; and extended to remand centres and separate young offender units in prisons.  
Minor report arrangements not otherwise to be extended to prisons.

69. The chief officer should examine records of minor reports to ensure that they are not being used for matters which should not be the subject of a disciplinary charge.

70. There should be an administrative procedure to deal with losses of prison property issued to prisoners. Minor losses should not be the subject of adjudications.

e) Punishments

71. Existing punishments other than forfeiture of remission should be retained with their present maxima.

72. There should be a punishment of "extra work" in prisons.

73. Power to suspend punishments should be retained and used as fully as possible. There should be no power of partial suspension.

74. Adjudicators should be required to take into account any period the prisoner has spent in segregation pending adjudication.

75. Existing provisions to mitigate punishments should be retained; and governors and the Tribunal should have power to change a punishment where they later appreciate that it was not the right one for the offence.

APPEALS, REVIEW AND CONSISTENT PRACTICE

a) Appeals against Governor's decisions

76. An appeal to the Prison Disciplinary Tribunal against the decision of a governor where the punishment exceeds seven days forfeiture of remission should be lodged within 14 days.

77. Where the prisoner appeals against the finding, the appeal should be by way of rehearing. Where the appeal is against the punishment only, the prisoner should have a right of access to the Tribunal.

78. The Tribunal should deal with the case in any way within the governor's powers, but the punishment should not be increased other than after rehearing.

79. The Tribunal should have power to grant bail where, but for the forfeiture of remission, the prisoner would already have been released.

b) Appeals against decisions of the Prison Disciplinary Tribunal

80. There should be a system of appeals against decisions of the Tribunal.

81. The Appeal Tribunal should be composed of the president and selected members of the Prison Disciplinary Tribunal.

82. Appeals against decisions of the Disciplinary Tribunal should require leave of a single member of the Appeal Tribunal (normally the President).
83. Applications for leave to appeal should be lodged within 28 days of the decision appealed against.
84. The Appeal Tribunal should have power to:
- i. dismiss the appeal;
  - ii. quash the finding;
  - iii) substitute any result open to the Prison Disciplinary Tribunal;
  - iv) remit the case to the Tribunal for rehearing;
  - v) require a response from the chairman of the Tribunal panel;
  - vi) appoint an amicus.
85. It should be a matter for the Appeal Tribunal in each case whether the proceedings should be open to the public.
86. The prisoner would normally be represented, and should attend only if the Appeal Tribunal consider it to be essential to fairness.
87. Appeal Tribunal to give reasons for decisions.
- c) Consistency of practice
88. The president of the Tribunal to be responsible for maintaining consistent practice through guidance to Tribunal members and through training.
- d) Home Secretary's powers
89. The only appeal prisoners dealt with by the governor who have no right of appeal to the Tribunal would be to the secretary of state; petitions should be dealt with quickly by a special caseworking group.
90. The Home Secretary should continue to have reserve power to intervene, including power to quash a finding of guilt.
- e) Restoration of remission
91. Arrangements for restoration of remission should be retained.
92. Governors should be empowered to restore remission forfeited by decisions of governors, and the Tribunal remission forfeited by the Tribunal.
93. The minimum period after forfeiture of remission before restoration can be considered should be calculated in such a way that prisoners with shorter sentences are not excluded from consideration.

94. There should no longer be a rule preventing full restoration of remission.
95. The criteria for restoration should be simpler and more objective.
96. Reasons should be given for refusing an application for restoration.
97. The President and the Home Office should develop standard documentation to assist consistent practice in different establishments.

#### IMPLEMENTATION AND PRISON MANAGEMENT QUESTIONS

98. Effective implementation of our recommendations requires a higher priority for training.
99. There should be a review of grievance procedures, with special regard to Canadian practice.
100. Management policy and practice in establishments with low offence rates should be examined to see what lessons can be learned for others.

APPENDIX FOUR

Application for leave to apply for judicial review:  
Terence Patrick Ewing, August 1983.

Revised version of a hand-out given to participants  
on the Third Command Course for Prison Governors,  
Prison Service College, Wakefield, 1984

The following information is gathered from papers made available to me by P3 Division of the Home Office.

Mr. Ewing was serving five years imprisonment for theft and various offences of deception. He failed to return from home leave on 9.6.83 and surrendered to the gate officer at Cardiff Prison on 16.6.83 (ie. unlawfully at large six days).

Two conditions of release on licence had been:

- (a) to report to Miss Goodings, Probation Officer, Borough High Street, London, SE1 1JG.
- (b) to live at an address previously arranged by Miss Goodings.

Mr. Ewing had done neither.

He was charged with two offences under R47(21).

THE ADJUDICATION

The governor's adjudication unfolded as follows:

- A) The charge of failing to return, etc.
  - i) Mr. Ewing claimed that he had been too ill to return to the prison and he produced a medical certificate which covered part of the time of his absence. He asked to call, as a witness, his general practitioner who, he alleged, would say that he was too ill to return.
    - Hearing adjourned. The deputy governor (Mr. Beer) telephoned headquarters for guidance. The nature of the guidance is not clear from the papers.
  - ii) The adjudication recommenced, the deputy governor saying that he would not call the GP. He was satisfied that Mr. Ewing had been ill, but believed he could have reported back to the prison on time.

On the charge of "failing to return, etc." Mr. Ewing was ordered to forfeit eighteen days remission.

- B) The charge of failing to comply with conditions, etc.
  - i) Mr. Ewing offered two lines of defence (though it could be argued that they were statements in mitigation).
    - a) Though he did not report in person to Miss Goodings, he did speak to her on the telephone.

- b) When he spoke to her she already knew that he was not staying at the pre-arranged address. She did not raise an objection and had therefore given tacit approval to a change of address.

He asked to call Miss Goodings as a witness.

- The hearing was adjourned again whilst Mr. Beer took headquarters advice as to "the availability of Miss Goodings to attend". He also telephoned Miss Goodings. In a subsequent letter (15.9.83) from Mr. Beer to the Treasury Solicitor, the deputy governor describes the conversation and his subsequent action thus: "I did speak to Miss Goodings. She said it was something she might be able to do, but that she was busy and the journey would interfere with her work. I concluded that to call Miss Goodings in person would not produce any other evidence of note as I had enough to proceed with."

- ii) The adjudication recommenced. Mr. Beer said "Miss Goodings is unable to attend." Mr. Ewing was found guilty and on this second charge forfeited eight days remission consecutive to the already forfeited.

Mr. Ewing's new earliest date of release was 28.8.83.

#### SUBSEQUENT LEGAL ACTIVITY

Mr. Ewing was already receiving legal advice from a firm of solicitors in the Isle of Wight (his previous prison had been Albany). He was contesting the calculation of his sentence. His case was taken over by a firm of Cardiff solicitors, Messrs. Hallinan, Blackburn and Gittings (Mr. Gibbon). They wrote to the Governor:

- a) accepting that the calculation of sentence was correct;
- b) stating that they had been granted legal aid on behalf of their client who intended to seek leave to apply for judicial review of the proceedings before the governor. They asked for certified copies of the record of the adjudication so that they would be in a better position to advise their client. (Their letter is dated 8.8.83).

On 9.8.83, the governor of Cardiff sent a holding letter to solicitors and forwarded copies of correspondence to Home Office.

On 12.8.83 leave to apply for judicial review by way of certiorari was granted by Popplewell, J. in the Queen's Bench Division. Since Mr. Ewing was, by this time, serving his remission period, solicitors applied for, and were granted, Mr. Ewing's release on unconditional bail (1).

## ACTIVITY WITHIN HOME OFFICE

On 14.9.83 a sequence of correspondence commenced between the Treasury Solicitor, Legal Advisers Branch, P3 Division and Mr. Beer which, in total, outlines that described above.

On 17.10.83, A.J. Langdon (Assistant Under Secretary of State, Prison Department) wrote to Mr. Gillespie of the Private Office asking if the Home Secretary would give a steer on Mr. Ewing's case (2). The need to maintain governors' confidence was stressed. There was a fear that Mr. Ewing would be seen to "get away with it but that is of little significance compared with the disadvantages of an adverse judgement".

On 18.10.83, P3 Division wrote to Mr. Beer informing him that the Home Secretary had decided to use Prison Rule 56(1) to set aside the awards.

(On 18.12.83, Home Office rejected solicitors' requests for an ex gratia payment to compensate for time spent in custody during remission time).

Further evidence as to Home Office thinking can be seen from correspondence in the later issue of King (The Camp Hill case). Correspondence reveals the following:-

13.12.83 Letter from Treasury Solicitor to Legal Advisers' Branch:

"You will remember the recent decision in the case of Mr. Ewing when, although we had a strong case on the facts, it was decided to concede the case in order to avoid a decision that governors' adjudications are reviewable ..."

5.3.84 Letter from Quentin Thomas (Assistant Secretary, P3) to Mr. Gillespie (Private Office):

"...2) This is only the second occasion on which a prisoner has been granted leave to apply for a review of a governor's hearing. In the first case, Mr. Ewing, the Home Secretary decided to set aside the award on 18 October, not because the adjudication was unsafe, but, on the ground that any court judgment that governors' adjudications might be subject to judicial review might spread alarm and despondency at a time when we need their total confidence" (3).

### Footnote

- 1) The power of Popplewell, J. to release a convicted prisoner, who is not an appellant, on bail is questionable. I have spoken with Philip Stevens (P3) and Graham Zellick (University of London) who do not believe that such a power exists. I have spoken to Mr. Ewing's solicitor, Mr. Gibbon, who is, likewise, uncertain but tells me that since he asked for bail for his client, and since it was granted, he did not complain. The fact is that Mr. Ewing was released immediately.

- 2) Current policy is to obtain a ministerial steer on all prison cases Home Office consider contesting.
- 3) Of further interest in this correspondence is the following:  
  
"...5) If the Divisional court does assert jurisdiction over governors' adjudications then, in counsel's words "it follows as night does day" that governors will be held to have a discretion, like Boards of Visitors, to grant legal representation.

Peter M. Quinn  
Tutor  
Prison Service College  
1984

APPENDIX FIVE

The methodology of the Departmental Committee on the  
Prison Disciplinary System (The Prior Committee) 1984

DEPARTMENTAL COMMITTEE ON THE PRISON DISCIPLINARY SYSTEM

1. The Home Secretary is establishing an independent Departmental Committee to review the disciplinary system for inmates. A note of the Committee's terms of reference is attached.
2. The Chairman of the Committee is Mr Peter J Prior CBE DL, and the other members will be announced in due course. The Secretary to the Committee is Mr A D Burgess, and the secretariat's address is Room 1106, Home Office, Queen Anne's Gate, London SW1H 9AT (telephone 01-211-5237).
3. The Committee will no doubt announce arrangements for the submission of evidence, and Headquarters will see that any announcement is drawn to the attention of staff as quickly as possible. But staff will wish to be aware of the establishment of the Committee now, so that they have an opportunity to consider individually and collectively what views they want to give when evidence is invited.
4. It is also to be expected that members of the Committee will wish to arrange a programme of visits to establishments to inform themselves of the context within which the disciplinary system operates and to talk to those concerned in its operation. Arrangements for these visits will normally be made by the Committee's secretariat, though members may from time to time get in touch direct with Governors. I know that Governors and staff will wish to give members of the Committee every assistance during their visits.

5 April 1984

P7 Division  
Prison Department  
Home Office  
Eccleston Square

A J LANGDON

Written Evidence

The attachments to this note are provided for the guidance of those wishing to give evidence to the Committee. At Annex 1 is a copy of the Committee's terms of reference from the Home Secretary. Witnesses are asked to note the practical pressures and influences to which the terms of reference refer, namely the need for speed in dealing with the generality of charges; interaction with other internal and external processes; and resource questions generally.

At Annex 2 is a series of questions and pointers to the matters on which the Committee will especially welcome evidence. They are not necessarily comprehensive and witnesses should not feel deterred from commenting on other matters directly or indirectly connected with the disciplinary system which they consider relevant. They are intended to provoke thought and discussion rather than to be a questionnaire. Thus there is no requirement to deal with every question; witnesses' experience of and interest in the system will vary, and some may wish to comment on some matters and not others. Nor is it an absolute requirement to approach the submission of evidence in that form and order, since clearly the issues overlap to a considerable extent. But it will greatly help the Committee in analysing the evidence received if it can be broadly arranged in relation to the general subject headings suggested.

Submissions should if possible be reasonably brief, though the supporting arguments should not be artificially reduced in order to comply with this. It would also be useful if, where relevant (and except where it is obvious by virtue of the witness's official position), witnesses could indicate the basis on which they would support their conclusions and opinions, for example by the extent of observation and involvement in the existing arrangements.

Evidence should be sent to the Secretary to the Committee, Room 1106, Home Office, Queen Anne's Gate, London SW1H 9AT not later than 31 July.

Oral Evidence

The Home Secretary has asked the Committee to aim to report within twelve months. There will therefore not be an opportunity for the extensive taking of oral evidence. The Committee would no doubt wish to consult further with representatives of those most closely involved in operating the disciplinary system and may wish to ask others to expand on their written evidence; but witnesses should not feel that omission on the Committee's part to take up offers to give oral evidence is in any sense a reflection on the position of the witness or the quality of the evidence they have given.

DEPARTMENTAL COMMITTEE ON THE PRISON DISCIPLINARY SYSTEMTERMS OF REFERENCE

To consider the disciplinary offences applying to prisoners, and the arrangements for their investigation, adjudication and punishment, having regard in particular to:

- (i) the need within custodial institutions for a disciplinary system which is swift, fair and conclusive;
- (ii) the extent to which it is appropriate to use the ordinary criminal law, courts and procedure to deal with serious misconduct by prisoners;
- (iii) the connection with the investigation of related allegations by prisoners about their treatment;
- (iv) the pressure on prison and other criminal justice resources:

and to make recommendations.

## NOTES FOR THE GUIDANCE OF WITNESSES

The scope of the disciplinary system and formulation of the offences

What are the proper limits of a domestic disciplinary system, where some of the offences may also be criminal offences?

What offences should be prosecuted in the criminal courts? If any element of discretion is left to the prison administration, on what grounds should a decision to prosecute outside be taken?

What changes if any would you make to the content of the existing disciplinary offences, and the formulation of those you would retain?

Objectives of the Disciplinary System

What objectives and conditions have to be fulfilled? How is, for example, the requirement of speed to be balanced against that of adequate protection for prisoners' rights including a requirement of the sort at present in Rule 49(2) that a prisoner shall be given a full opportunity of hearing what is alleged against him and of presenting his case?

How well does the existing system succeed in meeting those objectives and in reconciling those which conflict with each other?

Governor's powers

Would you retain a two-tier (or more) structure on present lines, with less serious offences dealt with by the Governor?

If so what adjustments are needed (if necessary in the light of your comments on other matters below) to his jurisdiction and powers of punishment?

Are any changes needed to the existing procedures for the conduct of Governor's adjudications?

Should an inquiry by the Governor remain the first stage of investigation of more serious charges?

Arrangements for dealing with more serious offences

Is it possible for any sort of local 'Board' (whether the Board of Visitors or another board separately constituted) to operate effectively a system with the requirements now imposed on Boards of Visitors?

If not (or if another adjudication authority is thought desirable on other grounds) what other tribunal(s) should deal with more serious offences?

If yes, what adjustments if any need be made to the existing procedures, jurisdictions, training arrangements etc currently applying to Boards of Visitors?

Should all serious offences (save for those which are referred to the police) be dealt with by one body (whether Board of Visitors or other)? Or is there a case for a further division, maintaining a relatively simple procedure before the Boards of Visitors or equivalent, and more formal procedures for the most serious offences?

If a further division, on what basis should it be made?

If you have recommended the continuation of adjudications by a local Board, should Boards of Visitors continue to combine this with their supervisory and pastoral function, or should there be separate local Boards or panels to deal with adjudications? What are the advantages and disadvantages of combining the disciplinary and supervisory functions in one body?

### Procedure

What comments or criticism do you have on the physical and procedural arrangements for the conduct of adjudications at present. If basically the same system were to be maintained, what internal changes would you wish to see?

What procedural requirements, safeguards etc, are necessary or should be available at discretion under (each level of) the machinery you propose? For example, on what grounds, if at all, should legal representation be available? On what grounds, if at all, should other representation or assistance be available?

What are the practical implications of granting legal or other representation? Can a system like the present one accommodate or eliminate the delay in dealing with a case likely in practice to follow the granting of legal representation? What, for example, are the implications for the power to segregate pending adjudication?

Is provision necessary about rules of procedure, evidence and the standard of proof?

Are existing arrangements for giving advice to Boards of Visitors (and by analogy to any other local Board) on general procedural matters appropriate and effective?

### Punishments

Are any additions or other changes needed to the available punishments? Should any adjustments be made to the maximum awards available at each level of adjudication?

### Appeal and Review

Are the existing avenues of appeal and review adequate? Is the result of the present system broadly fair?

Is consistency between the awards at different establishments desirable? If so, do the existing arrangements sufficiently achieve this? If not what alternative arrangements are necessary?

To what extent should the adjudication arrangements you propose be subject to review by the courts of their procedural adequacy?

### General

Please add any relevant additional comments on any matters not fully covered by the above questions.

Witnesses are reminded of the Committee's request for their submission on each topic to be brief and succinct. They are more likely to be helpful to and noted by the Committee than are lengthy memoranda.

NOTICE TO INMATES

DEPARTMENTAL COMMITTEE ON THE PRISON DISCIPLINARY SYSTEM

The Home Secretary has appointed an independent Committee to look at the disciplinary offences applying to prisoners, and the arrangements for their investigation, adjudication and punishment. The Committee wish to receive written evidence from interested organisations and individuals, and are willing to receive evidence from individual inmates. Members will be ready to talk individually to inmates about the adjudication system during their visits to establishments.

The Notice beside this one sets out the Committee's terms of reference. Also with it is a note which the Committee are sending out to prospective witnesses suggesting the form which evidence might take and the matters which the Committee would particularly like witnesses to cover in their evidence.

Inmates should understand that the Committee's job is to review the existing disciplinary system, and not to receive complaints about individual cases in which an inmate may be dissatisfied with the outcome. Inmates should therefore not complain about a particular adjudication or its outcome and refer to it only if it illustrates a general point which he wishes to bring out in his evidence.

Evidence should be sent, not later than the end of July, to The Secretary, Committee on the Prison Disciplinary System, Room 1106, Home Office, Queen Anne's Gate, London SW1H 9AT.

Inmates wishing to give evidence to the Committee will be allowed an additional letter, at their own expense, for the purpose of doing so.

TO ALL PRISON DEPARTMENT ESTABLISHMENTS

DEPARTMENTAL COMMITTEE ON THE PRISON DISCIPLINARY SYSTEM

Notice to Staff No 23/1984 announced the establishment and terms of reference of this Committee. The membership of the Committee is as follows:-

Mr Peter J Prior, CBE, DL - Chairman

Mr H J Appleton -  
Chairman of the Board of Visitors, HM Prison Gartree

Professor Stephen Cretney -  
Faculty of Law, University of Bristol

Mr Richard W Davies -  
Accountant and Businessman

Mr Trevor Phillips -  
Producer, London Weekend Television

Mr P D J Scott, QC

Mrs Vivien Stern -  
Director, National Association for the Care and Resettlement of Offenders

Mrs J Veale, JP -  
Chairman of the Board of Visitors, HM Prison Channings Wood

Mr L J F Wheeler, CBE -  
Regional Director, SW Region, Home Office Prison Department

As I indicated in the previous Notice, the Committee will be undertaking a series of visits to a representative range of establishments, mainly in small groups and possibly individually; and I am sure that they will be well received.

The Committee have announced arrangements for the collection of written evidence, which they wish to have by the end of July. They have invited a number of organisations to give evidence, including the relevant Trade Unions and Staff Associations. But I understand that individual members of staff are most welcome to submit evidence also, and anyone wishing to do so should take note of the guidance in the attached note issued by the Committee as to the form and content of written evidence. A small additional supply of these notes is being sent to each establishment with this Notice. Further copies can be obtained from the Secretary to the Committee, Room 1106, Queen Anne's Gate, London SW1H 9AT.

A J Langdon

Prison Department  
Home Office  
Eccleston Square  
17 May 1984

APPENDIX SIX

Extract from the Manual on the Conduct of Adjudications  
in Prison Department Establishments, 1984

## Preface

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The first booklet of guidance for the conduct of an adjudication by a Board of Visitors was issued in April 1977, and it came to be known as the 'green booklet'. It derived from recommendations in the report of a Prison Department Working Party on Adjudication Procedures which was published in 1975. Although that guidance has been commended by the Divisional Court, this revision has become necessary in the light of judgements by that Court and by the European Court of Human Rights.

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A digest of judgements is at Appendix 4, but undoubtedly the judgement which has had the most profound impact is that given on 8 November 1983 in R v. Board of Visitors HM Prison Albany ex parte Tarrant when it was held that:

- (a) No prisoner has an automatic right to either legal representation or the assistance of a friend or adviser (a McKenzie Man) at an adjudication. (This followed a judgement by the Court of Appeal in 1975 in the case of Fraser v Mudge).
- (b) Prisoners have a right to ask to be legally represented or assisted at an adjudication and a Board of Visitors has discretion to grant such requests.
- (c) Boards should properly exercise their discretion when deciding whether to grant legal representation or assistance.

The Divisional Court set out several principles which a Board should take into consideration when exercising its discretion. These are set out in paragraph 28 of the General Guidance. The effect of the judgement of the European Court of Human Rights in the Campbell and Fell case is set out in paragraph 27 of the General Guidance.

The Divisional Court in Tarrant made clear that it is for each Board to regulate its own procedures; that is, it is master of its own proceedings. It also described the green booklet as "a very useful and comprehensive guide" but expected Boards to be advised to apply the criminal standard of proof. This was met in a letter of 9 November 1983 to Chairmen of Boards of Visitors which explained that Boards should apply the criminal standard of proof, i.e. they must be satisfied beyond reasonable doubt that the prisoner committed the offence with which he is charged.

In Campbell and Fell the European Court of Human Rights in a judgement delivered on 28 June 1984 rejected the European Commission's view that Boards of Visitors do not constitute "independent and impartial tribunals" as required by Article 6 of the European Convention on Human Rights.

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\*In this Manual, "assistance" is used to mean the assistance of a friend or adviser, also known as a McKenzie Man.

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On 24 October 1983 the Home Secretary, the Rt Hon Leon Brittan QC MP, announced the establishment of a Departmental Committee to inquire into the prison disciplinary system. When announcing this, he said that there must be two main requirements that a prison adjudication system should meet:

"First, it is a commonplace that justice delayed is justice denied, but in a disciplined institution there are very special reasons why charges should not be left unresolved to cloud relations between inmates and staff. There is, therefore, a particular requirement for despatch. Second, the fairness and effectiveness of the system should command the confidence not only of the general community and the courts, but also of inmates, of staff, and of those who conduct the adjudications themselves."

The Committee is now at work under the chairmanship of Mr Peter Prior, and is expected to report in 1985.

## General Guidance

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### Introduction

- (1) An adjudication by members of a Board of Visitors is ordinarily the ultimate in a range of internal measures by which discipline and control is maintained within an establishment, and for this reason, as well as the severity of the punishments which it is open to a panel to award, the proper conduct of an adjudication which can be seen to give the inmate concerned a fair hearing is of prime importance.
- (2) The members of an adjudicating panel have an exacting job to do. In a court it is sufficient to decide whether the prosecution has proved its case and to acquit if it has not. In prison adjudications by contrast it is important that the adjudicator should if possible take steps to discover what in fact happened if staff or inmates are not to feel dissatisfied with an adjudication: this is so whether or not there is legal representation at the hearing.
- (3) The aim of this manual is to assist members in their task by setting out:
  - (a) some general principles that should govern the conduct of adjudications; and
  - (b) a detailed procedure, for universal use, designed to ensure as far as possible that every case is fairly and properly heard and disposed of, and
  - (c) guidance on particular issues.

### Judicial Review and Natural Justice

- (4) In 1978 the High Court ruled in *R v. St Germain* that Boards of Visitors adjudications were subject to judicial review and that adjudications should be in accord with the rules of natural justice. Natural justice requires that no man should be judge in his own case: that both sides must be given a fair chance to state their views: that there must be a full investigation of the facts. Essentially therefore, adjudicators must be seen to act fairly, in good faith and without bias or prejudice: this requires adjudicators to reach decisions solely on the basis of the evidence presented and thus panels must start *de novo*.
- (5) The Court of Appeal ruled in *King v The Deputy Governor of Camp Hill Prison* that judicial review did not lie in respect of Governors' adjudications but that the Secretary of State's actions in respect of Governors' adjudications were reviewable.

- (6) In *R v. Tarrant* it was decided that a prisoner on adjudication before a Board of Visitors has the right to ask to be legally represented or to have the services of an adviser or friend (a McKenzie Man) and that a Board has discretion to grant such requests.

### The Role and Responsibilities of the Adjudicator

- (7) An adjudication must be seen in the context of the custodial setting. A departmental working party on adjudication procedures in prisons had this to say, in its report (The Weiler Report) published in 1975, on adjudications in a custodial setting:

"We start from the fairly obvious point that prisoners who appear on adjudication charged with what *prima facie* appear to be similar offences are often very dissimilar people. They will range from sophisticated and intelligent offenders to inexperienced or inadequate individuals who have blundered almost unwittingly into a situation in which an officer has felt that he has no option but to charge them. They may have been provoked into a foolish act, which they afterwards regretted, or they may themselves have done the provoking. They may be trouble-seekers, or they may have trouble forced upon them. They may be bullies or have acted under pressure, recidivists or 'first-timers' who are still finding their way under stress. In cases in which the offence is found proved, such differences may well have an important bearing on the appropriate award.

(It is consequently important that after the adjudicators have recorded their finding, an objective report about the prisoner and his earlier conduct at the establishment should be available.)

An adjudicating body in a penal establishment also has a special responsibility to ascertain the facts of the incident leading up to the alleged offence. To this end, adjudicators must be ready to question in a spirit of impartial inquiry both the prisoner charged with the offence and the reporting officer and any witnesses who have been called either in support of the case or on behalf of the prisoner. They also have the right themselves to call witnesses and put questions to them, and to adjourn the case, if necessary so as to ensure their attendance. This responsibility to establish what happened and why goes further than that of a criminal court which determines guilt or innocence on the basis of evidence put before it by the prosecution and the defence. The adjudicating body must establish the facts, evaluate the evidence and

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then apportion responsibility for an incident in a way which will be seen as just and fair by both sides of the prison community. As they attempt this difficult task, they cannot ignore the fact that the alleged offence has taken place in a custodial setting, where respect for the truth and attitudes to authority may be very different amongst its various members, when it comes to assess the credibility of those who appear as witnesses at the adjudication. Prison society can create pressures on all who live in it, and the possibility that pressure has been put on witnesses by powerful individuals or groups within an establishment can never safely be discounted. There is also, in a prison setting, ample opportunity for collusion between potential witnesses. This puts a particular onus on the adjudicator to probe the facts and assess credibility.

The significance of the offence will similarly often relate to the residential setting. Behaviour which could be tolerated with equanimity in the normal community may impose unacceptable strain or tension in a custodial establishment. We use the expression 'behaviour' advisedly. A breach of the Prison Rules will often fall far short of conduct which would constitute a breach of the criminal law outside prison. Indeed, as a general rule, we think it would be fair to say that such a breach may often approximate more closely to what, outside, might be regarded as no more than anti-social behaviour. But anti-social behaviour in an institutional setting can be a very serious problem. A prison can only operate effectively, and provide tolerable living conditions for both staff and inmates, if it is run in accordance with some generally accepted rules; and a breach of those rules by a single prisoner or group of prisoners is often resented by other prisoners as well as by the staff. Again, the type of establishment may be relevant. Behaviour which a closed establishment can contain may call for sanctions in an open one (and vice versa). Moreover, even within the same establishment the seriousness or significance of a particular incident may vary from time to time according to the prevailing circumstances.

The range of awards available for disciplinary offences equally reflects the limitations imposed by the prison situation. Most societies whose rules are broken have available the sanction of some form of expulsion or removal. The person found guilty of a breach of the Prison Rules has to go on living in the prison community during and after punishment. Nor have adjudicators any power to lengthen the sentence imposed by the court.

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Most of the penalties therefore take the form of depriving the prisoner of something for which good conduct is supposed to be a pre-requisite. Forfeiture of remission is perhaps the most significant example of this. But the consideration also applies to the forfeiture of various discretionary amenities.

The background to an incident leading to disciplinary proceedings and the reasons why the incident occurred are of particular significance in a custodial setting. Such incidents can occur for a variety of reasons, ranging from the very simple to the extremely complex. They may happen because a prisoner has a grievance against a member of staff, or another prisoner. They may also result from very deep tension, or simply from the spite or petty backbiting which may be found in almost any residential institution. But, whatever the background, they all occur in what may often be described literally as a confined space and they invariably occur in an artificial atmosphere. Prisons are, for the most part, cut off physically and, sometimes, in other ways from the world outside. And they are small inward-looking communities. This means that those involved in an adjudication will almost certainly have to live closely together again after the adjudication, and that the finding of the adjudicating body and, if it finds an offence proved, the level of its award, may be of direct and pressing interest to others (both staff and prisoners) whose lives together afterwards may also be affected by its decisions.

In a prison situation, there are inevitably tensions in the environment which it should be part of the process of adjudication to dispel. There is often tension before the adjudication is held and, depending on the nature of the incident which gave rise to the disciplinary proceedings, this tension may not be confined to the prisoner or prisoners alleged to have committed an offence. The incident giving rise to the proceedings may have been traumatic for the institution concerned; and the staff and prisoners generally may be awaiting its outcome with different kinds of anxieties. It is important that these tensions should not be allowed to fester by long delays in the hearing of charges, especially as it is often necessary to segregate a prisoner in the period between the laying of the charge and the adjudication. There may also be a danger of strain or tension after an adjudication, if the community as a whole does not believe that the adjudication has carried out an impartial investigation and reached an equitable finding.

All these considerations seem to us to emphasise two requirements: first the need for those who carry out adjudications on prisoners to be people who are familiar

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with the establishment in which the alleged offence has occurred — its objectives, its regime, its culture, its stresses and its internal relationships; and, second, the need for adjudications to be carried out in such a way as to leave all those concerned in no doubt as to the impartiality of those conducting it, or the thoroughness with which they have sought to establish the facts and weigh responsibility for particular events.

In disciplinary proceedings before governors, the whole weight of responsibility for ensuring that this last aim is achieved falls on them. In proceedings conducted by members of Boards, a great deal of the responsibility will inevitably rest with the chairman of the adjudicating panel who, more than anyone, will need to keep before him the considerations to which we have drawn attention."

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#### Constitution of a Panel

- (8) An adjudicating panel should consist of between 2 and 5 members, none of whom has to be a JP except where the charge is of an especially grave prison offence when the panel must consist of between 3 and 5 members, at least two being justices of the peace (Prison Rule 52(2)).
- (9) The membership of a particular panel is for the Chairman of the Board to decide, but he should ensure that:
- (i) new or inexperienced board members should not sit on panels until they have first attended as observers or additional members;
  - (ii) the more experienced members should sit in serious or complicated cases;
  - (iii) participation by board members in adjudications should be as wide as possible;
  - (iv) panels should have a balance of court and other experience;
  - (v) the board's chairman or vice-chairman should chair the panel wherever possible; and
  - (vi) panels should have at least three members wherever possible.
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#### Framing of Charges

- (10) The drawing up of charges is usually a matter for the officer who reports an offence. Where the evidence given about an offence does not support the charge, it must be dismissed by the panel. The case of *R v Board of Visitors Dartmoor, ex parte Trevor Smith*, established that it is not open to a panel to change or reduce the charge (though it may amend the particulars) during the course of the hearing, as was once thought.
- (11) More than one charge may be preferred in respect of offences arising from a single incident, ie. any discrete act that constitutes an offence may be the subject of a charge. If the evidence supports it, the prisoner may be found guilty of more than one charge provided of course that they are separate acts and that the charges do not duplicate each other. However, if the prisoner appears to have been charged twice for the same act, then it is not open to the panel to find him guilty of both charges.
- (12) The charge must be of an offence described in Prison Rule 47.
- (13) A charge of making any false and malicious allegation against an officer (Rule 47(12)) must not incorporate words which indicate the outcome of any preliminary investigation by the prison authorities.
- (14) Charges in respect of drug offences require particular care in their formulation — see Appendix 3.
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#### Governor's Initial Hearing

- (15) Prison Rule 48(3) requires that every charge shall be inquired into, in the first instance, by the governor. If there has not been an initial inquiry into the charge(s) by the governor, the accused has been deprived of certain safeguards, including the governor's power to dismiss the charge(s), and a panel has no jurisdiction in the matter.
- (16) The governor may, at his hearing, dismiss the charge unless the offence is one which is especially grave (Prison Rule 52(1)) in which event it must be referred to the board unless the Secretary of State directs otherwise.
- (17) Where the governor does not dismiss a charge of an offence which is a graver offence (Prison Rule 51(1)) the charge must also be referred to the Board of Visitors unless the Secretary of State directs otherwise.
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## Entering of Plea

- (18) The charge should contain sufficient explanatory detail to leave the prisoner in no doubt as to what is alleged against him. Where a prisoner has difficulty in understanding English he should be given assistance by members of the adjudicating panel, staff or, if necessary, an interpreter to enable him to participate in the proceedings. The Chairman of the panel should ensure that the prisoner is quite clear that any guilty plea applies to every essential element in the charge; thus, a prisoner who admits that an article was in his unauthorised possession but denies that he knew it contained controlled drugs, should have his plea to a charge of possessing controlled drugs recorded as not guilty -- see Appendix 3.
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## Applications for Legal Representation or Assistance

- (19) A request for legal representation or assistance may be considered at any point up to the finding, although clearly it is desirable to do so at the outset and before any evidence is given since the grant of representation at a later stage might oblige the panel to disqualify itself on the grounds that the proceedings will have to begin again and do so with a panel which comes to the case afresh. However, there may be circumstances during the course of a hearing which persuade a panel to reverse a decision to refuse representation; this will necessitate an adjournment and a fresh hearing with a different panel. Once representation is allowed, the decision should not be reversed although a prisoner may at any time decide that he no longer wants representation.
- (20) Although these applications may be heard by the adjudicating panel itself (see paragraph 22), it is open to boards to decide to have filtering panels to consider applications for representation or assistance. Although it may be convenient for any filtering panel to be composed of board members who are able to attend at short notice, it is preferable that the filtering panel does not always comprise the same members. Filtering panels should comprise a quorum as required by the nature of the offence ie. at least two Board members; in the case of an especially grave offence the prisoner is in any case entitled to legal representation (see paragraph 27 of the General Guidance).
- (21) A record of the proceedings must be kept (F256) and, inter alia, it should include detail as required by paragraph 31.
- (22) Where it is preferred not to have a filtering panel and a request for legal representation or a McKenzie Man is granted by an adjudica-

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ting panel, it will be necessary to adjourn the hearing. Where such requests are refused, it should normally be possible for the panel to proceed with the adjudication forthwith (but see paragraph 23 below). The prisoner will have been forewarned by virtue of paragraph 7 of F1145 (Appendix 1) that he should be prepared for this.

- (23) The panel may reach a decision on the basis of the charge and the reporting officer's statement, and any statement that the prisoner wishes to make or read out. It would not however be appropriate for the adjudication to be conducted by the panel which heard the application, whether it granted or rejected it, if in the course of considering the application the panel had access to material (for example, details of the prisoner's defence or some relevant incriminating admissions or his criminal, disciplinary or behavioural history) which compromised its ability to approach the case de novo (see also paragraphs 4 and 19 of the General Guidance). Where it appears that consideration of the application necessitates access to material in addition to the charge and statements from the reporting officer and prisoner, the panel should ask for this to be produced; if the request is subsequently refused, a judgement will be necessary as to whether the adjudication may proceed with the same panel, the test being whether it is able to come to the adjudication proper afresh and without having been prejudiced by anything it heard in considering the application.
- (24) At every adjudication, the panel must ask the prisoner if he has read and understood the explanation of procedure (F1145) which informs him that he may apply for assistance or representation. If the prisoner makes no request, the panel should nevertheless ask him if he wishes to be assisted or legally represented, without leading him to expect that a request will necessarily be granted.
- (25) In considering a prisoner's application for assistance or representation, it is enough for the panel to be satisfied on balance that the request should or should not be granted. (It is not the case that a panel may reject the application only if it is sure beyond reasonable doubt that assistance or representation is not needed).
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## Considerations for Decision to Grant Representation or Assistance

- (26) The Divisional Court in Tarrant set out six considerations which panels should take into account when deciding whether to allow legal representation or assistance; it did not explicitly distinguish between legal representation and assistance. Where the prisoner asks for assistance the panel will consider that application on merit; where the prisoner asks for legal representation and the

panel grants it no further question will arise, but if it refuses legal representation, the prisoner may nonetheless ask for assistance and the panel may suggest that it would grant assistance if the prisoner wishes. The guidance below sets out the six considerations and the way in which they might affect the panel's decision on whether to grant legal representation, assistance or neither.

(27) However, the effect of the ruling of the European Court of Human Rights in Campbell and Fell is that where a prisoner charged with an especially grave offence, (ie. mutiny or incitement to mutiny or gross personal violence to an officer) asks to be legally represented that request should always be granted: this is reflected in the considerations set out below. In another case, R v Board of Visitors Blundeston, ex-parte Norley, Webster J said that there is no duty imposed by section 47(2) of the Prison Act and Rule 49(2) of the Prison Rules to consider the exercise of its undoubted discretion to allow legal representation unless it is asked to do so. However, he commended the guidance issued by the Home Office that the panel should ask a prisoner if he wished to seek legal representation. Mr Justice Webster also said that the case (in which Norley had been found guilty of a charge of doing gross personal violence to a person not being a prison officer) was typical of very many in which legal representation is neither necessary nor desirable.

(28) (a) **The seriousness of the charge and of the potential penalty**

A prisoner facing charges under Rule 52 of mutiny or incitement to mutiny (an offence of collective insubordination, collective defiance, or disregard of authority or refusal to obey authority) or doing gross personal violence to a prison officer should always be granted legal representation. With other offences there is no hard and fast rule: whether the seriousness of the charge or the potential penalty (including cases where several charges in combination will produce a combined maximum penalty that is serious) or a combination of both points to legal representation or to a McKenzie Man or to neither is a matter of degree. In the most serious cases, legal representation will no doubt be appropriate; and in the least serious cases probably neither is necessary. But in practice the panel will consider the force of this criterion in combination with the others.

(b) **Whether any points of law are likely to arise**

The Divisional Court mentioned as an example cases where there might be difficult issues of intent and this points to legal representation rather than to a McKenzie Man.

(c) **The capacity of a particular prisoner to present his own case**

This consideration may point to the need for either a legal representative or to the assistance of a friend or adviser. This decision will depend very much on the circumstances of the case and the judgement the panel makes about the capacity of a prisoner to present his case. Those prisoners who are incapable of preparing a written reply to the charge; those who are unlikely to be able to follow the proceedings or those who have a speech defect, might need such help.

(d) **Procedural difficulties**

When exercising its discretion, the panel should take into account any special difficulties which prisoners might have in cross-examining a witness (particularly a witness giving evidence of an expert nature), at short notice and without having knowledge of the witnesses' evidence. For example, the prisoner may have been segregated under Rule 43 or Rule 48 and thus not had an opportunity to interview potential witnesses, or the evidence might not have been given at the Governor's preliminary hearing. How far a friend or legal adviser will be necessary or will be able to assist in matters of this kind will depend on the circumstances of the case and on who he is. A panel should tend to favour a legal representative rather than a McKenzie Man in cases where the prisoner will have difficulty in calling and cross-examining witnesses since a McKenzie Man does not represent the prisoner and may not be able to cross-examine witnesses.

(e) **The need for reasonable speed**

Clearly, the speediest procedure will be when the prisoner is not represented or assisted. Delay is an inevitable consequence of legal representation where legal advisers will wish to consult their clients, interview potential witnesses and marshal their arguments. This delay has to be balanced with other considerations and the overriding requirement is to ensure that the requirements of natural justice are respected.

(f) **The need for fairness as between prisoners and as between prisoners and prison officers**

The Divisional Court may have had in mind two considerations in particular. First, that where there are a number of prisoners who are alleged to have taken part in the

same incident, the grant of assistance – whether in the form of legal representation or otherwise – to one may imply the need to grant it to any others. Secondly, the need to ensure that in the proceedings the prisoner is enabled to present his case properly and, depending on the circumstances, this might require legal representation or the assistance of a friend.

(g) **Other considerations**

The considerations set out in (a) – (f) are not exhaustive. The circumstances of individual cases might produce other considerations which a panel should take into account when exercising its discretion.

(29) Where the panel grants legal representation or assistance to a prisoner in respect of one charge, they should allow it also in respect of other charges against him arising from the same incident.

(30) There are circumstances which a prisoner might claim, in themselves entitle him to representation or assistance, eg:

- (a) when he pleads not guilty;
- (b) where there is more than one charge arising out of the same incident, which gives rise to the possibility of a cumulative award totalling more than 180 days forfeiture of remission;
- (c) a charge or charges arising out of concerted or collective acts, other than mutiny;
- (d) charges which involve wilfulness, an attempt, intention, malice or knowing possession; ie. a mental element;
- (e) charges to which the prisoner indicates he will plead self-defence, provocation, accident, mistaken identity or alibi;
- (f) a prisoner who claims he has not been able to see witnesses, because they have been transferred or because he has been segregated.

In none of these circumstances – unless the charge is mutiny or gross personal violence to an officer – is the panel bound of necessity to grant legal representation or the service of a McKenzie Man. The panel will consider all the circumstances of the case in the light of the considerations set out in paragraph 28 above.

(31) Where an application for legal representation or the assistance of a friend is refused the record of the adjudication (F256) on these matters should be sufficiently detailed to show that the panel has properly considered the request. In particular it should record that the panel has explained to the prisoner that it has considered the application in the light of the guidance given by the Divisional Court before concluding that legal representation should not be granted.

### The Adviser or Friend (McKenzie Man)

(32) An historical note about the McKenzie Man is at Appendix 5.

(33) The Divisional Court held in Tarrant that a panel has a discretion to agree that a prisoner may be assisted by a friend or adviser who should be a 'suitable person and who is readily available and willing to assist, viz not a fellow prisoner but – for instance – a probation officer, social worker or clergyman acquainted with the prisoner'. This does not prevent a panel from considering any other person who is willing to assist the prisoner and whom the panel considers suitable.

(34) It is the prisoner's responsibility to nominate a person who is willing to assist him. The panel should consider suitability in consultation with the Governor who is responsible for control of admission to the prison. Where the prisoner is unable to name someone, the panel or Governor may make suggestions. If the prisoner nominates a solicitor, the solicitor must accept the role of the adviser as defined by the panel on the basis of the Divisional Court's judgement: his costs when acting in that capacity are not met from public funds.

(35) In Tarrant the Divisional Court defined the role of the adviser as taking notes, quietly making suggestions and giving advice: to assist the prisoner in presenting his case, and in giving support. If however, without the permission of the panel he interferes or participates in the proceedings the panel is entitled to require him to leave. The panel may however allow him to take a more active part in the proceedings if they see fit.

### The Governor's Representative

(36) Where a panel grants legal representation to a prisoner it should also indicate expressly that any legal representative of the Governor will also be given audience. The role of the Governor's representative is set out in Appendix 2. In brief, his principal function is to assist the panel in getting at the truth. He will also assist in the presentation of the establishment's case against the prisoner.

(37) Arrangements for the appointment of the Governor's representative are made by Prison Department Headquarters on receiving notification from the Governor that a prisoner has been granted legal representation.

### The Prisoner's Access to a Solicitor

- (38) A prisoner is entitled to communicate with a solicitor about an adjudication at any time and such contact will be treated as privileged. Of course, where he has been granted legal representation he will wish to communicate with the solicitor of his choice. If he does not know of a solicitor who will act for him he will be allowed to consult the Law Society's regional legal aid solicitors list so that he may choose a solicitor.

### Facilities for Legal Representative or Adviser

- (39) Requests from legal representatives or advisers for facilities should be referred to the Governor for his consideration. The reason for this is that the facilities may have a bearing on security or good order and discipline, and the responsibility for admitting any person into a prison rests with the Governor.
- (40) Where requests for facilities are received by a panel it may recommend that they be granted. Where the Governor is unable to provide the facilities requested and the panel believes that this prejudices a fair hearing, there may be no alternative but to dismiss the charge notwithstanding the implications that this could have for discipline and control within the establishment.
- (41) Where the prisoner's legal representative or his McKenzie Man asks before the hearing to see copies of written statements the Governor or in practice the Governor's representative should arrange for the prisoner's representative to be given copies of any statements or other written material which are to be entered in evidence.
- (42) Requests by the prisoner's legal representative or McKenzie Man before an adjudication takes place for permission to interview other inmates or members of staff in order to prepare the defence should be referred to the Governor for his consideration. If the prisoner or member of staff is willing to be interviewed, the Governor will normally allow the interview provided he judges it appropriate. Where such requests are made during the hearing of an adjudication the panel, having satisfied itself that the request is reasonable, should ask the Governor to make suitable arrangements and, where necessary, adjourn the proceedings to facilitate this. No-one is obliged to be interviewed against his will.

### Facilities for Unrepresented Prisoners

- (43) If an unrepresented prisoner asks before a hearing to see copies of statements or other written material which are to be entered in evidence the Governor should normally arrange this. The only exception to this is a medical record which in the opinion of the author should not be disclosed to the prisoner (e.g. because disclosure could be harmful to the patient or to the doctor/patient relationship).
- (44) Where an unrepresented prisoner asks before a hearing for facilities to interview prisoners or other witnesses, in or out of hearing of prison staff, who may have relevant evidence the Governor should allow such interviews if he judges it appropriate and the witnesses are willing. Where such requests are made to the panel, it is for the panel to consider referring the request to the Governor with any recommendation it thinks appropriate and to consider an adjournment (see also paragraph 59).
- (45) If an unrepresented prisoner asks for access to books of reference to help him prepare his defence such requests may be granted by the Governor and a request for an adjournment for that purpose may be considered by the panel on its merits.
- (46) Where a prisoner asks before a hearing for names of witnesses or others involved in the incident which gave rise to the charge(s), whether of staff or inmates, the Governor should take action which he considers appropriate and which does not disturb the orderly running of the establishment to identify persons whom the accused can describe. A member of staff will however not be compelled to take part in an identification parade against his will. Where such requests are put to the panel it may decide, having asked any questions necessary to elucidate the basis of the requests, to refer the request to the Governor with such recommendations, if any, as seem appropriate and consider an adjournment.

### Names of Witnesses

- (47) If a legal representative or McKenzie Man asks for names of witnesses involved in an incident, whether of staff or inmates, or for the means to identify them, before an adjudication begins, the Governor should take all reasonable steps to assist. Where such requests are made to the panel during an adjudication the panel should determine the relevance of the requests, and if it is disposed to agree in principle the Governor should be asked to assist. An adjournment might be necessary to facilitate this.

- (48) Where the Governor decides that the prisoner's legal representative or adviser may interview potential witnesses, the interview should normally take place in privileged conditions: that is, in sight but out of hearing of prison officers.
- (49) Where the Governor decides that interviews must take place within the hearing of staff for reasons of security or because of the possibility of coercion or collusion between witnesses, the officer supervising the interview should not disclose the nature of the discussion unless it presents a threat to security (in which case, the interview should be terminated) or because there is a clear intention to defeat the ends of justice: in these circumstances, the panel should be informed.
- (50) Where legal representatives or advisers ask for lists of names of prisoners in a wing or in a particular cell or for a list of officers on duty at a particular time, or for help in identifying prisoners or prison officers, the panel, after asking any questions necessary to elucidate the basis of the request, should refer the matter to the Governor with any recommendation that seems appropriate.

#### Adjudications in Absentia

- (51) Where a prisoner refuses to attend an adjudication, it should be explained to him, preferably by a member of the panel, that the adjudication will proceed in his absence. If the prisoner still refuses to attend the plea should be recorded as not guilty.
- (52) A prisoner who is prepared to attend an adjudication but is not willing to do so suitably dressed, or is in a condition which is offensive to the panel or others (eg. on dirty protest), should be told that the adjudication will proceed in his absence.
- (53) In these circumstances it would in general be inappropriate for an adviser (McKenzie Man) to attend the adjudication as his role is a limited one; though it would be open to a panel to allow him to be present if it considered it right to do so. A legal representative should be present at an adjudication where his client is to be adjudicated upon in absentia.

#### Physical Arrangements

- (54) The physical arrangements for adjudications should be in accordance with the recommendations made by the Weiler Committee in 1975:

"There will be obvious advantage in choosing a physical arrangement which will ensure that the general atmosphere is as relaxed as possible within the context of the disciplinary hearing. If both staff and prisoners are at ease, it is the more likely that they will be able to give their evidence clearly and effectively. And a prisoner who feels that his case has been given proper consideration in a calm and relaxed atmosphere is perhaps less likely to feel disgruntled if he is found guilty and punished. At the same time, it is necessary to ensure sufficient formality to emphasise the importance of the proceedings."

The escorting officers should be on either side of the prisoner rather than in front and facing him and, unless the size of the room and other physical arrangements preclude this, arrangements should be made for all those taking part in the proceedings to be seated. The prisoner should be allowed facilities to make notes. In cases where the prisoner is legally represented, it may be convenient if the reporting officer is seated next to the governor's representative, and the prisoner is seated close to his legal representative.

#### Adjournments

- (55) If after it has started it becomes necessary to adjourn an adjudication, the period of adjournment should not normally exceed 3 weeks. If the adjournment is to facilitate the appearance of a reporting officer or other officer witness who is unable to attend because of prolonged sick absence, the hearing should be resumed when the officer has returned to duty unless the accused is willing to proceed with written evidence and in the knowledge that the officer could not be questioned on his evidence.
- (56) When a panel has granted legal representation there may be some delay before the legal representatives are ready to proceed. In such cases the panel should set a date, which may have to be more than 3 weeks ahead, for the resumed hearing, obliging the lawyers to make a case for further adjournment if they think it necessary, if for any reason a subsequent adjournment is necessary it should be to a specific date so that the panel is in a position to control progress of the case.
- (57) A prisoner awaiting adjudication may be segregated under Rule 48(2). Decisions to segregate under this Rule are a matter for governors, who have been advised that use of the Rule is justified only where the reasons for segregation relate to the adjudication, for example if there is a real possibility of collusion, intimidation or suborning of witnesses to give false evidence or where it is

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thought that the accused may attack witnesses he fears will give evidence against him. Nevertheless, in cases where it is necessary to adjourn the hearing of a charge against a prisoner segregated under Rule 48(2) the panel may feel that such segregation is no longer necessary and, in these circumstances, it is open to the panel to recommend that the Governor reconsiders his decision.

- (58) A prisoner may consult a solicitor about an impending adjudication. Where a prisoner who has been refused legal representation asks that the hearing should be adjourned pending receipt of advice from his solicitor, the panel should ascertain whether in fact the advice has been sought and whether the prisoner will be seriously disadvantaged if the hearing proceeds. When considering adjournment, the panel should bear in mind that the prisoner may say his defence will be prejudiced without the advice he is seeking.
- (59) Where a prisoner who is charged with an offence which is especially grave (mutiny, incitement to mutiny or gross personal violence to an officer) refuses legal representation but asks for an adjournment on the grounds that he is awaiting legal advice, the panel – having satisfied itself that advice has been sought – should adjourn for a reasonable period, say 3 weeks.
- (60) Other grounds for considering an adjournment arise in paragraphs 44 - 46 above.

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### Standard of Proof

- (61) A finding of guilt should not be arrived at unless the panel is satisfied beyond a reasonable doubt that the prisoner committed the offence with which he is charged.
- (62) Where a prisoner pleads guilty to a charge the panel should hear the evidence of the reporting officer and satisfy itself that the prisoner fully understands the charge which he has admitted. If it becomes clear that the prisoner's admission of guilt is based on a misunderstanding of the charge, he should be advised to plead not guilty, but if he declines this advice, it may be necessary for the panel to inform the prisoner that it is proceeding on the basis that the plea is not guilty.
- (63) In *R v Board of Visitors Dartmoor ex parte Smith* the court held that Boards have no jurisdiction to reduce a charge during the course of a hearing or to direct that a lesser charge should be substituted. Therefore, where the panel reaches the view that the facts adduced during the hearing are not sufficient to justify a finding of guilt on the offence as charged, the panel should return a finding of not guilty. Although the evidence may constitute a similar or less serious offence a lesser charge should not be substituted.

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### Evidence at Adjudications – General

- (64) It is for the adjudicating panel to assess the veracity of each statement given in evidence before it and, where there is doubt, to try to obtain further information that will help it in its assessment. An obvious example is where an inmate's story contradicts that of a member of staff. Before reaching a decision the panel must always try to elicit further evidence that could resolve the conflict. When an unrepresented inmate is seeking to give his side of the story and he wishes to question a witness it may frequently happen that for a number of reasons he has difficulty in doing so. The Chairman of the panel should in such circumstances seek to establish from the inmate his version of the events about which he is seeking to question the witness and then put questions to the witness on the inmate's behalf.
- (65) The accused or his legal representative or adviser must hear, and have the opportunity to challenge, all the evidence. The panel must not have regard to any fact relevant to the offence charged which was not brought out in the course of the hearing, though it may of course have regard to its own general knowledge of the background in the prison in which the incident took place.

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### Written Evidence

- (66) The panel may accept written evidence, but if the accused or his legal representative denies or explains away a particular piece of written evidence, its reliability may be put in doubt. For this reason, a previously written statement, whether or not it has been shown to the prisoner or his McKenzie Man or legal representative before the adjudication, may be accepted as evidence only if it is read out and either the writer is present at the hearing so that the accused may have an opportunity of questioning him, or the accused consents to its being accepted without his having such an opportunity. If the writer is not present and the prisoner does not so consent, the hearing should be adjourned. One of the uses of written evidence may be to corroborate evidence given orally at the adjudication.
- (67) Board adjudications must start afresh without reference to the Governor's preliminary hearing, or to the report of any previous internal inquiry into the incident, but the record of the Governor's hearing or any statements made at it, or any statements made to a previous internal enquiry, may be accepted as evidence provided they are read out in the presence of the prisoner. Where it is clear that the prisoner or his legal representative wish to question the

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authors of such statements, they should be allowed to do so. If it is claimed that the written or oral evidence at the Board adjudication varies materially from that given at the preliminary hearing by the Governor or at any other internal inquiry, the panel should call for records of the evidence and allow the accused or his legal representative to question the person who gave the evidence. The panel may consider calling for such evidence of its own volition or where the parties to the adjudication request it. If in doubt about calling for such evidence, the panel should err on the side of helping the accused to exonerate himself (see Appendix 4, paragraphs 19 - 22).

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### Hearsay Evidence

- (68) First hand evidence is obviously preferable to hearsay evidence, but there will be occasions, for instance where no member of the staff witnessed the alleged offence or where an absconder or escaper from another establishment is being dealt with, when a reporting officer has to rely on what he has been told. If the accused pleads not guilty, a finding of guilt based solely on hearsay evidence would clearly be unsafe. Where a prisoner desires to dispute the hearsay evidence and for this purpose to question the witness, and where there are insuperable or very grave difficulties in arranging for his attendance, the panel should refuse to admit that evidence or, if it has already come to their notice, should expressly dismiss it from their consideration. If there are prisoner witnesses who should be called (see paragraph 69 below), but they are unwilling to appear, the panel must assess the credibility of the hearsay evidence and disregard it where there is any doubt.
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### Calling of Witnesses

- (69) Prisoner witnesses cannot be compelled to give evidence. Although a panel has no power to compel the attendance of an officer of the prison (a phrase which encompasses all officials in a prison and not only prison officers), an officer of the prison may be required by the Governor, as part of his duties, to appear as a witness. The panel has the discretion to refuse to call witnesses named by the accused prisoner but this must be done reasonably, for example if it thinks that the request is part of an attempt by the prisoner to render the hearing unmanageable or that a witness could not contribute to the investigation, the panel should question the prisoner to satisfy themselves that the witness was indeed at the scene of the incident at the material time, or may otherwise have relevant evidence, and that his evidence, if believed, might be material

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and weigh on their decision on the point at issue. The panel should not refuse to call a witness because it is inconvenient to do so, or because they already feel that a prisoner is guilty; they should not exclude the possibility that material witnesses as yet uncalled may bring vital testimony; nor should they restrict themselves to calling a sample of the witnesses requested. The panel is, however, under no duty to call the witness if the prisoner does not make his request clear and, if necessary, help the panel to identify that witness.

- (70) If, unknown to the prisoner, someone has witnessed the incident, and the authorities know this, they are under a duty to bring it to the attention of the panel, since any finding of guilt by the panel may be unsafe if they do not.
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### Offences involving Charges against more than one Inmate

- (71) If, where more than one inmate is charged with an offence relating to one incident, the panel decides to hear the cases separately, care should be taken to ensure that evidence heard at one adjudication is not taken into account in reaching a decision in another adjudication without that evidence being presented at that other hearing. An accused must only be convicted on evidence which he himself has heard. It is open to an adjudicating panel to hear the cases in stages, using adjournments, to allow two or more cases to be progressed concurrently to virtually simultaneous conclusions. An example of this would be where 2 prisoners are charged with doing gross personal violence to a third prisoner. To avoid the risk of collusion or falsification of the evidence on the part of the accused it might be decided to hear the cases separately and proceed with the adjudication on one of them until he has presented his defence. The case could then be adjourned while the charge is heard separately against the second accused. By the time the second accused has presented his defence it will be possible for the panel to determine whether there is any discrepancy in the stories of the two accused. It would then be open to the panel to return to the first case, and to hear the second accused as a witness giving evidence this time in front of the first accused. The case could be further adjourned while the first accused is brought in as a witness at the hearing of the second accused. Each adjudication could then be carried through to a conclusion.
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**Evidence from Persons outside the Establishment**

(72) If evidence from a person outside the establishment is likely to be relevant, he or she should be invited to attend the hearing and the importance of this should be explained. If the accused does not dispute the evidence to be given and will accept a written statement without wishing to ask questions of the witness, and the panel is satisfied that the accused will not be prejudiced thereby, a written statement may be accepted.

**Split and Majority Verdicts**

(73) The way in which a panel comes to a decision is its affair alone. When the panel members cannot agree, the majority opinion will prevail; if the panel is equally divided the prisoner should be found not guilty. Where the panel disagrees on the appropriateness of an award, there is obvious scope for compromise in terms of the type of award and its severity.

**Consistency of Awards**

(74) The Working Party on Adjudication Procedures in Prisons (The Weiler Report) explained why anything analogous to a tariff system should not be introduced and had this to say:

"When deciding on an award in a particular case the Board will no doubt wish to impose the minimum necessary to recognise the seriousness of the offence and to discourage repetition by the prisoner himself or by other prisoners. For this purpose, it is essential that they should take account not only of the circumstances of the particular offence but of the record, character and circumstances of the prisoner himself (including the stage in his sentence and the extent to which certain awards may have either no, or only limited, application to him); of the type of establishment and the particular regime it is following; and of the general state of order and discipline (including the prevalence of the offence at the particular time). The fact that this combination of circumstances needs to be taken into account makes it inevitable and appropriate that the level of award for comparable offences should vary both within, and between, establishments. Indeed, it would in our view be artificial and arbitrary to attempt to operate under a

standard tariff which disregarded these essential differences between individual cases which we have described."

"So far as consistency of awards within an establishment is concerned, we recommend that:

- (a) The adjudicating panel should have available to it a list of previous offences and awards over the previous twelve months together with details of the adjudicating panel, the plea, and a short note of any special circumstances affecting the level of the award. In establishments where adjudications are less frequent ..... a list of awards for comparable offences over a longer period would probably be helpful.
- (b) The monthly meeting of the full Board should include a discussion of offences and awards made by adjudicating panels, with the respective chairman drawing attention to any points of particular interest.
- (c) The governor should be invited to provide details of his awards during the previous month, again drawing attention to any points of particular interest."

**Public Pronouncement**

(75) In Campbell and Fell the European Court of Human Rights considered the requirement in Article 6 of the European Convention on Human Rights that everyone charged with a criminal offence is entitled to a public hearing and made clear that there was no requirement to admit the public to adjudications and that the requirements to pronounce judgement publicly would not be interpreted literally. However, some steps are necessary where a panel makes a finding in respect of a charge which is especially grave ie. mutiny, incitement to mutiny or doing gross personal violence to an officer, to make the judgement publicly known.

(76) The panel should therefore make arrangements through its Clerk to inform the local press of the following information when it has dealt with an offence which is especially grave (Prison Rule 52(1)):

- The name of the prisoner
- The offence with which he was charged
- The finding and, where the prisoner was found guilty
- The award made.

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## Prison Rules

- (77) Appendix 6 is an extract from the Prison Rules 1964 (as amended to end of 1983). In respect of Rule 56(2) the directions of the Secretary of State are to be found in Standing Order 3D 41 and 42 and Circular Instruction 58/1976: Boards of Visitors have the power to remit or mitigate disciplinary awards only in the limited circumstances described in paragraph 5 of the Circular Instruction: that is where there is an application for the restoration of forfeited remission which was imposed by a Governor and exceeds 28 days or which was imposed by both a Governor and a Board on separate occasions.
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# Model Procedure for the Conduct of an Adjudication by a Panel of the Board of Visitors.

## General

(1) The proceedings should be started afresh without reference to the record of proceedings before the Governor or of any non-disciplinary inquiry dealing with the same matter, and without access to the inmate's prison record or the record of any previous prison offences committed by him.

(2) It will be expeditious for the adjudicating panel to have an advance list of witnesses whom the prisoner wishes to call.

(3) A record of the proceedings should be taken down on Form 256.

(4) It is open to an adjudicating panel to adjourn a hearing to either a later time, or a later date, if they consider this desirable, eg. for further information or enquiries, or for the presence of a witness who is not available.

- (1)
- i. The fresh start is to enable the adjudication panel to determine the case solely on the evidence presented at its hearing. Statements written in connection with the hearing by the Governor or with any other inquiry into the incident (eg. by the Board at the request of the Prison Department) may be accepted as evidence provided they are read out in the presence of the accused. If the accused wishes to question the person who made the statement, he must be permitted to do so. The record of the Governor's hearing should be admitted as evidence if it is claimed that evidence from any party at that hearing contradicts evidence from the same party at the panel hearing.
  - ii. If an earlier inquiry — for example under Rule 94(2) — has been conducted by Board members the adjudicating panel should be different from those who conducted the earlier inquiry on the matter.
  - iii. It is inevitable that sometimes some Board members may know something of an inmate's history, but details of his previous disciplinary offences should not be supplied to the adjudicating panel before the hearing. These details can be supplied if and when an award is being considered (see paragraphs 3 and 45).

(2) The accused should be asked to indicate in advance of the hearing the witnesses he would like to call so that arrangements can be made to make them available for the hearing. It will still be open to the accused to ask, during the course of the hearing, to call additional witnesses; and it will be open to the panel to call witnesses other than those requested by the accused.

(3) The record of the adjudication does not need to be verbatim. It must include a record of the preliminaries, the specific evidence relied upon, the findings and, where appropriate, the reasons for the awards imposed so that anyone reading it subsequently can form an accurate picture of the whole of the adjudication. The record is usually taken by the clerk to the Board, but the chairman and members of the adjudicating panel may take notes for themselves to assist them during the conduct of the proceedings. Although the record must eventually be on the F256, it does not necessarily have to be taken down on the F256 at the time but may be written subsequently, for example from contemporaneous notes. It should then be signed by the chairman of the panel who is responsible for the adequacy and accuracy of the record.

(4) Any panel which grants legal representation or the assistance of an adviser will almost certainly need to adjourn the hearing. Where it does so, it is open to the panel to ask the Governor to consider whether an accused prisoner who has been segregated under Prison Rule 48 should continue to be segregated during the adjournment.

**Before the Hearing**

- (5) The Clerk to the Board of Visitors should check that:
- (a) a fresh Form 256 has been prepared for the hearing and that each charge, as recorded on Form 256, is one that is provided for in, and follows, the wording of the appropriate paragraph of Prison Rule 47.
  - (b) in addition to the formal wording under the Rules, each charge contains sufficient additional explanatory detail to leave the accused in no doubt as to the precise nature of the charge against him.
  - (c) a fresh Form 1127 (Notice of Report) has been issued to the accused in respect of the Board's hearing in sufficient time for him to prepare his defence. The Form 1127 (Notice of Report), the charge recorded on Form 256 and the charge as heard by the governor at his preliminary hearing (as recorded on the F256) are all identical.
  - (d) there has been an initial inquiry into the charge(s) by the governor in accordance with Prison Rule 48(3).
  - (e) The charges have been referred to the Board by the governor:
    - i. after seeking the directions of the Secretary of State if the offence is one of the 'graver' or 'especially grave' offences which the Rules require should be referred to the Secretary of State; or
    - ii. Because although not such an offence it is a serious or repeated offence against discipline for which the governor considers the awards he can make are insufficient.
- (5) (a) If a charge is not one provided for in the Rules, it is not an offence against discipline, so cannot be sustained, eg. a charge of not having a haircut is not an offence: refusing to obey an order to have a haircut is an offence (subject to the provisos in Rule 26).
- (b) i. Very often there is a confused situation at the time of an offence with the possibility of one or more of several charges being brought and the accused having no really clear recollection of precisely what happened. It is important that the accused is left in no doubt precisely what he is being charged with, eg. when the charge is one of assault on an officer it should be expanded by an addition such as 'ie. by striking Officer Smith in the face with his fist'.
- ii. The formal wording of some offences contains alternatives, so it is particularly necessary to check that the charge indicates clearly which alternative applies. For example, Rule 47(7) refers to a prisoner having an unauthorised article "in his cell or room or in his possession". The charge should specify the alternative relevant to the case i.e. "in his cell", "in his room" or "in his possession" (but see Appendix 3).
- iii. The charge should be clear as to what is alleged eg:  
 'Prison Rule 47(7) - has in his possession an unauthorised article, ie. at 10.00am on 4.12.76, in the heavy textile workshop, was found to have £1 treasury note in his pocket'.
- iv. The facts of an offence against good order and discipline (Prison Rule 47(20)) should be stated.
- (c) The accused will have been issued with a Form 1127 in respect of the hearing in front of the Governor. If he has set out his defence in writing on the reverse of that form he may ask for this to be read out at the hearing before the panel. Nevertheless, he should be given notice of the panel's hearing, and the opportunity to put an amended defence or additional points, by being supplied with a fresh Form 1127 at least 2 hours before the start of the hearing.
- (d) If there has not been an initial inquiry into the charge(s) by the governor, the accused has been deprived of certain safeguards, including the governor's power to dismiss the charge(s), and a panel has no jurisdiction in the matter.
- (e) If the Secretary of State's directions have not been sought, it could mean that a Board is being asked to deal with an offence which should have been referred to the police with a view to its being dealt with in the courts. Prison Rule 51(5) also provides that the Secretary of State may require charges specified in this Rule to be referred to him, instead of to a panel of the Board, in which case an officer of the Secretary of State is nominated to inquire into the charge. (This power is used only on rare occasions, eg. where the offence is against a member of the Board or the governor but is not an appropriate case to refer to the police.)

- (f) Form 1145 (Explanation of the Procedure at Adjudications by Boards of Visitors) has been issued to the accused in sufficient time for him to study it.
- (g) the Medical Officer has certified on Form 256 that the accused is fit for adjudication and punishment, and that any report prepared by the Medical Officer for the attention of the panel is available. Exceptionally, where there is no full-time cover available at the time and the part-time medical officer has been unable to examine the accused before the hearing the adjudication may nevertheless proceed, but no punishment will be awarded any inmate about whose fitness for the punishment the adjudicating panel has any doubt, nor will any award of cellular confinement be made until the inmate has been medically examined.

- (f) Form 1145 is the only advance information given to the inmate about the procedure followed at an adjudication by a panel of the Board.
- (g) i. Prison Rule 53(2) provides that no award of cellular confinement shall be made unless the Medical Officer has certified that the inmate is in a fit state of health to be so dealt with. Standing Orders require that arrangements are made to enable the Medical Officer to examine the accused for his fitness to undergo cellular confinement; and that he reports any matter affecting the inmate's physical and mental condition which appears relevant to the adjudication including, where appropriate, his opinion that the mental condition of the prisoner was such that he should not be held fully responsible for his actions at the time of his alleged offence. The examination will be on the day of, and preceding, the adjudication (and resumption of the adjudication following any adjournment). Exceptionally, however, where there is no full-time cover available at the time and the part-time medical officer is unable to examine the accused within the 24 hours immediately preceding the adjudication (or the resumption following any adjournment) the examination may follow the adjudication, provided that it does so as soon as possible (ordinarily within 24 hours following the adjudication) and that no award of cellular confinement is made unless the Medical Officer has certified the inmate fit for it.
- ii. If during an adjudication the panel is in doubt about a prisoner's culpability at the time of an offence, or about his state of mind, it should ask the Medical Officer whether he can assist in these matters.

### Opening Procedure

It is the responsibility of the Chairman of the panel to see that the following steps are taken, either by the Chairman of the panel or by the clerk and that they, and the responses of the accused, are recorded on Form 256. The panel will not normally know in advance whether they will be receiving a request for legal representation or the assistance of an adviser, or whether the hearing will be adjourned for this or any other reason and, in consequence, whether they or another panel will hear the adjudication. Steps 6-12 must be carried out in respect of every charge referred to the Board. Where the adjudicating panel is different from a panel which considered an application for legal representation or assistance, steps 6-12 must be repeated as appropriate.

- (6) Identify the accused.

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- (7) Ask the accused whether he has received Form 1127 and Form 1145, and make sure that he understands what the procedure will be.
- (8) Read out the charge(s).
- (9) Ask the accused whether he understands the charge(s), and explain to him any matter about which he is in any doubt.
- (10) Ask the accused whether he has had sufficient time to prepare his answer to the charge(s).
- (11) Ask whether or not the accused has made a written answer to the charge(s).
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- (12) Ask the accused if he wishes to be legally represented or if he wishes to be assisted by an adviser.

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- (13) If the prisoner states that he does not want representation or assistance, the adjudication may proceed forthwith from paragraph 16. If the prisoner says that he wants to be legally represented or assisted, the panel should ask why and explain briefly what considerations will be applied when deciding the issue (paragraph 28 of the General Guidance). The panel will probably prefer to adjourn before announcing its decision.

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- (14) The panel should announce its decision.
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- (7-11) If the panel is satisfied that the accused needs more information on the procedure or the charge(s), more time to prepare his answer to the charge(s) or to make out his case for representation or assistance, the hearing should not proceed until this has been remedied. Where a prisoner has difficulty in understanding English, he should be given assistance by members of the adjudicating panel, staff or, if necessary, an interpreter to enable him to participate in the proceedings. If the prisoner claims that he is awaiting advice or a visit from his solicitor in order to prepare his defence or his case for representation or assistance, the panel should establish whether in fact a solicitor has been approached and whether the circumstances of the alleged offence are such that the prisoner will be seriously disadvantaged if the hearing proceeds. The panel may consider an adjournment. If it denies such an adjournment, which it is entitled to do, it should bear in mind that the prisoner may say that his defence or his arguments for representation or assistance will be prejudiced unless he receives advice from his solicitor.

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- (12)
- i. The panel may already know, eg. through a written application, that the prisoner wants to be represented or assisted.
  - ii. The panel is only bound by the terms of the Tarrant judgement to consider applications from prisoners for legal representation or the assistance of an adviser, but every prisoner before them will know from the F1145 that he may make such an application and every prisoner should be asked specifically whether he wants representation or assistance.
  - iii. If the panel has at any stage granted legal representation, it cannot reverse its decision. It is however open to the panel to consider a request for legal representation or assistance at any stage and, if it grants representation or assistance, it should decide whether it should disqualify itself from a fresh hearing which will have to take place following an adjournment.

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- (13)
- i. It is enough for the panel to be satisfied on balance that the prisoner's request for representation or assistance should or should not be granted; it is not the case that a panel may reject an application only if it is sure beyond reasonable doubt that representation or assistance is not needed.
  - ii. If the prisoner does not request representation or assistance, it should not be granted to him. Equally, if he requests representation but not assistance or, having been refused representation but offered assistance, declines assistance, assistance should not be granted to him.
  - iii. The panel might find it necessary to hear the details of the case against the accused before reaching its decision.

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- (14) It is important that it is apparent from the record of the hearing (F256) where an application for legal assistance or representation was refused that it was properly considered.
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(15) Where the panel grants legal representation, it should announce that it is allowing the same facility to the Governor; and if it grants legal representation or assistance it will normally be necessary to adjourn the hearing: where it refuses such requests the adjudication may proceed provided that the panel is satisfied that the accused has had sufficient time to prepare his answer to the charge(s).

(16) Ask the accused in respect of each charge whether he pleads guilty or not guilty.

If the accused pleads not guilty or refuses to plead, proceed in accordance with paragraphs 17 to 28 inclusive, but

if the accused pleads guilty, proceed in accordance with paragraphs 29 to 33 inclusive.

(15) i. Where representation or assistance is approved the panel may fix a reasonable date for the substantive hearing and indicate that only in exceptional circumstances would they or another panel consent to a further adjournment.

ii. If the adjudication is adjourned to arrange representation or assistance or for any other reason, it will normally be necessary for the resumed hearing to repeat steps 6-11.

(16) i. A separate record (F256) should be made in respect of each charge.

ii. If the accused refuses to plead, or qualifies a plea of guilty, a not guilty plea should be entered on Form 256, and the hearing should proceed as if the accused has pleaded not guilty. A plea of guilty should be recorded only if the prisoner pleads guilty to the essential element or elements of the charge: for example, a prisoner who admits that his allegation was false but denies it was malicious, or who admits to possessing a pipe-stem but denies knowing it had been used for smoking controlled drugs, should be recorded as making a not guilty plea.

iii. If, in addition, the accused refuses to speak during the proceedings, it should be explained to him that the hearing will nevertheless continue, that all other available evidence will be heard, and that the question of guilt, and of the award to be made if the finding is guilty, will be decided in the light of that evidence.

iv. Where a charge is dealt with in absentia (see paragraph 51 of the **General Guidance**) the plea should be recorded as not guilty.

### The Hearing

In a legally represented hearing, the main roles will be taken by the panel and the two lawyers. It is for the panel to decide the ordering procedure and to conduct the proceedings as an impartial inquiry to discover the facts and the truth and to give the prisoner, through his legal representative, a full opportunity of presenting his case.

In what follows references to the reporting officer and the accused or the inmate, should be taken to include the phrases 'or the Governor's representative as appropriate' and 'or his legal representative, as appropriate'.

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**The Hearing (if the inmate has pleaded not guilty or is treated as so doing)**

(17) The panel should hear the evidence of the reporting officer, and invite the accused, if he so wishes, to question the officer on his evidence, or on relevant matters which the officer has not covered. The Chairman and other members of the panel may also wish to ask questions for clarification.

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(18) The panel should repeat 17 for any other witnesses in support of the charge. An inmate should be asked to confirm that he is prepared to give evidence, as he cannot be compelled to do so. An officer of the prison who is a witness may be required by the Governor to attend as part of his duties. Witnesses other than the reporting officer should not normally remain in the room after they have given their evidence and been questioned on it.

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(19) If any exhibit is produced during the hearing (eg. a weapon which has been used, or an unauthorised article found in the accused's possession) this should be described and recorded at the time it is produced.

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- (17)
- i. There is no objection to the reporting officer reading out his evidence from a previously prepared statement: this should be incorporated in the record of the hearing. (See also note i. to 1.)
  - ii. If the accused in any way abuses the opportunity to question the officer directly the Chairman may insist on questions being put through him.
  - iii. If, at this stage, the accused wishes to change his plea to guilty, this may be accepted and the hearing continued in accordance with paragraphs 29 to 33.
  - iv. If the reporting officer is temporarily not available to give evidence in person the situation should be explained to the accused and where the absence is likely to be less than 3 weeks it should be left to him to decide whether the hearing should proceed with the witness's written evidence and in the knowledge that he would not be able to question the officer on his evidence, or whether the hearing should be adjourned until the officer returns to duty. (The foregoing will not apply where the reporting officer has no first-hand knowledge of the alleged offence, eg. an escape from another establishment.) Where the accused chooses to await the availability of the officer and he is segregated under Prison Rule 48, the Chairman should ask the Governor to consider whether segregation is still necessary during the adjournment.
  - v. If the reporting officer is likely to be unavailable for more than 3 weeks (or sooner where an earlier hearing is imperative) the advice of the Governor should be sought.

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(18) It is most important that, on leaving the adjudication room, a witness should not have the opportunity to talk to those waiting to give evidence.

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(19) For disposal of exhibits, see note ii. to 48.

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(20) The panel should invite the accused to make his defence to the charge(s) and to give oral evidence if he wishes. This is the appropriate time for any written defence or explanation he has made on Form 1127 to be read out. Unless he wishes to call witnesses, this is also the appropriate time for him to comment on the evidence and to point out anything he thinks is in his favour.

(21) If the accused asks to call witnesses, whether named in advance or during the hearing, the panel should ask him to say what he thinks their evidence will show or prove. Unless the adjudicating panel is satisfied (after any submission from the accused) that the witnesses will not be able to give relevant evidence, they should be called. An inmate witness should be asked to confirm that he is prepared to give evidence, as he cannot be compelled to do so. An officer of the prison may be required by the Governor to give evidence as part of his duties. If the panel decides not to call a witness requested by the accused he should be told why and given the opportunity to comment. The reason for the decision should be recorded in the record of the hearing.

(22) The panel should invite the accused's witnesses to say what they know of the affair, and invite the accused, if he so wishes, to question them on their evidence or on anything else that appears relevant to the case. The reporting officer should also be given the opportunity to question the accused or witnesses, and members of the panel may also wish to ask questions. The witnesses should not remain in the room after they have given their evidence and been questioned on it.

(23) The adjudicating panel may also wish to call witnesses, even though they have not been named by the accused or the reporting officer.

(24) After all the witnesses have been heard, the panel should ask the accused whether he wishes to say anything further about his case, to comment on the evidence, or to draw attention to any relevant considerations. If the accused tries to bring up points in mitigation at this stage, the points should be noted and considered carefully at the appropriate time (see paragraph 29 below).

(20) If the inmate has prepared a written statement he may be invited to read it aloud, but if he declines to do so but wishes it to be taken into consideration it should be read out by the Chairman of the panel. See also note to 5c.

(21) i. Witnesses must not be excluded for reasons of administrative convenience or because the panel considers the case against the prisoner is already made out. If the panel disbelieves the prisoner or is in doubt about his story, it should refuse to call his witnesses only if it is convinced that the evidence they are expected to give is wholly irrelevant to the point at issue (eg. they could not have witnessed an incident being inquired into) or that the request is part of an attempt to render the hearing unmanageable. However, if the panel accepts the matter(s) which the prisoner is trying to establish it is not necessary to hear witnesses, and it should make sure that the inmate understands this and that it is recorded on the form F256.

ii. If an essential witness is temporarily unavailable the notes in iv. and v. to 17 are applicable.

(22) If the panel agrees to hear a witness but the witness is not readily available to give evidence in person, the accused should be asked whether he would like the hearing to be adjourned until the witness can be present. The Chairman of the panel should find out how soon that can be, and provided there will not be any undue delay the hearing should be adjourned accordingly. Ordinarily an adjudication should not be adjourned longer than 3 weeks (see notes iv. and v. to 17 above).

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(25) The panel should consider the question of guilt. Where it does not retire to a separate room to do so, the governor, any other member of the staff (including the clerk to the Board) and all other persons should leave the room; the accused and his escort should then leave the room.

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(26) Where the panel reaches a conclusion that the evidence constitutes a lesser offence than that with which the prisoner is charged, it must return a finding of not guilty.

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(27) When the panel have come to a decision on the finding, then, depending on the practice followed (see paragraph 25 above), either the panel should return to the room, or the accused and his escort should be recalled, followed by such members of the staff and other persons as need to be present.

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(28) The Chairman of the panel should announce its decision(s) and this should be recorded on Form 256.

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- (25)
- i. This is necessary to demonstrate that the panel is entirely independent. To avoid any appearance that the panel was improperly influenced in its decision by the Governor or the member of staff deputising for him at the hearing, it is essential that there should be no communication or opportunity to communicate at this stage between him and members of the panel except in the presence of the accused. No evidence of any kind should be taken, or decision communicated, except in the presence of the accused.
  - ii. The panel should find the prisoner guilty only if it is satisfied beyond reasonable doubt that he is guilty of all the essential elements of the charge (see paragraph iii of the Preface and 61 of the General Guidance).
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(26) The panel has no power to reduce a charge during the hearing or to direct that a lesser charge should be substituted. (see also paragraph 63 of the General Guidance).

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(27) See note to 25 i.

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(28) When more than one charge is being heard at the same time the finding on each charge should be clearly stated and recorded, by cross-referencing if necessary on the Form 256.

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**If the finding in respect of any Charge being Heard is one of Guilty:**

- (29) The inmate should be asked whether he wishes to say anything in mitigation. If he asks to call any person to support his plea in mitigation this should be allowed unless the panel is satisfied that the witness will not be able to give relevant evidence. If no plea in mitigation is put forward, this fact should be recorded on Form 256.
- 
- (30) The Chairman of the panel should then invite the governor, or the member of staff deputising for him, to give a report on the inmate including whether the inmate is subject to a suspended or current disciplinary award, his conduct generally during his current sentence and any other information the panel should be aware of and details of previous prison offences during the current sentence. Ask the inmate whether he wishes to add anything or to put any question to the governor in connection with his report.
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- (31) The panel should consider, privately, as in paragraph 25 above, awards it will make. No award of cellular confinement may be made unless the medical officer has certified that day that the inmate is fit for it; and if the inmate has not been medically examined that day no other punishment will be awarded if the panel has any doubt about the inmate's fitness for it. The panel may adjourn, for a period not normally exceeding 24 hours, for any necessary medical examination to be made.
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- (32) When the panel have decided on the awards to be made, it should proceed as in paragraph 27 above.
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- (33) The panel should announce the awards and if the panel is making awards in respect of more than one charge, whether the awards are to be cumulative or concurrent with, other awards.
- If an award is ordered to be suspended (Prison Rule 55(1)), or it includes the stoppage of earnings under the provisions of Prison Rule 53(1), the terms of the award must be set out in writing in the 'Remarks' section of Form 256, and the inmate's liability explain to him in ordinary language.

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- (30)
- i. The Chairman of the panel may put questions to the Governor to clarify or elicit further information relevant to the question of punishment, eg. about any period the accused has been segregated whilst awaiting adjudication.
  - ii. Essentially, the report should be about the prisoner's behaviour during his current sentence and should not include details of his criminal history. No information should be given to the panel in the absence of the prisoner except, of course, where the whole hearing has been in absentia (see paragraph 52 of the General Guidance).
  - iii. Where the report is read from a previously prepared note this should form part of the record of the adjudication.
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- (31)
- i. See note to 25 i.
  - ii. Ordinarily the inmate will have been medically examined on the day of the adjudication. There is however a dispensation at establishments where there is only a part-time medical officer (see note to 51).
- 
- (32) See notes to 25.
- 
- (33)
- i. The awards must be within the range of, and expressed in the terms of, the Prison Rules.
  - ii. Neither the award nor any entry in the 'Remarks' section of Form 256 should include any reference to any administrative action or any recommendation for such action (eg. placing on Rule 43, return to a closed prison, or disposal of exhibits). If it is desired to make reference to exhibits it would be appropriate to tell the inmate that they will be disposed of by the governor in accordance with standing instructions.

If the inmate is subject to an extant suspended award, the panel's decision on the suspended award must be announced and explained to the inmate and recorded on Form 256. The decision may be to:

- (\*a) direct that the suspended award shall take effect; or
- (\*b) reduce the period or amount of the suspended award and direct that it shall take effect as so reduced; or
- (c) vary the original direction by substituting for the period specified a period expiring not later than 6 months from the date of variation; or
- (d) give no direction with respect to the suspended award.

\*In either of these cases the panel may order that it should take effect immediately, or that it should commence on the expiration of an award of the same nature imposed for the current offence.

(34) The clerk should ensure the awards are correctly entered in the appropriate spaces on Form 256 before the Chairman of the adjudicating panel signs and dates the form.

(35) If the charge was in respect of an especially grave offence (prison Rule 52(1)) the clerk should arrange for the local press to be informed.

- iii. An individual award may not be suspended in part, but when a penalty comprising more than one award is imposed one or more of them may be wholly suspended. Thus, an award of forfeiture of privileges, for example, may be suspended in its entirety but not in part and a penalty comprising, say, forfeiture of privileges and cellular confinement may be suspended by ordering that both elements or either should be wholly suspended.
- iv. A suspended award will not usually be appropriate for an offence where violence has been used and injuries caused or where there has been a serious offence against good order and discipline. Suspended awards of forfeiture of remission should be made only where there are special extenuating circumstances and, where an award of more than 14 days' forfeiture of remission is imposed, the F256 should indicate what those extenuating circumstances are.
- v. A suspended award may not be activated unless a prisoner is found guilty of a further offence which was committed during the period of suspension.
- vi. The *activation* of a suspended award may not be ordered as the punishment for the further offence i.e. an award is made for the further offence and in addition the panel may order the suspended award to take effect in whole or in part.

(34) Where awards are made in respect of more than one charge, each Form 256 should show separately the relevant awards. See notes to 33.

(35) The Clerk should provide the following information

- The name of the prisoner
- The offence with which he was charged
- The finding and, where the prisoner was found guilty
- The award.

**The Hearing (if the accused has pleaded Guilty)**

(36) The panel should hear the evidence of the reporting officer, and invite the accused, if he so wishes, to question the officer on his evidence or on relevant matters which the officer has not covered. The Chairman or other members of the panel may also wish to ask questions for clarification.

(37) The panel should repeat 36 for any other witnesses in support of the case. An inmate should be asked to confirm that he is prepared to give evidence, as he cannot be compelled to do so. An officer of the prison may be required by the Governor to give evidence as part of his duties.

Witnesses other than the reporting officer should not normally remain in the room after they have given their evidence and been questioned on it.

(38) If any exhibit is produced during the hearing (eg. a weapon which has been used, or an unauthorised article found in the accused's possession) this should be described and recorded at the time it is produced.

(39) The panel should invite the accused to offer an explanation of his conduct. This is the appropriate time for any written explanation he has made on Form 1127 to be read out.

(40) If the accused asks to call witnesses, whether named in advance or during the hearing, the panel should ask him to say what he thinks their evidence will show or prove. Unless the adjudicating panel is satisfied (after any submission from the accused) that the witnesses will not be able to give relevant evidence, they should be called. An inmate witness should be asked to confirm that he is prepared to give evidence, as he cannot be compelled to do so. An officer of the prison may be required by the Governor to give evidence as part of his duties. If the panel decides not to call a witness request-

- (36)
- i. There is no objection to the reporting officer reading out his evidence from a previously-prepared statement, which should be incorporated in the record of the hearing (see also note i. to 1).
  - ii. If the accused in any way abuses the opportunity to question the officer directly the Chairman of the panel may insist on questions being put through him.
  - iii. If the accused himself or through witnesses challenges facts on which the charge is based the plea should be entered as not guilty and the hearing should be continued in accordance with paragraphs 17 to 35.
  - iv. If the reporting officer is temporarily not available see notes iv. and v. to 17.

- (37)
- i. If an essential witness is temporarily unavailable the notes iv. and v. to 17 are applicable.
  - ii. See note to 18.

(38) For the disposal of exhibits see note ii. to 47.

(39) If the inmate has prepared a written statement which he wishes the panel to consider he may be invited to read it aloud, but if he declines the statement should be read out by the Chairman of the panel. See also note 5c.

- (40)
- i. Whether the witnesses named by the accused are inmates or members of the staff, it is for the panel to decide whether any or all of them are likely to be able to assist in establishing the facts (see paragraph 21 ii).
  - ii. If an essential witness is temporarily unavailable the notes iv. and v. to 17 are applicable.

ed by the accused, he should be told why and given the opportunity to comment. The reason for the decision should be recorded in the record of the hearing.

- (41) The panel should invite the accused's witnesses to say what they know of the affair or, as the case may be, to state any matters in mitigation and invite the accused, if he so wishes, to question them on their evidence or on anything else that appears relevant to the case or to the question of mitigation. The reporting officer should also be given the opportunity to question the accused or witnesses, and members of the panel may also wish to ask questions. The witnesses should not remain in the room after they have given their evidence and been questioned on it.
- (42) The adjudicating panel may also wish to call witnesses, even though they have not been named by the accused or the reporting officer.
- (43) If the panel is satisfied that the inmate is guilty of the offence with which he is charged, the Chairman of the panel should announce this, and the finding should be recorded on Form 256.
- (44) After all the witnesses have been heard, the panel should ask the accused whether he wishes to say anything further about his case, to comment on the evidence, or to draw attention to any relevant considerations particularly anything in mitigation. If he asks to call any person to support his plea in mitigation this should be allowed unless the panel is satisfied that the witness will not be able to give relevant evidence. If no plea in mitigation is put forward, the fact should be recorded on Form 256.
- (45) The Chairman of the panel should then invite the governor, or member of staff deputising for him, to give a report on the inmate including whether the inmate is subject to a suspended or current disciplinary award, his conduct generally during his current sentence, any other information the panel should be aware of and details of his previous-prison offences during the current sentence. Ask the inmate whether he wishes to add anything or to put any question to the governor in connection with his report.

- (41) i. If the accused has asked to call a witness who appears to have a useful contribution to make but who is not available to give evidence, see note to paragraph 22 above regarding possible adjournment.
- ii. See also note to 18.

- (43) When more than one charge is being heard at the same time the finding on each charge should be clearly stated.

- (44) As the accused has pleaded guilty it may not be necessary to follow the procedure at paragraph 25 above.

- (45) i. The Chairman of the panel may put questions to the Governor to clarify or elicit further information relevant to the question of punishment, eg. about any period the accused has been segregated whilst awaiting adjudication.
- ii. Essentially, the report should be about the prisoner's behaviour during his current sentence and should not include details of his criminal history. No information should be given to the panel in the absence of the prisoner except, of course, where the hearing has been in absentia (see paragraph 51 of the General Guidance).
- iii. Where the report is read from a previously-prepared note this should form part of the record of the adjudication.

(46) The panel should consider what awards it will make. Where it does not retire to a separate room to do so the governor, any other members of the staff (including the clerk to the Board) and all other persons should leave the room; the prisoner and his escort should then leave the room.

No award of cellular confinement should be made unless the medical officer has certified that day that the inmate is fit for it; and if the inmate has not been medically examined that day no other punishment will be awarded if the panel has any doubt about the inmate's fitness for it. The panel may adjourn, for a period not normally exceeding 24 hours, for any necessary medical examination to be made.

(47) When the panel have decided on the awards to be made, then, depending on the practice followed (see paragraph 46 above), either the panel should return to the room, or the inmate and his escort should be recalled, followed by such members of the staff and other persons as need to be present.

(48) The panel should announce the award, and if the panel is making awards in respect of more than one charge, whether the awards are to be cumulative or concurrent with, other awards.

If an award is ordered to be suspended, or it includes the stoppage of earnings under the provisions of Prison Rule 53(1), the terms of the award must be set out in writing in the 'Remarks' section of Form 256, and the inmate's liability explained to him in ordinary language.

If the inmate is subject to an extant suspended award, the panel's decision on the suspended award must be announced and explained to the inmate and recorded on Form 256. The decision may be to:

- (\*a) direct that the suspended award shall take effect; or
- (\*b) reduce the period or amount of the suspended award and direct that it shall take effect as so reduced; or
- (c) vary the original direction by substituting for the period specified a period expiring not later than 6 months from the date of variation; or
- (d) give no direction with respect to the suspended award.

\*In either of these cases the panel may order that it should take effect immediately, or that it should commence on the expiration of an award of the same nature imposed for the current offence.

(46) i. See note to 25 i.

ii. Ordinarily, the inmate will have been medically examined on the day of the hearing. There is, however, a dispensation at establishments where there is only a part-time medical officer (see note to 5 g).

(47) See note to 25 i.

(48) i. The awards must be within the range of, and expressed in the terms of, the statutory Rules.

ii. Neither the award nor any entry in the 'Remarks' section of Form 256 should include any reference to any administrative action or any recommendation for such action (eg, placing on Rule 43, return to a closed prison, or disposal of exhibits). If it is desired to make reference to exhibits it would be appropriate to tell the inmate that they will be disposed of by the governor in accordance with standing instructions.

iii. An individual award may not be suspended in part, but when a penalty comprising more than one award is imposed one or more of them may be wholly suspended. Thus, an award of forfeiture or privileges, for example, may be suspended in its entirety but not in part and a penalty comprising, say, forfeiture of privileges and cellular confinement may be suspended by ordering that both elements or either should be wholly suspended.

iv. A suspended award will not usually be appropriate for an offence where violence has been used and injuries caused or where there has been a serious offence against good order and discipline. Suspended awards of forfeiture of remission should be made only where there are special extenuating circumstances and where an award of more than 14 days' forfeiture of remission is imposed the F256 should indicate what those extenuating circumstances are.

- v. A suspended award may not be activated unless a prisoner is found guilty of a further offence which was committed during the period of suspension.
- vi. The *activation* of a suspended award may not be ordered as the punishment for the further offence is, an award is made for the further offence and in addition the Board may order the suspended award to take effect in whole or in part.

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(49) The clerk should ensure the awards are correctly entered in the appropriate spaces on Form 256 before the Chairman of the adjudicating panel signs and dates the form.

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(50) If the charge was in respect of an especially grave offence (Prison Rule 52(1)) the clerk should arrange for the local press to be informed.

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(49) It is important that where awards are made in respect of more than one charge, each Form 256 should show separately the relevant awards. See notes to 48.

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(50) The Clerk should provide the following information:

- The name of the prisoner
- The offence with which he was charged
- The finding and, where the prisoner was found guilty
- The award.

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## Appendix 1: Explanation of the Procedure at a Hearing of a Disciplinary Charge by a Governor or Board of Visitors

When you appear before the Governor or the Board of Visitors\* at the hearing of a disciplinary charge the procedure will be as described below. Statutory Rules about discipline are set out in your copy of the General Information Booklet for Prisoners. If you want any advice before the hearing about the procedure, ask your officer about it.

- (1) The Governor will ask you whether you received the Notice of Chairman Report (Form 1127) showing the charge(s) against you.
- (2) You will be asked whether you have received this card which explains the procedure at the hearing of a charge. If you do not understand the procedure then you should say so.
- (3) The charge(s) will be read out to you. If there is any difference between the charge(s) read out and the charge(s) on the Notice of Report, or if you are in any doubt about any charge, this will be your opportunity to say so.
- (4) You will be asked whether you have had enough time to prepare your defence to the charge(s). If you consider you need more time, you should say so and give your reasons so that it can be considered whether the hearing should be adjourned to allow you more time.
- (5) You will be asked whether you have made a written answer to the charge.
- (6) If the hearing is before the Board of Visitors, you may ask the Chairman if you can be legally represented or assisted by a friend or adviser. The panel will consider your request and if they agree to it the hearing may be adjourned to a suitable date. If a request for legal representation is granted by the panel the Governor will allow you facilities to contact a solicitor of your choice. If you do not know a solicitor who will act for you the legal aid designated officer will show you the Law Society's regional legal aid solicitors list so that you may choose a solicitor. Your solicitor will advise you about how his costs might be met from the legal aid fund.
- (7) If a request for legal representation or assistance is refused the panel will almost certainly wish to proceed with the adjudication and you should be prepared for this.

\*In practice, the adjudication will be conducted by a panel of between 2 and 5 members of the Board.

- (8) The Governor will ask you, taking each charge separately if there is more than one, whether you plead guilty or not guilty. You will be treated as having pleaded 'Not guilty' unless you plead 'Guilty'.  
Chairman
- (9) The officer who reported you will give his evidence. You will be allowed, after the officer has completed his statement, to question him on what he has said or on any relevant matter.  
  
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 also.  
  
You may be required to put your questions through the Governor.  
Chairman  
  
Do not argue with witnesses. If you do not feel able to frame questions to bring out your point, explain it to the Governor, who will  
Chairman  
assist you by asking them for you.
- (10) You will then be invited either to:
  - (a) make your defence to the charge(s) – if you have not pleaded guilty;
  - or
  - (b) offer an explanation of your conduct and say why you think you should be treated leniently – if you have pleaded guilty.
- (11) This will be the time for any written statement you have made of your defence or in explanation to be read out; and – unless you want to call witnesses – for you to comment on the evidence given and point out anything you think is in your favour.
- (12) If you want to call witnesses, ask for permission to call them and say who they are, even if you have named them before the hearing.  
  
If they are witnesses in your defence, say what you believe their evidence will prove. If the Governor is satisfied that their evidence  
Chairman  
may help to establish exactly what happened, the witnesses will be called (but remember that witnesses who are inmates cannot be compelled to give evidence).  
  
You will be allowed to question the witnesses on their evidence or any relevant matter, and they may also be questioned by others present.

- (13) After your witnesses have been heard you will be given the opportunity to say anything further about your case, to comment on the evidence and point out anything you think is in your favour.
- (14) The Governor will announce the finding of guilty or not guilty  
Chairman  
for each charge.
- (15) If you have pleaded not guilty but are found guilty, the Governor  
Chairman  
will invite you to say, before any punishment is awarded, why you think you should be treated leniently.
- You may ask to call someone to support a plea for leniency.
- The Governor will ask for a report to be read out on your conduct  
Chairman  
and record since you last came into custody, and will ask you whether you want to add anything or ask any question in connection with the report.
- (16) The Governor will announce the award(s) for each offence  
Chairman  
proved. If you do not understand how the award will affect you, you should ask for it to be explained to you.
- (17) The Governor may adjourn the hearing, or the Governor may  
Chairman  
bring a hearing to an end, at an intermediate stage – for example, to await the outcome of any police investigation into the case or to await directions from higher authority, or so that an essential witness may be present. The reason for any adjournment or termination will be given to you.

Form 1145 ( revision)

## Appendix 2: The Functions of the Solicitor representing the Governor

- (1) The principal function of the solicitor representing the governor is to assist the adjudicating panel in getting at the truth. Before he receives his instructions, the prisoner will have been charged and have appeared before the Governor. The alleged offence will have been investigated by prison officers and some statements may have been taken from witnesses (these are likely to be prison officers, but there may be exceptionally a prisoner who is able and willing to give evidence against the defendant). The solicitor should consider the charge in the light of the evidence to see whether it is appropriate and whether further evidence is required to support it. If further evidence is required, the solicitor should report to the Governor asking for arrangements to be made for him to see the witness and he should ask the panel for an adjournment if this is necessary. If the charge is not appropriate, the solicitor should report to the Governor, suggesting that the proper remedy is for the solicitor to inform the panel that he will not be calling evidence in support of that charge, and inviting the panel to dismiss it. The offence charged may be appropriate but the particulars may be wrong or inadequate. In that case, the solicitor should raise the matter at the beginning of the proceedings before the panel and suggest that the panel should proceed on the basis of the solicitor's formulation of the particulars. The question of reduction of charges and alternative charges is discussed in paragraphs 10 and 63 of the General Guidance: where the evidence at the hearing does not support the offence charged, it must be dismissed: the charge must not be reduced. If the solicitor is not satisfied with the evidence as set out in the statements supplied to him, he should inform the Governor who will arrange for the solicitor to take further statements from the relevant witnesses.
- (2) The solicitor will present the evidence in support of the charge. While the principal function of the solicitor is to assist the panel in getting at the truth he has an important part to play in protecting witnesses from unfair cross-examination and in presenting the other side of the case if the prisoner's solicitor launches an attack on the conduct of prison officers or on the way the prisoner has been treated in prison. The solicitor will give every assistance to the panel when points of law are raised, whether by the solicitor for the prisoner or by the panel. (This does not mean of course that the panel will wish to look only to the Governor's representative for advice on legal points. In practice it will be sensible, when a legal point is made, to seek comments from both lawyers present so that when the point has been elucidated the panel will be able to form a judgement.)
- (3) Experience suggests that there are a number of requests which the solicitor acting for a prisoner may make. Examples are discussed in the following paragraphs. In relation to each, it must

be remembered that the panel has no powers to compel the attendance of witnesses or the production of documents and cannot impose duties upon prison officers or the Governor of the prison. However, if the panel is of the opinion that in the interests of justice particular action should be taken, the proceedings may be adjourned while the Governor is invited to consider the views expressed by the panel.

- (4) The solicitor acting for the prisoner may ask to see copies of all statements which it is intended to use against the prisoner. Where there are such statements, the solicitor representing the Governor will no doubt wish to anticipate this request by providing copies as soon as possible.
- (5) The solicitor for the prisoner may require facilities to interview prison officers or other prisoners. This request should be made first to the Governor but if it is repeated to the panel, the solicitor representing the Governor should seek to establish which prisoners it is sought to interview and why it is thought that they may be able to give evidence for the defence. There can be no possibility of arranging for the solicitor to see all the prisoners who were in a particular wing at the relevant time.
- (6) The solicitor may ask for a list of names of prisoners in the wing or in particular cells or for a list of officers on duty at the time. This is not a matter for the panel but for the Governor, and the solicitor representing the Governor should seek to narrow the request as far as possible and to find the justification for it.
- (7) The solicitor for the prisoner may ask for an identification parade to be held so that his client may seek to identify prisoners or prison officers. Again, this is a matter for the Governor, but the aim should be to discover the case for holding such a parade. A member of staff will not however be compelled to take part in an identification parade against his will.

## Appendix 3: Advice on Various Matters

This note comprises a brief summary of Home Office guidance on some particular adjudication issues relevant to Boards of Visitors proceedings.

### Possession of unauthorised articles

- (2) In its judgement on 31 July 1984 in the case of *King v the Deputy Governor of Camp Hill Prison*, the Court of Appeal (Lawton, Griffiths and Browne-Wilkinson LLJ) enunciated its view of the proper construction of Prison Rule 47(7). To be guilty of an offence of having an unauthorised article, the prisoner must have been exercising some control over the unauthorised article in his cell; it is not sufficient merely to 'know' of the presence of the article.
- (3) Griffiths LJ went on to say that in shared cells it may be more difficult to know whether the article is in the joint possession of all the prisoners or whether one or more are the guilty parties.
- (4) It is important therefore, particularly where the prisoner is in a shared cell, that the adjudicator is satisfied that the prisoner was exercising sole or joint control over the article before finding him guilty.

### Drug Offences

- (5) There is no specific disciplinary offence under the Prison Rules which refers to the possession, use or supply of controlled drugs; charges may be laid under Rule 47, paragraphs (7), (10) or (20) depending on the circumstances of the alleged offence. It is of course open to a Governor to hear a charge under any of these paragraphs or for the matter to be referred to the police. However in most cases the charge is referred to the Board under Rule 51(2).
- (6) The standard of proof required when drugs-related charges are heard is the same as that for other disciplinary offences: ie. a finding of guilt should not be arrived at unless the panel is satisfied beyond a reasonable doubt that the prisoner committed the offence with which he is charged. There is an important difference between the mechanism available for dealing with drug abuse in prisons and that provided by the criminal law. Under the Misuse of Drugs Act 1971 the relevant offence is one of possessing a controlled drug. Prison Rule 47(7) provides for a disciplinary offence of possessing an unauthorised article. It is therefore open to the reporting officer to charge a prisoner under Rule 47(7)

with the possession of a pen or razor which has been in contact with, for example, cannabis resin; a charge need not be limited to possessing cannabis resin itself. This is taken to mean that the jurisprudence of the Misuse of Drugs Act to the effect that a charge of possession can only relate to a measurable quantity of a controlled drug is not binding on charges under the Prison Rules, and a charge under Rule 47(7) may be made out notwithstanding that only traces of the drug, not amounting to a measurable quantity, are found.

- (7) A charge of being in possession of controlled drugs or articles such as pens or razors which are believed to have been in contact with controlled drugs will normally be preferred under Prison Rule 47(7). Such a charge may be preferred immediately on discovery but the charge must be formulated as 'had in his possession a controlled drug' or 'had in his possession an article containing traces of a controlled drug' and not 'had in his possession a substance believed to be a controlled drug'. It is then open to the Governor, in consultation with the Regional Director, to refer the matter to the police for investigation and to adjourn the hearing pending the outcome. If discovery of a substance believed to be a controlled drug is not referred to the police for investigation, the adjudication may proceed provided that the prisoner makes a clear and unambiguous admission of guilt. The Governor should satisfy himself, particularly in the case of young offenders or any inmate who might not fully understand the charge, that they recognise the meaning and nature of controlled drugs and that it is a serious offence to possess them. With a clear and unambiguous admission of guilt, it is unnecessary to send the suspected substance for forensic analysis. The Board of Visitors may adjudicate without any forensic analysis, but only if the prisoner maintains his clear and unambiguous admission of guilt.
- (8) Where a prisoner makes a not guilty or equivocal plea before the Governor or, on the case being referred to the Board of Visitors, changes a guilty plea to one which is equivocal or not guilty, the substance may be analysed with a BDH kit; if this proves negative, the charge of possession of controlled drugs must be dropped; if positive or if a BDH kit has not been used, the substance must immediately be sent for forensic analysis and the hearing adjourned to be resumed on receipt of a forensic analysis report.
- (9) The judgement of Mr Justice McCullough in the Divisional Court on 20 September 1982 in the case of *R v Board of Visitors Highpoint Prison ex parte McConkey* provided guidance on another aspect of charging in connection with drugs offences ie. where a charge under Rule 47(20) may be appropriate.
- (10) McConkey and three other inmates at Highpoint prison were charged under Prison Rule 47(20) with offending against good order and discipline in that 'they were present at a drug smoking party or session'; the other three inmates were also charged under

Prison Rule 47(7) with being in possession of, or having in bedding, substances believed to be cannabis, or a pipe adapted to smoke drugs. McConkey, and two of the others, were found guilty on the 47(20) charge. In quashing the Board's decision in respect of McConkey, Mr Justice McCullough explained that there had been no allegation that McConkey was in possession of the pipe or the cannabis, nor that he encouraged or assisted anyone else to smoke. He rejected the argument that mere presence, knowing that an offence was being committed, could constitute an offence; similarly he rejected the view that a mere observer should be regarded as an offender himself because of the risk that he might be tempted to join in or in some way assist the offender. He also rejected the argument that guilt should result merely because the presence of the observer might happen to assist the offender to escape justice by creating confusion in the mind of an officer as to who was, in fact, offending.

- (11) Mr Justice McCullough went on to say that it would be another matter if the inmate present 'wilfully encouraged the offender' because 'he then makes himself party to the principal offender's offence and himself offends'. It follows from this that where a prisoner is suspected of being present, even knowingly, when drugs are being smoked or consumed, he should not be charged, under Prison Rule 47(20), with mere presence. To constitute an offence some additional ingredient has to be established. The charge should make clear what the additional ingredient is thought to be so that (a) the adjudicating body is clear that this is an essential feature of the offence which must be proved and (b) that the prisoner has a full opportunity of hearing the allegation and presenting his defence. Clearly everything will depend on the individual circumstances of a case but, as examples, the charge might make it clear that the inmate was suspected of wilfully encouraging or assisting those actually smoking or consuming drugs (eg. by acting as a lookout). Similar considerations apply to offences other than those involving drugs; for example, unauthorised possession or taking of unauthorised articles, Rules 47(7) and (10); damaging a cell or property Rule 47(11); attempts to escape Rule 47(5) and (19); and barricading or arson Rule 47(11) and/or 47(20).

- (12) In the light of the judgement by Mr Justice McCullough it is probable that when conducting a judicial review of adjudications in respect of drug related offences the Divisional Court will draw analogies with the criminal law. First, where a prisoner is charged with an offence which if committed outside the prison could result in a charge under the criminal law, it is necessary that the offence of possession be proved to the same standard as is required for a criminal offence under the Misuse of Drugs Act. The adjudicating authority must therefore satisfy itself that the prisoner knew that the unauthorised article was in his possession and that he knew it contained traces of, or was, a controlled drug. It is not necessary that the prisoner should know the precise nature of the drug.

(13) A statement by the prisoner in defence of a charge that he 'did not know the article was there' or that he 'did not know the article had been used for smoking a controlled drug' is a legitimate defence; equally, a statement to the effect that he was exercising no degree of control over an article in his cell is a legitimate defence, even though he admitted knowing the article was there or had been used for smoking drugs. Whether these defences are believed is a matter for judgement by the adjudicating authority which has the opportunity to decide from, inter alia, the demeanour of the witness whether he is telling the truth. Other statements commonly advanced by a prisoner such as 'someone gave it to me', 'I do not smoke cannabis', 'it is not my pen' and 'I found the pen' do not in themselves constitute a valid defence. They may however be relevant in assessing the credibility of a defence to the effect that the prisoner did not know the article was in his possession or that he did not know that it contained or was a controlled drug.

(14) The adjudicating authority should try to ensure that the prisoner understands the three elements in the charge: that the unauthorised article was in his cell, that it was under his sole or joint control and that he knew that it contained traces of or was a controlled drug; and pleads accordingly. If the prisoner admits control over an unauthorised article but denies knowing that it contained traces of a controlled drug, the plea should be recorded as 'not guilty'.

(15) The definition of this offence has led to disputes in some disciplinary proceedings. The Divisional Court appear to have approved the definition "an offence of collective insubordination, collective defiance, or disregard of authority or refusal to obey authority". Certainly the Court thought that the vital questions in most cases would be whether collective action was intended to be collective, ie. whether it was concerted or not, and whether there had been mere disobedience of a particular order, or disregard or defiance of authority.

#### **Mutiny Awards**

(16) An award of punishment by a panel must be within the range and the terms of Prison Rules 51(4) and 52(3). Unless an award is suspended, or is ordered to start at the end of a period of punishment already being served, punishment other than forfeiture of remission will be implemented forthwith. If more than one punishment of a like kind is imposed at the same time for separate offences they may be ordered to run concurrently. An award of forfeiture

of remission may be made in the case of a prisoner who is detained only on remand or to await trial or sentence, notwithstanding that the prisoner has not (or had not at the time of the offence) been sentenced to imprisonment. A panel may direct that an award shall not take effect unless during a specified period not exceeding the ensuing 6 months the prisoner is found guilty of committing another offence against discipline. A suspended award will not usually be appropriate for an offence where violence has been used or where there has been a serious offence. Suspended awards of forfeiture of remission should be made only where there are special extenuating circumstances. An award may not be suspended in part; although any or all of the awards made for a single offence may be suspended, it is preferable to suspend all or none.

#### **Escapers**

**Adjudications on Charges under Prison Rule 47(5), 47(6) and 47(21) and under Youth Custody and Detention Centre Rules 50(5), 50(6) and 50(21)**

(17) In making an award upon an inmate found guilty of an offence relating to absence outside the establishment or a failure to return after being temporarily released, no account should be taken of:

- (a) the length of time the inmate has been unlawfully at large. This is because, under section 49(2) of the Prison Act 1952, the period will not be counted as part of the sentence when the inmate's normal date of release is calculated. (The Secretary of State may direct that it should be so counted, but it is not his practice to do so.)
- (b) any further offences committed by the inmate while at large. Such offences can be dealt with by the police as criminal offences. It is in any case doubtful whether there is authority under the various Rules to adjudicate and impose a punishment for such an offence.

(18) Accordingly, no reference should be made at the adjudication to any offences which may have been committed while at large and where such references are made the panel should expressly disregard them.

## Appendix 4: Implications of Certiorari Cases

### Introduction

This note records the main points to emerge in the cases of application for a writ of Certiorari concerning adjudications and considers the implications.

- (2) As a result of the Hull riot of 31 August – 2 September 1976, disciplinary proceedings were instituted against 185 prisoners, who forfeited about 90 years' remission in total. The Hull Board of Visitors carried out the adjudications at the various prisons to which accused inmates had been dispersed. Seven of these prisoners applied to the Divisional Court for orders of Certiorari to quash their findings. On 6 December 1977 the Divisional Court refused their applications on the grounds that Certiorari did not run to findings made by Boards of Visitors.
- (3) In summing up, Widgery LCJ equated Governors and Boards with fire service chiefs or army officers, as being responsible for a body with its own form of discipline and its own rules. Agreeing with another judgement (Lord Denning MR in *Becker v Home Office* (1972) 2 QB 407) he thought that a Governor's life would be made intolerable if his every disciplinary decision were liable to judicial review: and he thought that in this respect Governors and Boards should not be distinguished, as both were intimately connected with the running of the prison. The Divisional Court thought that the 'right' to petition the Secretary of State against an award, under Rules 7 and 56, was an adequate safeguard for the prisoner.
- (4) On 3 October 1978, the Court of Appeal<sup>1</sup> reversed this decision and held that awards made by Boards of Visitors were subject to judicial review. Megaw LJ said that the Governor's powers of summary discipline were part of his administrative function, and that good sense and public policy made it undesirable that those powers should be subject to Certiorari; on the other hand the Board's adjudicating role was separate from its other functions. Agreeing, Waller LJ said that the Board is an administrative body, but not when acting judicially where it is independent of staff and inmates.
- (5) Though agreeing with Megaw LJ, Shaw LJ said that it was difficult to distinguish Boards' and Governors' awards. It should be added that Megaw LJ had said that the notice of procedure and Form 1145 at a Board adjudication pointed to a judicial proceeding; but a similar procedure and the same form are used in Governors' adjudications. The Court of Appeal did not agree that Certiorari should be only a residual remedy, to be used after appeal to the Secretary of State had failed, because prisoners do not have an absolute right to this appeal, and because in any case

the Secretary of State can only remit the award: he cannot quash the finding of guilt. The Court of Appeal, however, left open the question of whether Governors' adjudications were justiciable.

- (6) In 1984, the Court of Appeal ruled in *King v The Deputy Governor of Camp Hill Prison* that judicial review did not lie in respect of Governors' adjudications but that the Secretary of State's actions in respect of Governors' adjudications were reviewable.
- (7) The Hull *St Germain* cases, together with the Wandsworth *Rosa* case, were referred back to the Divisional Court for consideration on their merits. The Court said that section 47(2) of the Prison Act 1952, requiring the Secretary of State to ensure that 'a person who is charged with an offence under the rules shall be given a proper opportunity of presenting his case' and Rule 49(2) that a prisoner 'shall be given full opportunity of hearing what is alleged against him and of presenting his own case' were declaratory of one of the basic rules of natural justice, namely that every party to a dispute has a right to a fair hearing. 'He must know what evidence has been given and what statements have been made affecting him; and then he must be given a fair opportunity to correct or contradict them'. Referring back to Megaw LJ in the Court of Appeal, the Divisional Court said that a mere breach of procedural rules would not justify or require interference by the courts; for that there would have to be 'some failure to act fairly – fairly, having regard to all the circumstances and such unfairness could reasonably be regarded as having caused a substantial, as distinct from a trivial or merely technical injustice, which was capable of remedy'.
- (8) The application of these principles to the *St Germain* and later cases is considered below.
- (9) It should be stressed that the Divisional Court is not rehearing the adjudication. It looks at the documents of the adjudication to see if there is prima facie evidence there of unfairness: it cannot resolve conflicts of evidence. It can, however, examine affidavits, but if a conflict of evidence remains, it will allow cross-examination of deponents only to prevent an 'unacceptable risk' that justice will not be done if there is no cross-examination. (Webster J in *Fell's* case.)
- (10) The rest of this paper looks at the points of procedure or the decisions where the Divisional Court has commended or criticised Boards. It should be added that the Court may criticise a Board without quashing its award, if the point is insubstantial or incapable of remedy. It may also order a rehearing.

<sup>1</sup> *R v Hull Prison Board of Visitors, ex parte St Germain* (1979) QB 425

## Procedure

- (11) In *St Germain*, Megaw LJ said that Certiorari would lie for a breach of procedural rules only if a substantial and remediable, not a trivial, unfairness had occurred, and in *Brady and Mealy* Hodgson J said that matters of procedure and principles of fairness should be distinguished.
- (12) In *Moseley*, the clerk appears to have got the order in which evidence was given wrong, which made it difficult for Glidewell J to decide whether there had been a refusal to call witnesses or not. In *Brady and Mealy* the Chairman took the last of six charges first, without an explanation to the prisoner, causing him some confusion. In neither case was the finding quashed on grounds of irregularity.
- (13) A verbatim transcription of the proceedings is unnecessary, but a full account of the *important* points in the adjudication should be recorded. Judges give great weight to statements and affidavits which are corroborated by the adjudication sheets.

## Entering Pleas

- (14) In the *Brady and Mealy* case, the accused said he did not see the point of the charge (47(20): 'in any way offends against good order and discipline') and it was not explained to him. Hodgson J thought it was wrong of the Chairman to enter a plea of guilty, even though Mealy later admitted guilt; but he did not quash the finding.
- (15) Leyland, one of the applicants in *Tarrant*, complained that the meaning of a 'concerted act of indiscipline' was not explained to him. But since Leyland himself referred to 'the riot', Webster J did not consider that any injustice was done by not explaining the charge.
- (16) In the *Rosa* case (commended as a model for dealing with hearsay evidence) the accused admitted committing an assault, but under provocation. He should therefore have been advised to plead guilty and mention provocation later in mitigation, whereas he was advised to plead not guilty.

## Charges

- (17) In *Seray-Wurie*, the applicant, though he admitted that he had committed many offences, claimed that the Governor had no right to refer him to the Board under Rule 51(2) since he had repeated no particular offence. Forbes J disagreed saying that repeated offences can be different ones.

- (18) *McConkey* was charged with offending against good order and discipline in that he was 'present at an unlawful drug-smoking party'. The Board's finding of guilt was quashed by the Divisional Court; his argument that mere *presence* could not amount to an offence was accepted. In order to succeed it appears that the charge should at least have implied some degree of participation.

## Access to written statements

- (19) Board adjudications should be started afresh without reference to the record of proceedings before the Governor. This enables the panel to determine the case solely on the evidence presented at its hearing. But statements written in connection with the hearing by the Governor may be accepted as evidence provided they are read out in the presence of the accused. If the accused wishes to question the person who made the statement he must be permitted to do so.
- (20) In *Brady and Mealy*, the accused claimed correctly that a prison officer had changed his story between Governor's and Board's hearings, and he suspected collusion between officers. But he was not allowed to see a record of the Governor's hearing, nor to question the officer on his statement. Hodgson J said that, though disallowing access to the record was not necessarily unfair, in this case the prisoner should have been allowed to see it: the finding amounted to a substantial injustice and it was quashed.
- (21) It seems also from this judgement, that if the prisoner had not asked to see the Governor's record, he would have had no case: ie. it is up to the prisoner to ask for the record, not up to the Chairman to ask him if he wishes to see it.
- (22) In *Gibson*, the finding of guilt on a charge of making a false and malicious allegation against an officer was quashed, because the report of the investigation by the Assistant Governor concluded that the allegation was false and malicious, and mentioned that the prisoner had made allegations against staff before and was anti-authority. Putting his report before the Board was regarded by the Court as prejudicial to the interests of justice, although the Board said they had disregarded it. (It should be noted that the *report* of the investigation is solely to enable the Governor to decide whether to lay a charge under Prison Rule 47(12), and it should not be sent to the Board; statements made during the investigation, however, may be accepted as evidence by the Board provided that they are read out in the presence of the accused.)

## Hearsay Evidence

- (23) In the *St Germain* cases, Lane LJ declared that the Board is entitled to listen to hearsay evidence, subject always to the duty to

give the prisoner a fair hearing. This involves allowing the prisoner to cross-examine the witness whose evidence first appeared as hearsay. In one of these cases, the Court criticised the Board because a prisoner was not allowed to question, or even know the names of the six officers who said they saw him on the roof at the time of the riot. He went on to say that if calling the witness is impossible, the evidence should be dismissed by the Board unless the prisoner wants to have the hearing postponed until hearsay can be checked by cross-examination.

- (24) In one *St Germain* finding criticised by the Court, the prisoner Anderson was punished for looting although there was no evidence of unauthorised articles in his possession, but merely statements from officers that he was part of a looting gang and that he was 'very aggressive throughout' which the prisoner was not able to question.
- (25) The *Rosa* case, decided at the same time as the *St Germain* cases, was a model of how to deal with hearsay, in the view of the Divisional Court. The prisoner was on hunger strike, so there was a need to hold the adjudication as soon as possible, but the reporting officer was off sick as a result of the alleged attack by the prisoner. The prisoner was questioned on the officer's statement and he effectively admitted guilt. (It transpired that he was advised to plead not guilty where he should have been advised to plead guilty and mention provocation in mitigation.) One judge observed that 'it was obvious, from what the applicant himself was saying that it would not profit him in the least to cross-examine the officer'.

### Calling of Witnesses

- (26) The Divisional Court has dealt with applications by prisoners who claim Boards failed to call witnesses in their defence. The Court has declared that the general principles should be:
- (i) the prisoner must be allowed to call witnesses if this is necessary to give him a fair chance to present his case; thus the Chairman's discretion to refuse to allow a witness to be called must be exercised reasonably, in good faith and on proper grounds (*St Germain*). Hence, the Chairman may refuse to call witnesses if he thinks this is part of an attempt by the prisoner to render the hearing unmanageable; or if he has reason to believe that the witness would have little or nothing to add.
  - (ii) An award by the Board may be quashed even if the failure to call a witness, resulting in an unfair hearing, is not the fault of the Board (*Fox-Taylor*). If, however, the prisoner says he has a witness, but will not help the prison authorities to identify him, eg. by naming him, they have no duty to try to supply that witness (*Davies*).

(27) The application of these principles has been seen in a number of cases. In these cases Certiorari was refused:

- (i) In *Moseley* and in *Chesterton* there was no clear evidence that the prisoner had requested witnesses to be called and the Board had refused to provide them.
- (ii) An officer witness who, in the opinion of the Court, would have confirmed that an offence had taken place, but could not have shown whether or not it was committed by the accused, was not called (*Coates and Butterill*).
- (iii) The prisoner said (though the Chairman denies it) that he asked to call the Deputy Governor to establish that he had played a peaceable role during a riot and the request was refused; but if true this would not necessarily have amounted to a 'substantial and material want of natural justice' (*Fell*).
- (iv) The Board did not call a witness to examine the prisoner's claim that the spectacles of another inmate, allegedly assaulted by him, were broken. The Court ruled that the point at issue was only whether an assault had taken place, not whether or not the spectacles had been broken (*Seray-Wurie*).
- (v) The Chairman saw no point in calling witnesses at the stage demanded by the prisoner, but probably would have done so but for the fact that the prisoner then refused to take any further part in the proceedings (*Cartwright*).
- (vi) The Chairman did not interpret the prisoner's words 'I'm having trouble getting some of the witnesses I need' as an application for an adjournment to call witnesses. Forbes J said that the Chairman should be expected to 'interpret' only if the prisoner is inarticulate (*Rye*).
- (vii) The Chairman did not call a second officer as witness, because he no doubt thought that the description by the first officer of the alleged assault was enough (*Rye*).
- (viii) The prisoner refused to help the authorities by naming his witness, so the witness was not called (*Davies*).

(28) In the following cases, however, Certiorari was granted because the Court thought the Chairman's grounds for refusal to call witnesses were improper:

- (i) The Chairman thought there was already ample evidence against the accused (*St Germain*);
- (ii) The Chairman thought the prisoner's alibi, to be upheld by witnesses, did not cover the material time, though in fact it did (*St Germain*);
- (iii) The Chairman did not call a witness because it would have been 'administratively inconvenient' to do so (*St Germain*);
- (iv) The Chairman convinced the prisoner that no witness he called would be believed (*Brady and Mealy*);
- (v) The Board was not able to hear a witness who claimed that the accused was acting in self-defence. This was due to a failure by staff to inform the Board of the existence of the witness, and thus no fault of the Board; nevertheless, its proceedings were vitiated (*Fox-Taylor*).

(29) In these cases, Certiorari was granted because the Board did not exercise its discretion to allow representation or assistance, but Boards were also criticised for failure to give the prisoner a fair hearing:

- (vi) The Board refused to allow a prisoner, Clark, to call four of the nine alibi witnesses on the grounds that the four had been transferred and could add nothing to the evidence of the five available (*Tarrant*).
- (vii) The Chairman did not allow the prisoner, Leyland, to question an officer on an apparent inconsistency, nor to call a prisoner witness simply on the grounds that he had been transferred and that the Board did not consider there was an inconsistency (*Tarrant*);
- (viii) The Board refused to call all witnesses named by a prisoner, Tangney, possibly on the grounds that some of those who had been called transpired not to have been eye-witnesses; but Tangney had been segregated so it might have been necessary for him to call a number of witnesses before finding one or more who had witnessed the scene (*Tarrant*).

(30) In conclusion, while the Chairman can refuse to call a witness on proper grounds, he must ask the accused what assistance or evidence the witness might give and, if he refuses the request, say why. If the Chairman is in doubt about or disbelieves the prisoner's version of the point at issue, he should not refuse to call

witnesses unless he is convinced that their evidence will be of no value to the panel. If he believes the prisoner, there is no need to call the further witnesses.

### Cross-examination of Witnesses

- (31) In *Tarrant*, Webster J endorsed the fore-runner of Note 36(ii) of this guidance, saying that a prisoner must be allowed to ask his questions, unless he abuses that right, if he is to receive a full opportunity of hearing what is alleged against him and of presenting his case. The panel should not, therefore, prevent the prisoner from asking questions of a witness unless it is convinced that the questions are irrelevant to the point at issue.

### Mitigation

- (32) In *Brady and Mealy* the accused was not allowed to call a witness in mitigation, nor was he asked what evidence that witness might produce; and he was not allowed to ask a question of a witness nor to sum up. Though this is not in line with paragraph 10 of the F1145 ('After your witnesses have been heard you will be given the opportunity to say anything further about your case, to comment on the evidence and point out anything you think is in your favour.'), Hodgson J did not think that this rendered the proceedings defective and probably did not affect the award: therefore Certiorari was not granted.

### Reduction of Charges During an Adjudication

- (33) In *Smith McCullough* J ruled that a Board of Visitors had no jurisdiction to reduce a charge during the course of a hearing or to direct that a lesser charge should be substituted.

### Other Points

- (34) *Fell* asked the Parkhurst Board to restore some or all of the remission he had forfeited following a mutiny charge at Albany four years before. He was told remission would not be restored because, inter alia, he was in litigation against the Deputy Governor and a member of staff. Webster J called this a 'material irregularity', but added that the Board's decision under Rule 56(2) not to remit or mitigate an award would not normally be a matter for judicial review, and he did not quash the finding, but said the case must be re-heard before a different panel.

- (35) In the case of *Norley* (see paragraph 27 of the General Guidance) Webster J said that there is no duty imposed on the Board by Section 47(2) of the Prison Act and Rule 49(2) of the Prison Rules to consider the exercise of its undoubted discretion to allow legal representation unless it is asked to do so.

## Appendix 5: The McKenzie Friend

- (1) The term McKenzie Man derives from complex matrimonial proceedings, *McKenzie v McKenzie* which began in 1965. Originally the husband was legally represented but this ceased in 1968 when legal aid was withdrawn.
- (2) The complications, involving a large number of issues which are irrelevant for the purpose of this note, caused considerable delay and it was not until 1969 that the divorce hearing began at which point the husband had beside him in court an Australian barrister who was there with the intention of assisting the husband to present his case and to prompt him. The trial judge decided that Mr McKenzie's friend should not give such assistance and the hearing, which lasted 10 days, proceeded without him.
- (3) This decision was examined on appeal by the Court of Appeal when Counsel on behalf of the husband, who was now legally represented, argued that the trial judge was wrong in refusing to allow McKenzie to be assisted. Briefly, the court – Lord Justices Davies, Karminski, and Sachs – agreed that the trial judge was in error. Reference was made to *Collier v Hicks* in 1831 when the point at issue was whether an attorney was entitled as of right, without the Justices permission, to act as an advocate to a party in proceedings before them. The court held that he was not. But Lord Tenterden CJ said:

“Any person, whether he be a professional man or not, may attend as a friend of either party, may take notes, may quietly make suggestions and give advice.”

- (4) In *R v Tarrant*, Webster J referred to the authorities of *Collier v Hicks* and *McKenzie v McKenzie* and said that those authorities could not be applied to hearings before Boards of Visitors: that no-one has the right to attend hearings before Boards of Visitors without the invitation or permission of the Board of Visitors and that a prisoner was not entitled, as of right, to require the Board to allow him to be assisted by a friend, or adviser. He concluded that a Board has a discretion to allow a prisoner to be assisted by a friend or adviser and went on to say that if, however, someone has been allowed to attend the hearing to assist the prisoner in the manner described by Lord Tenterden, and if, without the permission of the Board he interferes or participates in the proceedings, then the Board would be entitled to require him to leave. Kerr LJ in his judgement in *Tarrant* referred to the question of a prisoner having the assistance of a McKenzie Man and said:

“For myself, I would not exclude this in cases where (i) the prisoner asks for this form of assistance, (ii) it appears to the Board appropriate to grant it, and (iii) the request relates to a suitable person who is readily available and willing to assist, viz not a fellow prisoner, but – for instance – a Probation Officer, social worker or clergyman acquainted with the prisoner.”

## Appendix 6: Extract from Prison Rules 1964 (as amended to end of 1983)

### Offences against discipline

- (47) A prisoner shall be guilty of an offence against discipline if he –
  - (1) mutinies or incites another prisoner to mutiny;
  - (2) does gross personal violence to an officer;
  - (3) does gross personal violence to any person not being an officer;
  - (4) commits any assault;
  - (5) escapes from prison or from legal custody;
  - (6) absents himself without permission from any place where he is required to be, whether within or outside prison;
  - (7) has in his cell or room or in his possession any unauthorised article, or attempts to obtain such an article;
  - (8) delivers to or receives from any person any unauthorised article;
  - (9) sells or delivers to any other person, without permission, anything he is allowed to have only for his own use;
  - (10) takes improperly or is in unauthorised possession of any article belonging to another person or to a prison;
  - (11) wilfully damages or disfigures any part of the prison or any property not his own;
  - (12) makes any false and malicious allegation against an officer;
  - (13) treats with disrespect an officer or any person visiting a prison;
  - (14) uses any abusive, insolent, threatening or other improper language;
  - (15) is indecent in language, act or gesture;
  - (16) repeatedly makes groundless complaints;
  - (17) is idle, careless or negligent at work or, being required to work, refuses to do so;
  - (18) disobeys any lawful order or refuses or neglects to conform to any rule or regulation of the prison;
  - (19) attempts to do any of the foregoing things;

- (20) in any way offends against good order and discipline; or
- (21) does not return to prison when he should have returned after being temporarily released from prison under Rule 6 of these Rules, or does not comply with any condition upon which he was so released.

### Disciplinary charges

- (48)
  - (1) Where a prisoner is to be charged with an offence against discipline, the charge shall be laid as soon as possible.
  - (2) A prisoner who is to be charged with an offence against discipline may be kept apart from other prisoners pending adjudication.
  - (3) Every charge shall be inquired into, in the first instance, by the governor.
  - (4) Every charge shall be first inquired into not later, save in exceptional circumstances, than the next day, not being a Sunday or public holiday, after it is laid.

### Rights of prisoners charged

- (49)
  - (1) Where a prisoner is charged with an offence against discipline, he shall be informed of the charge as soon as possible and, in any case, before the time when it is inquired into by the governor.
  - (2) At any inquiry into a charge against a prisoner he shall be given a full opportunity of hearing what is alleged against him and of presenting his own case.

### Governor's awards

- (50) Subject to Rule 51, 52 and 52A of these Rules, the governor may make any one or more of the following awards for an offence against discipline:—
  - (a) caution;
  - (b) forfeiture for a period not exceeding 28 days of any of the privileges under Rule 4 of these Rules;
  - (c) exclusion from associated work for a period not exceeding 14 days;
  - (d) stoppage of earnings for a period not exceeding 28 days;
  - (e) cellular confinement for a period not exceeding 3 days;
  - (f) forfeiture of remission of sentence of a period not exceeding 28 days;

- (g) forfeiture for any period, in the case of a prisoner otherwise entitled thereto, of any of the following:—
  - (i) the right to be supplied with food and drink under Rule 21(1) of these Rules; and
  - (ii) the right under Rule 41(1) of these Rules to have the articles there mentioned;
- (h) forfeiture for any period, in the case of a prisoner otherwise entitled thereto who is guilty of escaping or attempting to escape, of the right to wear clothing of his own under Rule 20(1) of these Rules.

### Graver offences

- (51)
  - (1) Where a prisoner is charged with any of the following offences against discipline:—
    - (a) escaping or attempting to escape from prison or from legal custody,
    - (b) assaulting an officer, or
    - (c) doing gross personal violence to any person not being an officer, the governor shall, unless he dismisses the charge, forthwith inform the Secretary of State and shall, unless otherwise directed by him, refer the charge to the board of visitors.
  - (2) Where a prisoner is charged with any serious or repeated offence against discipline (not being an offence to which Rule 52 of these Rules applies) for which the awards the governor can make seem insufficient, the governor may, after investigation, refer the charge to the board of visitors.
  - (3) Where a charge is referred to the board of visitors under this Rule, the chairman thereof shall summon a special meeting at which not more than five nor fewer than two members shall be present.
  - (4) The Board so constituted shall inquire into the charge and, if they find the offence proved, shall, subject to Rule 52A of these Rules make one or more of the following awards:—
    - (a) caution;
    - (b) forfeiture or postponement for any period of any of the privileges under Rule 4 of these Rules;
    - (c) exclusion from associated work for a period not exceeding 56 days;

- (d) stoppage of earnings for a period not exceeding 56 days;
  - (e) cellular confinement for a period not exceeding 56 days;
  - (f) forfeiture of remission of sentence of a period not exceeding 180 days;
  - (g) forfeiture for any period, in the case of a prisoner otherwise entitled thereto, of any of the following:—
    - (i) the right to be supplied with food and drink under Rule 21(1) of these Rules; and
    - (ii) the right under Rule 41(1) of these Rules to have the articles there mentioned;
  - (h) forfeiture for any period, in the case of a prisoner otherwise entitled thereto who is guilty of escaping or attempting to escape, of the right to wear clothing of his own under Rule 20(1) of these Rules.
- (5) The Secretary of State may require any charge to which this Rule applies to be referred to him, instead of to the board of visitors, and in that case an officer of the Secretary of State (not being an officer of a prison) shall inquire into the charge and, if he finds the offence proved, make one or more of the awards listed in paragraph (4) of this Rule.

### **Especially grave offences**

- (52) (1) Where a prisoner is charged with one of the following offences:—
- (a) mutiny or incitement to mutiny, or
  - (b) doing gross personal violence to an officer.
- the governor shall forthwith inform the Secretary of State and shall, unless otherwise directed by him, refer the charge to the board of visitors.
- (2) Where a charge is referred to the board of visitors under this Rule, the chairman thereof shall summon a special meeting at which not more than five nor fewer than three members, at least two being justices of the peace, shall be present.
- (3) The board constituted as aforesaid shall inquire into the charge and, if they find the offence proved, shall, subject to Rule 52A of these Rules, make one or more of the

awards listed in Rule 51(4) of these Rules, so however that, if they make an award of forfeiture of remission, the period forfeited may exceed 180 days.

### **Offences committed by young persons**

- (52A) In the case of an offence against discipline committed by a person detained in a prison who was under the age of 21 when the offence was committed (other than an offender in relation to whom the Secretary of State has given a direction under section 13(1) of the Criminal Justice Act 1982 that he shall be treated as if he had been sentenced to imprisonment) —
- (a) Rule 50 of these Rules shall have effect with the substitution in each of paragraphs (b) and (d) thereof of "14" for "28";
  - (b) paragraph (4) of Rule 51 of these Rules shall have effect as if —
    - (i) in sub-paragraph (b), there were substituted for the words "for any period" the words "for a period not exceeding 28 days";
    - (ii) in sub-paragraphs (c) and (d) there were substituted "28" for "56";
    - (iii) in sub-paragraph (e) there were substituted "7" for "56"; and
    - (iv) in sub-paragraph (f) there were inserted after the words "180 days" the words "in the case of an offence of assaulting an officer or doing gross personal violence to any person not being an officer and 90 days in the case of any other offence"; and
  - (c) paragraph (3) of Rule 52 of these Rules shall have effect as if there were inserted after the word "exceed" the words "90 days but may not exceed".

### **Provisions in relation to particular awards**

- (53) (1) An award of stoppage of earnings may, instead of forfeiting all a prisoner's earnings for a specified period not exceeding 28 days or as the case may be 56 days, be expressed so as to forfeit a proportion (not being less than one half) of his earnings for a specified period not exceeding a correspondingly greater number of days.
- (2) No award of cellular confinement shall be made unless the medical officer has certified that the prisoner is in a fit state of health to be so dealt with.

### Prospective forfeiture of remission

- (54) (1) In the case of an offence against discipline committed by a prisoner who is detained only on remand or to await trial or sentence, an award of forfeiture of remission may be made notwithstanding that the prisoner has not (or had not at the time of the offence) been sentenced.
- (2) An award under paragraph (1) above shall have effect only in the case of a sentence of imprisonment or youth custody being imposed which is reduced, by section 67 of the Criminal Justice Act 1967, by a period which includes the time when the offence against discipline was committed.

### Conversion of sentence of youth custody to sentence of imprisonment

- (54A) In the case of a prisoner who has been sentenced to a term of youth custody and who, by virtue of a direction of the Secretary of State under section 13 of the Criminal Justice Act 1982, is treated as if he had been sentenced to imprisonment for that term, any award made in respect of him for an offence against discipline before the said direction was given shall, if it has not been exhausted or remitted, continue to have effect as if made under Rule 50 or 51 of these Rules.

### Disciplinary awards: transitional

- (54B) (1) In the case of a person detained in a prison who, by virtue of paragraph 4 of Schedule 17 to the Criminal Justice Act 1982, on 24th May 1983 falls to be treated for purposes of detention, release and supervision as if his sentence had been a youth custody sentence, any award for an offence against discipline made in respect of him before that date under Rule 49 or 50 of the Borstal Rules 1964 shall, if it has not been exhausted or remitted, continue to have effect, subject to the provisions of paragraph (2) of this Rule, as if it had been made under Rule 50 or 51 respectively of these Rules.
- (2) An award of reduction in grade, or postponement of promotion to a higher grade, for a specified period made under Rule 49(e) or 50(4)(e) of the Borstal Rules 1964 shall continue to have effect under this Rule as if it had been an award of loss of remission of a like period.

### Suspended awards

- (55) (1) Subject to any direction of the Secretary of State, the power to make a disciplinary award (other than a caution) shall include power to direct that the award is not to take effect unless, during a period specified in the direction (not being more than 6 months from the date of the direction), the prisoner commits another offence against discipline and a direction is given under paragraph (2) below.
- (2) Where a prisoner commits an offence against discipline during the period specified in a direction given under paragraph (1) above the person or board dealing with that offence may:—
- (a) direct that the suspended award shall take effect; or
  - (b) reduce the period or amount of the suspended award and direct that it shall take effect as so reduced; or
  - (c) vary the original direction by substituting for the period specified therein a period expiring not later than 6 months from the date of variation; or
  - (d) give no direction with respect to the suspended award.

### Remission and mitigation of awards

- (56) (1) The Secretary of State may remit a disciplinary award or mitigate it either by reducing it or by substituting another award which is, in his opinion, less severe.
- (2) Subject to any directions of the Secretary of State, the governor may remit or mitigate any award made by a governor and the board of visitors may remit or mitigate any disciplinary award.

**GUIDANCE FOR  
GOVERNORS'  
ADJUDICATIONS**

## Introduction

- (1) Although following the judgement in *R v. Deputy Governor of Camp Hill ex parte King* Governors' adjudications are not directly reviewable by the courts the principles underlying the general guidance section of the first part of this Manual (for Boards of Visitors) also apply to adjudications by Governors with the exception of the arrangements for legal representation or assistance. This earlier guidance also reflects judgements by the Divisional Court and the European Court of Human Rights.
- (2) In the judgement of the Court of Appeal in *King* Lawton LJ explained that the Court had to decide whether a prison Governor when adjudicating was performing a management function or exercising a judicial one and having examined the history from the 15th Century, noted the similarity between the Prison Act 1877 and the Prison Act 1952 which conveyed all powers and jurisdictions in relation to prisons and prisoners to the Secretary of State, determined that the Minister was responsible for ensuring that the 1952 Act and all the Rules made under it are complied with. Lawton LJ judged that a prison Governor was a manager, appointed by and answerable to the Secretary of State, and those whom he is managing have to behave properly towards those with whom they come into contact; to do as they are told and to conform to the standing orders of the prison.
- (3) In the context of adjudications, Lawton LJ referred to all prisons as being likely to have within them a few prisoners intent on disrupting the administration and those who delude themselves that they are the victims of injustice and said that to allow such men access to the High Court whenever they thought that the Governor had abused his powers, failed to give them a fair hearing or misconstrued the Prison Rules would undermine and weaken his authority. He went on to say that 'If a prisoner has a well founded complaint that a Governor has misconstrued a Prison Rule and the Secretary of State has rejected his petition inviting attention to the misconception, he may be entitled to apply for judicial review, the relief being in the form of a declaration as to what is the correct construction.'
- (4) The implications of this for the Secretary of State and for Governors was explained by Griffiths LJ in his judgement when he said, in effect, that the Secretary of State should intervene, if asked to do so, in all cases where the Governor misdirected himself in law and – more precisely – that it is open to a prisoner whose petition has been declined by the Secretary of State to seek redress from the Court if he suffers injustice as a result of the misconception of the Prison Rules.
- (5) It follows that adjudications conducted by Governors must conform with the rules of natural justice: that is, that a man must know what is alleged against him; that no man should be judge in

his own case, that both sides must be given a fair chance to state their cases and that there must be a full investigation of the facts. Essentially therefore, adjudicators must be seen to act fairly, in good faith and without bias or prejudices. Moreover, the judgement in *King* should not be interpreted as simply requiring compliance with Prison Rules. For example, a refusal to properly consider a request by an accused to call a witness, or to refuse to hear a witness if the discretion to do so is not exercised reasonably, in good faith and on proper grounds, would be grounds on which the Secretary of State, in the first instance, would if asked, contemplate the setting aside of an adjudication award on the grounds that there was a breach of Rule 49(2).

- (6) References hereafter to the 'Governor' should be construed as meaning the person authorised in instructions issued by the Prison Department on behalf of the Secretary of State vide Prison Rule 98, to carry out adjudications.
- (7) References to 'an officer' means all officials in a prison establishment.

## Charges

- (8) Prison Rule 48(1) requires that where a prisoner is to be charged with an offence the charge shall be laid as soon as possible. In *R v. Board of Visitors Dartmoor ex parte Trevor Smith McCullough* J said that 'As soon as possible must mean as soon as reasonably possible or the like'. He went on to say, '..... the clear intention of the Rules is that a charge should be laid quickly and considered by the Governor quickly. I observe that neither Rule 51 nor Rule 52 requires the Board of Visitors to consider the charge speedily, but this does not detract from the clear intent that the case should reach the Governor speedily'.
- (9) A prisoner is charged with an offence at the point where a Notice of Report (Form 1127) is handed to him and this should be done at least 2 hours before the adjudication is due to begin.
- (10) The charge must be of an offence described in Prison Rule 47 and if it is not, it must be dismissed.
- (11) Charges in respect of drug offences require particular care in their formulation -- see Appendix 3 of the section of guidance for Boards of Visitors.
- (12) A charge under Prison Rule 47(12) of making a false and malicious allegation against an officer must not be preferred except on the express authority of the Governor (or the officer for the time being in charge of the prison) and the charge must not incorporate words which indicate the opinion of the investigating officer

who carried out the preliminary investigation. Where the allegation is made in a petition such a charge must not be preferred without authority from Headquarters (see Circular Instruction 14/1980). The Governor must hold an initial hearing of the charge and, unless on hearing the evidence he dismisses it, must refer it to the Board of Visitors to deal with.

- (13) Although more than one charge may be preferred in respect of offences arising from a single incident in that any discrete act that constitutes an offence may be the subject of a charge, care should be taken to avoid multiple charges for what is essentially one action. For example, a prisoner who is ordered to remove a barricade from his cell door should not be charged with refusing to obey an order for every occasion on which such an instruction was given and neither should charges be duplicated such as refusing to obey an order to remove a barricade and refusing an order to leave a barricaded cell.
- (14) All especially grave and graver offences must be referred to Regional Office (or Headquarters as appropriate). A decision will then be taken on how to deal with the case and in particular whether or not to refer it to the police (as always happens in cases of gross personal violence). In all such cases a charge must be laid under the Prison Rules. Where an offence of any kind is referred to the police for investigation a charge must nevertheless be laid under Prison Rules: a hearing should be convened at which the prisoner is informed that the hearing of the charge is adjourned pending the outcome of police enquiries.
- (15) In cases where the police decide to prosecute the disciplinary charge under the Prison Rules will not be proceeded with, whatever the outcome of any court hearing. All the relevant records should be amended accordingly.
- (16) There is no power to change or reduce a charge other than in its particulars once it has been laid and thus it is most important that the appropriate charge is brought. Accordingly, officers should consult a senior member of staff before a charge is preferred.
- (17) Prison Rules 48(3) and (4) require that every charge against an inmate must be inquired into, in the first instance, by the Governor, and save in exceptional circumstances this must be done not later than the next day, not being a Sunday or public holiday, after it is laid.

#### Applications for Legal Representation or Assistance

- (18) Where a prisoner makes application for legal representation or assistance before the hearing of a charge by the Governor takes place, or during the course of it, he should be told that legal representation is not permitted at a Governor's adjudication and

his attention should be drawn to paragraph 6 of Form 1145 (Appendix 1) which provides that at a hearing before the Board of Visitors a request for legal representation or the assistance of a friend may be made to the Board.

#### The Prisoner's Access to a Solicitor

- (19) Where a prisoner who is charged, or is about to be charged, with an offence against Prison Rules requests permission before an adjudication by the Governor takes place to consult a solicitor, he should be allowed to do so. This is not however, a ground on which the hearing need be adjourned.
- (20) Where a prisoner applies to consult a solicitor after an adjudication, whether by a Board of Visitors or by a Governor, he should be allowed to do so.

#### Facilities for Prisoners

- (21) If a prisoner asks before a hearing to see copies of statements or other written material which are to be entered in evidence the Governor should normally arrange this. The only exception to this is a medical report which in the opinion of the author should not be disclosed to the prisoner (e.g. because disclosure could be harmful to the patient or to the doctor/patient relationship).
- (22) Where a prisoner asks before a hearing or during the course of it for names of witnesses or others, whether of staff or inmates, involved in an incident which gave rise to the charge(s) the Governor should take action which he considers appropriate and which will not disturb the orderly running of the establishment to identify persons whom the accused can describe.
- (23) Where a prisoner asks before a hearing or during the course of it for facilities to interview prisoners or other witnesses the Governor should allow such interviews if he judges it appropriate and the witnesses are willing. Where it is decided that such interviews must take place within the hearing of staff for reasons of security or because of the possibility of coercion or collusion, the officer supervising the interview should not be the reporting officer or any other officer who may be called to give evidence at the adjudication. The supervising officer should not disclose the nature of the discussion unless it presents a threat to security or because there is a clear intention to defeat the ends of justice: in these circumstances the interview should be terminated.

### Adjudications in Absentia

- (24) An adjudication may be held in absentia in every case where a prisoner refuses to attend provided that he has been given a clear indication that the case will proceed in his absence and a reasonable opportunity to change his mind and attend. This is absolute and includes a prisoner who is prepared to attend an adjudication but is not willing to do so suitably dressed, or is in a condition which is offensive to others (eg. on a dirty protest). The record of the adjudication should be noted to show the warning which had been issued, by whom, and when. A plea of 'not guilty' should be entered when an adjudication proceeds in absentia.

### Physical Arrangements

- (25) Generally, the arrangements described in paragraph 54 of the part of the Manual dealing with Boards of Visitors adjudications should be followed. The technique practiced in the past at some establishments by officers escorting prisoners at an adjudication and known as 'eye-balling' must not be used. It is possible that the practice could constitute grounds for an application for judicial review.

### Adjournments and Segregation

- (26) The most frequent reasons for adjournment will probably be the need to await the completion of police enquiries or the forensic analysis of suspected drugs or the return to duty of a reporting officer or other officer who is on sick leave.
- (27) Where for any reason a hearing is adjourned and the prisoner has been segregated under Prison Rule 48(2), the necessity for continued segregation should be considered and the decision recorded on both the record of the adjudication (Form 256) and the prisoner's record (Form 1150).

### The Hearing - General

- (28) The Governor may, at his hearing, dismiss the charge, unless the offence is an especially grave one (Prison Rule 52(1)). If the

offence is especially grave, it must be referred to the Board of Visitors unless the Secretary of State directs otherwise.

- (29) Where he does not dismiss a graver offence the Governor may not adjudicate without the express authority of the Secretary of State (as delegated to Regional Office) see paragraph 14. The Governor may at his hearing of an offence which he judges to be serious (other than an offence under Prison Rule 52) or which is a repeated offence against discipline for which the awards he can impose seem insufficient, refer the charge to the Board of Visitors. The prisoner need not have repeated a particular offence but must have repeatedly been found guilty at adjudication before being referred under Rule 51(2). Where an incident leads to a series of charges these should not be referred en bloc unless each individual charge meets the criteria for referral.
- (30) If the offence is one where referral to the Board of Visitors is indicated and the imminence of the prisoner's earliest date of release precludes completion of a hearing by the Board of Visitors, the Governor should seek instructions from the Regional Director as to whether he should resume the adjourned hearing and adjudicate himself. In these circumstances, the Governor's powers of punishment are limited to those prescribed in Rule 50, no matter what the offence.
- (31) The charge as recorded on the Notice of Report must contain sufficient explanatory detail to leave the prisoner in no doubt as to what is alleged against him, and if there is a doubt it should be further explained orally. If there is a misunderstanding of sufficient significance to have prejudiced the prisoner in preparing his defence and he is not in a state of preparedness to proceed, the hearing should be adjourned to allow him further time.
- (32) Where the evidence given about an offence does not support the charge preferred it must be dismissed.
- (33) The primary objective of the inquiry by the Governor is to establish exactly what happened, and why. He must establish the relevant facts by questioning the reporting officer, the accused and any witnesses, and where necessary by calling other persons whose evidence might clarify any points in dispute. The inmate must be given the opportunity to answer the charge against him. If the accused cannot present his side of the story effectively the Governor has the responsibility of assisting him to do so and to discover, through questioning, any areas of doubt and any mitigating factors. The accused must hear, and have the opportunity to challenge, all the evidence against him. It is quite indefensible for decisions to be reached which are influenced by information not brought out during the course of the hearing.
- (34) Where the alleged offence is one which must be referred to the Board of Visitors or one which may be referred to the Board under Rule 51(2) and the Governor is satisfied that there is a case to answer, he should explain to the prisoner that he is entitled to

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make his defence but he may prefer to reserve this for the full hearing by the Board. If the prisoner insists on exercising the right which Rule 49(2) gives him he must be allowed to do so.

- (35) Where a prisoner pleads guilty to a charge, the Governor should hear sufficient evidence to satisfy himself that the prisoner fully understands the charge which he has admitted. The charge may be dismissed notwithstanding a plea of guilty.
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### Standard of Proof

- (36) A finding of guilt should not be arrived at unless the Governor is satisfied beyond a reasonable doubt that the prisoner committed the offence with which he is charged.
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### Written Evidence

- (37) Written evidence may be accepted only if it is read out in the presence of the accused and either the writer is present so that the accused may have an opportunity to question him or if the accused consents to the statement without having an opportunity to challenge it. If the accused does not consent the hearing should be adjourned.
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### Calling of Witnesses

- (38) Prisoner witnesses should not be compelled to give evidence. An officer of the prison (a phrase which encompasses all officials in a prison and not only prison officers) may be required by the Governor, as part of his duties, to appear as a witness. The Governor has the discretion to refuse to call witnesses named by the accused prisoner but this must be done reasonably; for example if he thinks that the request is part of an attempt by the prisoner to render the hearing unmanageable or that a witness could not contribute to the investigation. The Governor should question the prisoner to satisfy himself that the witness was indeed at the scene of the incident at the material time, or may otherwise have relevant evidence, and that his evidence, if believed, might be material and weigh on his decision on the point at issue. The Governor should not refuse to call a witness because it is inconvenient to do so, or because he already feels that a prisoner is guilty; he should not exclude the possibility that material witnesses as yet uncalled may bring vital testimony; nor should he restrict himself to calling

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a sample of the witnesses requested. The Governor is, however, under no duty to call the witness if the prisoner does not make his request clear and, if necessary, help the Governor to identify that witness.

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### Offences involving Charges against more than one Inmate

- (39) If, where more than one inmate is charged with an offence relating to one incident, the Governor decides to hear the cases separately, care should be taken to ensure that evidence heard at one adjudication is not taken into account in reaching a decision in another adjudication without that evidence being presented at that other hearing. It is easy to form an opinion based on evidence heard at one adjudication and allow it to influence a decision in another without giving the accused in the other adjudication the opportunity to revise that opinion. It is open to the Governor to hear the cases in stages, using adjournments, to allow two or more cases to be progressed concurrently to virtually simultaneous conclusions. An example of this would be where two prisoners are charged with doing gross personal violence to a third prisoner. To avoid the risk of collusion or falsification of the evidence on the part of the accused it might be decided to hear the cases separately and proceed with the adjudication on one of them until he has presented his defence. The case could then be adjourned while the charge is heard separately against the second accused. By the time the second accused has presented his defence it will be possible for the Governor to determine whether there are any discrepancies in the story of the two accused. It would then be open to the Governor to return to the first case, and to hear the second accused as a witness giving evidence this time in front of the first accused. The case could be further adjourned while the first accused is brought in as a witness at the hearing of the second accused. Each adjudication could then be carried through to a conclusion.
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### Consistency of Awards

- (40) There is no tariff of awards. An award should take account of the circumstances and seriousness of the offence, and the record of the prisoner's behaviour during the currency of his present sentence. It should also take account of the type of establishment, the effect of the offence on the regime and the general order and discipline of a closed community, and the need to discourage him and others from repeating the offence.
- (41) Inevitably, there will be differences in the level of awards between establishments. It is desirable however to try to ensure consistency of awards within an establishment. The Governor should therefore

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arrange for records to be kept, to monitor these and to produce appropriate guidelines which should be followed by Governor grades who are authorised to adjudicate in his absence.

**Before the Hearing**

- (1) The Governor should check that:
- (a) Form 256, on which the proceedings will be recorded, has been prepared and that the charge(s), as recorded on Form 256, is one that is provided for in, and follows, the wording of the appropriate paragraph of Prison Rule 47.
  - (b) In addition to the formal wording under the Rules, the charge contains sufficient additional explanatory detail to leave the accused in no doubt as to the precise nature of the charge against him.
  - (c) Form 1127 (Notice of Report) has been issued to the accused in sufficient time for him to prepare his defence. The Form 1127 (Notice of Report) and the charge recorded on Form 256 are identical.
  - (d) Where the charge is mutiny or incitement to mutiny authority has been obtained from Headquarters for the charge to be preferred.

- (1)
- (a) (i) The record of the adjudication does not need to be verbatim. It must include a record of the preliminaries, the specific evidence relied upon, the findings and, where appropriate, the reasons for the sanctions imposed so that anyone reading it subsequently can form an accurate picture of the whole of the adjudication. Previously written statements which are read out must be attached to the record (Form 256). The Governor is responsible for the accuracy and adequacy of the record.
  - (ii) If the charge is not one provided for in the Rules, it is not an offence against discipline and must be dismissed.
  - (b) (i) Very often there is a confused situation at the time of an offence, particularly as seen through the officer's eyes, with the possibility of one or more of several charges being brought and the accused having no really clear recollection of precisely what happened. It is important that the accused is left in no doubt precisely what he is being charged with, eg. when the charge is one of assault on an officer it should be expanded by an addition such as 'ie. by striking Officer Smith in the face with his fist'.
  - (ii) The formal wording of some offences contains alternatives, so it is particularly necessary to check that the charge indicates clearly which alternative applies. For example, Prison Rule 47(7) refers to a prisoner having an unauthorised article 'in his cell or room or in his possession'. The charge should specify the circumstances relevant to the case, ie. 'has in his cell', 'has in his room' or 'has in his possession'.
  - (iii) The charge should be clear as to what is alleged, eg. Prison Rule 47(7) – has in his possession an unauthorised article, ie. at 10.00am on 4.12.76, in the heavy textile workshop, was found to have a £1 Treasury note in his pocket'.
  - (iv) The facts of the offence against good order and discipline (Prison Rule 47(20)) should be stated.
  - (c) (i) Form 1127 which should include brief particulars of the offence, must be served on the accused at least 2 hours before the hearing.
  - (ii) Any material difference between the details of the charge on Form 256 and Form 1127 must be remedied. An adjournment may be necessary if there is a significant difference so that the accused may have more time to prepare his defence.

- (e) Where the offence is one of doing gross personal violence to an officer or assaulting an officer a decision has been obtained from Headquarters or the Regional Director as to whether the police should be invited to investigate the incident.
- (f) Form 1145 (Explanation of the Procedure at a hearing of a Disciplinary charge by a Governor or a Board of Visitors) has been issued to the accused in sufficient time for him to study it.
- (g) The medical officer has certified on Form 256 that the accused is fit for adjudication and punishment, and that any report prepared by the Medical Officer for the information of the adjudicator is available. Exceptionally, where there is no full-time cover available at the time and the part-time Medical Officer has been unable to examine the accused before the hearing the adjudication may nevertheless proceed, but no punishment will be awarded any inmate about whose fitness for the punishment the adjudicator has any doubt, nor will any award of cellular confinement be made until the inmate has been medically examined.
- (h) Any witnesses who it is known the accused wishes to call and any others whose evidence seems likely to be relevant are available.

### Opening Procedure

- (2) It is the responsibility of the Governor to see that the steps set out at paragraphs 3 to 9 below are taken, and that they and the responses of the accused are recorded on Form 256.

- (f) Form 1145 is the only advance information given to the inmate about the procedure followed at an adjudication.
- (g) (i) Prison Rule 53(2) provides that no award of cellular confinement shall be made unless the Medical Officer has certified that the inmate is in a fit state of health to be so dealt with. Standing Orders require that arrangements are made to enable the Medical Officer to examine the accused for his fitness to undergo cellular confinement; and that he reports any matter affecting the inmate's physical and mental condition which appears relevant to the adjudication including, where appropriate, his opinion that the medical condition of the prisoner was such that he should not be held fully responsible for his actions at the time of his alleged offence. The examination will be on the day of, and preceding, the adjudication (and resumption of the adjudication following any adjournment).
- Exceptionally however, where there is no full-time cover available at the time and the part-time Medical Officer is unable to examine the accused within the 24 hours immediately preceding the adjudication (or the resumption following the adjournment) the examination may follow the adjudication, provided that it does so as soon as possible (ordinarily within 24 hours following the adjudication) and that no award of cellular confinement is made unless the Medical Officer has certified the inmate fit for it.
- (ii) If during an adjudication the Governor is in doubt about a prisoner's state of mind, he should ask the Medical Officer whether he can assist in these matters.
- (h) The accused should be asked to indicate in advance of the hearing witnesses he would like to call so that arrangements can be made to make them available for the hearing; it will still be open to the accused to ask, during the course of the hearing, to call additional witnesses; it will be open to the Governor to call witnesses other than those requested by the accused.

(3) Identify the accused.

(4) Ask the accused whether he has received Form 1127 and Form 1145, and make sure that he understands what the procedure will be.

(5) Read out the charge(s).

(6) Ask the accused whether he understands the charge(s), and explain to him any matter about which he is in any doubt.

(7) Ask the accused whether he has had sufficient time to prepare his answer to the charge(s).

(8) Ask whether or not the accused has made a written answer to the charge(s).

(9) Ask the accused in respect of each charge whether he pleads guilty or not guilty.

(4-8)

(i) If the Governor is satisfied that the accused needs more information on the procedure, or the charge(s) or more time to prepare his answer to the charge(s), the hearing should not proceed until this has been remedied.

(ii) Question 4 and those in paragraphs 5, 7, 8 and 9 should not be put if one or more of the offences with which the inmate has been charged has been referred to the police, or in the case of drug offences a substance or article has been sent for forensic analysis. In these circumstances the hearing should be adjourned pending the outcome of those enquiries and, when it is subsequently resumed, it will be necessary to follow the opening procedure.

(9)

(i) A separate record (Form 256) should be made in respect of each charge.

(ii) If the accused refuses to plead, or qualifies a plea of guilty, a not guilty plea should be entered on Form 256, and the hearing should proceed as if the accused has pleaded not guilty. A plea of guilty should be recorded only if the prisoner pleads guilty to the essential element or elements of the charge. For example, a prisoner who admits that his allegation was false but denies it was malicious, or who admits to possessing a pipe-stem but denies knowing that it had been used for smoking controlled drugs, should be recorded as making a not guilty plea.

(iii) If, in addition, the accused refuses to speak during the proceedings, it should be explained to him that the hearing will nevertheless continue, that all other available evidence will be heard, and that the question of guilt, and of the award to be made if the find-

ing is guilty, will be decided in the light of that evidence.

- (iv) Where a charge is dealt with in absentia (see paragraph 24 of the Introduction) the plea should be recorded as not guilty.
- (v) If the charge relates to the discovery of a substance believed to be a controlled drug which has not been referred to the police for investigation, the adjudication may proceed provided that the prisoner makes a clear and unambiguous admission of guilt. (See Appendix 3.)

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(10) If the accused pleads not guilty or refuses to plead, proceed in accordance with paragraphs 11 to 23 inclusive, but if the accused pleads guilty, proceed in accordance with paragraphs 31 to 45 inclusive.

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- (10)
- (i) Where the hearing is resumed following an adjournment, the opening procedure may have to be repeated in part depending, of course, on the point which was reached at the time of the adjournment.
  - (ii) Where the charge is of a 'graver offence' or an 'especially grave offence' (Prison Rules 51(1) and 52(1)) or a serious or repeated offence which the Governor has it in mind to refer to the Board of Visitors (Prison Rule 51(2)) it is not necessary to hear all the evidence. If the Governor is satisfied that there is a case to answer he should explain to the prisoner that he may wish to reserve his defence for the full hearing by the Board but if the prisoner insists on exercising his right under Rule 49(2) he must be allowed to do so.
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**The Hearing (if the inmate has pleaded not guilty or is treated as so doing)**

- (11) Hear the evidence of the reporting officer, and invite the accused, if he so wishes, to question the officer on his evidence, or on relevant matters which the officer has not covered. The Governor may also wish to ask questions for clarification.
- 
- (12) Repeat 11 for any other witnesses in support of the charge. An inmate witness should be asked to confirm that he is prepared to give evidence as he cannot be compelled to do so. An officer of the prison who is a witness may be required by the Governor to give evidence as part of his duties. Witnesses other than the reporting officer should not normally remain in the room after they have given their evidence and been questioned on it.
- 
- (13) If any exhibit is produced during the hearing (eg. a weapon which has been used, or an unauthorised article found in the accused's possession) this should be described and recorded at the time it is produced.
- 
- (14) Invite the accused to make his defence to the charge(s) and to give oral evidence if he wishes. This is the appropriate time for any written defence or explanation he has made on Form 1127 to be read out. Unless he wishes to call witnesses, this is also the appropriate time for him to comment on the evidence and to point out anything he thinks is in his favour.
- 

- (11)
- (i) There is no objection to the reporting officer reading out his evidence from a previously prepared statement, this should be incorporated in the record of the hearing.
  - (ii) If the accused in any way abuses the opportunity to question the officer directly the Governor may insist on questions being put through him.
  - (iii) If, at this stage, the accused wishes to change his plea to guilty, this may be accepted and the hearing continued in accordance with paragraphs 31 to 45.
  - (iv) If the reporting officer is temporarily not available to give evidence in person the situation should be explained to the accused and where the absence is likely to be less than 3 weeks it should be left to him to decide whether the hearing should proceed with the witness' written evidence and in the knowledge that he would not be able to question the officer on his evidence, or whether the hearing should be adjourned until the officer returns to duty. (The foregoing will not apply where the reporting officer has no first-hand knowledge of the alleged offence, eg. an escape from another establishment.) Where the accused chooses to await the availability of the officer and he is segregated under Prison Rule 48, the Governor should consider whether segregation is still necessary during the adjournment.
  - (v) If the reporting officer is likely to be unavailable for more than 3 weeks (or sooner where an earlier hearing is imperative) the advice of Headquarters should be sought.

- 
- (12) It is important that, on leaving the adjudication room a witness should not have the opportunity to talk to those waiting to give evidence. If an inmate witness is likely to be needed for further questioning, arrangements should be made to ensure that he is readily available.
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- (13) For disposal of exhibits, see Note 27.
- 

- (14) If the inmate has prepared a written statement he may be invited to read it aloud, but if he declines to do so, but wishes it to be taken into consideration it should be read out by the Governor.
-

(15) If the accused asks to call witnesses, whether named in advance or during the hearing, ask him to say what he thinks their evidence will show or prove. Unless the Governor is satisfied (after any submission from the accused) that the witnesses will not be able to give relevant evidence, they should be called. If the Governor decides not to call a witness requested by the accused he should be told why and given the opportunity to comment. The reason for the decision should be recorded in the record of the hearing.

(16) Invite the accused's witnesses to say what they know of the affair, and invite the accused, if he so wishes, to question them on their evidence or anything else that appears relevant to the case. The reporting officer should also be given the opportunity to question the accused or witnesses, and the Governor may also wish to ask questions. The witnesses should not remain in the room after they have given their evidence and been questioned on it.

(17) The Governor may also wish to call witnesses, even though they have not been named by the accused or the reporting officer. After all the witnesses have been heard he should ask the accused whether he wishes to say anything further about his case, to comment on the evidence, or to draw attention to any relevant considerations. If the accused tries to bring up points in mitigation at this stage, the point should be noted and carefully considered at the appropriate time (see paragraph 24 below).

(18) The Governor should consider the question of guilt, announce his finding and record it on Form 256.

(19) A conclusion that the evidence constitutes a lesser offence than that with which the prisoner was charged must result in the charge being dismissed.

(20) Except in the case of a charge of committing an especially grave offence under Rule 52(1), the Governor may decide to dismiss any or all of the charges against the accused. If he does not do so and the offence is graver as defined in Rule 51(1), it must be referred to the Board of Visitors unless the Secretary of State has directed otherwise. An especially grave offence may not be dismissed by the Governor, and must be referred to the Board of Visitors unless the Secretary of State directs otherwise.

(15) Witnesses must not be excluded for reasons of administrative convenience or because the Governor considers the case against the prisoner is already made out. If the Governor disbelieves the prisoner or is in doubt about his story, he should refuse to call witnesses only if he is convinced that the evidence they are expected to give is wholly irrelevant to the point at issue (eg. they could not have witnessed an incident being inquired into) or that the request is part of an attempt to render the hearing unmanageable. However, if the Governor accepts the matter(s) which the prisoner is trying to establish it is not necessary to hear further witnesses. The fact that he accepts the point at issue should be recorded.

(16) (i) If the Governor agrees to hear a witness but the witness is not readily available to give evidence in person, the accused should be asked whether he would like the hearing to be adjourned until the witness can be present. The Governor should find out how soon that is likely to be, and provided there will not be any undue delay the hearing should be adjourned accordingly. Ordinarily, an adjournment should not be longer than 3 weeks.

(ii) If an essential witness is temporarily unavailable the notes in (iv) and (v) to paragraph 11 are applicable.

(20) (i) See also the Note to paragraph 10(iii)

(ii) Any charge under Prison Rule 47(12) involving a false and malicious allegation will have to be referred to the Board of Visitors since the Governor, having decided that there is a prima facie case to answer, cannot reasonably dismiss the charge. See also Circular Instruction 14/1980.

(21) If in respect of charges other than those under Rules 52(1) or 51(1) the Governor is satisfied that a prima facie case has been made out against the accused and that the offence is serious or repeated and the award he can impose seems insufficient, he should inform the prisoner accordingly and refer the charge to the Board of Visitors.

(22) Where the incident from which the offences arose led to more than one charge against the accused and one of these is referred to the Board of Visitors, the other charges should not be so referred unless they meet the relevant criteria (see paragraphs 20 and 21).

(23) Where the incident from which the offence arose led to more than one inmate being charged, and the charge against one prisoner is referred to the Board of Visitors, the charges against all the inmates involved should only be referred to the Board of Visitors where the relevant criteria are met for each individual.

**If the finding in respect of any Charge being Heard is one of guilty:**

(24) The inmate should be asked whether he wishes to say anything in mitigation. If he asks to call any person to support his plea in mitigation this should be allowed unless such a request is clearly unreasonable. If no plea in mitigation is put forward, this fact should be recorded on Form 256.

(25) The Governor should ask any member of staff who knows the inmate, including workshop staff, for a report and if he does so the inmate should be given the opportunity to add anything or ask any question in connection with the report.

(26) The Governor should consider what awards he will make. No award of cellular confinement may be made unless the Medical Officer has certified that day that the inmate is fit for it; and if the inmate has not been medically examined that day no other punishment will be awarded if he has any doubt about the inmate's fitness for it. He may decide to adjourn, for a period not normally exceeding 24 hours, for any necessary medical examination to be made.

(21) See also the Note to paragraph 10(ii).

(25) (i) The Governor may put questions to the officer making the report to clarify or elicit further information relevant to the question of punishment.

(ii) Where the report is read from a previously prepared note this should form part of the record of the adjudication.

(26) (i) Ordinarily, the inmate will have been medically examined on the day of the adjudication. There is however a dispensation at establishments where there is only a part-time Medical Officer.

(ii) The Governor should examine the inmate's record in respect of his current sentence of imprisonment (or, in the case of an unsentenced prisoner the record relevant to the present reason for detention) for information about his behaviour. The Governor should tell the prisoner what matters he has taken into account, favourable or unfavourable.

(27) Announce the awards and when making awards in respect of more than one charge, whether the awards are to be cumulative or concurrent with, other awards.

- (27)
- (i) The awards must be within the range of, and expressed in the terms of, the Prison Rules.
  - (ii) Neither the award nor any entry in the Remarks section of Form 256 should include any reference to any administrative action eg. placing on Rule 43, return to a closed prison, or disposal of exhibits.
  - (iii) If it is desired to make reference to exhibits it would be appropriate to tell the inmate that they will be disposed of in accordance with standing instructions.
  - (iv) An individual award may not be suspended in part, but when a penalty comprising more than one award is imposed one or more of them may be wholly suspended. Thus, an award of forfeiture of privileges, for example, may be suspended in its entirety but not in part and the penalty comprising, say, forfeiture of privileges and cellular confinement may be suspended by ordering that both elements or either should be wholly suspended.
  - (v) Suspended awards of forfeiture of remission should be made only where there are special extenuating circumstances and the offence did not involve violence and where an award of more than 14 days' forfeiture of remission is suspended the Form 256 should indicate what those extenuating circumstances are.
  - (vi) A suspended award may not be activated unless the prisoner has been found guilty on adjudication of a further offence which was committed during the period of suspension.
  - (vii) It is open to the Governor to make no award in respect of the offence adjudicated upon but in order that a suspended award take effect in whole or in part. The *activation* of a suspended award may not be ordered as the *punishment* for the further offence.

(28) If an award is ordered to be suspended (Prison Rule 55(1)), or it includes the stoppage of earnings under the provisions of Prison Rule 53(1), the terms of the award must be set out in writing in the Remarks section of Form 256, and the inmate's liability explained to him in ordinary language.

(29) If the inmate is subject to an extant suspended award, the Governor's decision on the suspended award must be announced and explained to the inmate and recorded on Form 256. The decision may be to:

- \* (a) direct that the suspended award shall take effect; or
- \* (b) reduce the period or amount of the suspended award and direct that it shall take effect as so reduced; or
- (c) vary the original direction by substituting for the period specified a period expiring not later than 6 months from the date of variation; or
- (d) give no direction with respect to the suspended award.

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\*In either of these cases the Governor may order that it should take effect immediately or that it should commence on the expiration of an award of the same nature imposed for the current offence.

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(30) Ensure the awards are correctly entered in the appropriate spaces on Form 256 before it is signed and dated.

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(30) Where awards are made in respect of more than one charge each Form 256 should show separately the awards for each.

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**The Hearing (if the accused has pleaded Guilty)**

(31) Hear the evidence of the reporting officer, and invite the accused, if he so wishes to question the officer on his evidence, or on relevant matters which the officer has not covered. The Governor may also wish to ask questions for clarification.

(32) Where the incident from which the offence arose led to more than one charge against the accused and one of these is referred to the Board of Visitors, the other charges should not be so referred unless the relevant criteria are met (see paragraph 20).

(33) Where the incident from which the offence arose led to more than one inmate being charged and the charge against one prisoner is referred to the Board of Visitors, the charges against all the other inmates involved should only be referred to the Board of Visitors where the relevant criteria are met for each individual.

(34) Where the charge is:

- (a) mutiny or incitement to mutiny;
- (b) doing gross personal violence or a serious assault whoever the victim;
- (c) any assault on an officer;
- (d) escaping or attempting to escape from prison or legal custody;

see paragraphs 28 and 29 of the General Guidance in this section.

- (e) where the charge is of making false and malicious allegations see note 20(ii).

(31)

- (i) There is no objection to the reporting officer reading out his evidence from a previously prepared statement: this should be incorporated in the record of the hearing.
- (ii) If the accused in any way abuses the opportunity to question the officer directly the Governor may insist on questions being put through him.
- (iii) If the accused himself or through witnesses challenges facts on which the charge is based the plea should be entered as not guilty and the hearing should be continued in accordance with paragraphs 11 to 30.
- (iv) If the reporting officer is temporarily not available see Notes (iv) and (v) to 11.

(34)

- (a)/(b) It must be verified that the police have decided not to prosecute.
- (c) Where the police have been invited to investigate it must be verified that there is no intention to bring a prosecution.
- (d) An intention by the police to bring a prosecution for further offences committed whilst unlawfully at large should not delay the adjudication.

(35) Repeat 31 for any other witnesses in support of the charge. An inmate witness should be asked to confirm that he is prepared to give evidence, as he cannot be compelled to do so. An officer of the prison may be required by the Governor to give evidence as part of his duties. Witnesses other than the reporting officer should not normally remain in the room after they have given their evidence and been questioned on it.

(36) If the accused asks to call witnesses, whether named in advance or during the hearing, ask him to say what he thinks their evidence will show or prove. Unless the Governor is satisfied that the witnesses will not be able to give relevant evidence, they should be called.

(37) If any exhibit is produced during the hearing (eg. a weapon which has been used, or an unauthorised article found in the accused's possession) this should be described and recorded at the time it is produced.

(38) If the Governor is satisfied that the accused is guilty of a charge for which he may make an award and he decides to deal with it himself, record the finding on Form 256 and ask the inmate whether he wishes:

- (a) to offer an explanation for his conduct; and
- (b) to say anything in mitigation.

(39) If the accused wishes to call someone to support a plea in mitigation this should be allowed unless such a request is clearly unreasonable. If no plea in mitigation is put forward, this fact should be recorded on Form 256.

(40) The Governor should ask any member of staff who knows the inmate, including workshop staff, for a report on the accused and if he does so the inmate should be asked whether he wishes to add anything or ask any questions in connection with the report.

(41) The Governor should consider what awards he will make. No award of cellular confinement may be made unless the Medical Officer has certified that day that the inmate is fit for it; and if the inmate has not been medically examined that day no other punishment will be awarded if he has any doubt about the inmate's fitness for it. He may decide to adjourn, for a period not normally exceeding 24 hours, for any necessary medical examination to be made.

(35) If an essential witness is temporarily unavailable the Notes (iv) and (v) to 11 are applicable.

(36) The accused, although having pleaded guilty, might wish to show that his part in an incident was not so serious as is apparent.

(37) For the disposal of exhibits see paragraph 42.

(40) (i) The Governor may put questions to the officer making the report to clarify or elicit further information relevant to the question of punishment.

(ii) Where the report is read from a previously prepared note this should form part of the record of the adjudication.

(41) (i) Ordinarily, the inmate will have been medically examined on the day of the adjudication. There is however a dispensation at establishments where there is only a part-time Medical Officer.

(ii) The Governor should examine the inmate's record in respect of his current sentence of imprisonment (or in the case of an unsentenced prisoner the record relevant to the present reason for detention) for information about his behaviour. The Governor should tell the prisoner what matters he has taken into account, favourable or unfavourable.

(42) Announce the awards and when making awards in respect of more than one charge, whether the awards are to be cumulative or concurrent with, other awards.

- (42)
- (i) The awards must be within the range of, and expressed in terms of, the Prison Rules.
  - (ii) Neither the award nor any entry in the Remarks section of Form 256 should include any reference to any administrative action eg. placing on Rule 43, return to a closed prison, or disposal of exhibits.
  - (iii) If it is desired to make reference to exhibits it would be appropriate to tell the inmate that they will be disposed of in accordance with standing instructions.
  - (iv) An individual award may not be suspended in part, but when a penalty comprising more than one award is imposed one or more of them may be wholly suspended. Thus, an award of forfeiture of privileges, for example, may be suspended in its entirety but not in part and the penalty comprising, say, forfeiture of privileges and cellular confinement may be suspended by ordering that both elements or either should be wholly suspended.
  - (v) Suspended awards of forfeiture of remission should be made only where there are special extenuating circumstances and the offence did not involve violence, and where an award of more than 14 days' forfeiture of remission is suspended the Form 256 should indicate what those extenuating circumstances are.
  - (vi) A suspended award may not be activated unless the prisoner has been found guilty on adjudication of a further offence which was committed during the period of suspension.
  - (vii) It is open to the Governor to make no award in respect of the offence adjudicated upon but to order that a suspended award take effect in whole or in part. The *activation* of a suspended award may not be ordered as the *punishment* for the further offence.\*

(43) If an award is ordered to be suspended (Prison Rule 55(1)), or it includes the stoppage of earnings under the provisions of Prison Rule 53(1), the terms of the award must be set out in writing in the Remarks section of Form 256, and the inmate's liability explained to him in ordinary language.

(44) If the inmate is subject to an extant suspended award, the Governor's decision on the suspended award must be announced and explained to the inmate and recorded on Form 256. The decision may be to:

- \* (a) direct that the suspended award shall take effect; or
- \* (b) reduce the period or amount of the suspended award and direct that it shall take effect as so reduced; or
- (c) vary the original direction by substituting for the period specified a period expiring not later than 6 months from the date of variation; or
- (d) give no direction with respect to the suspended award.

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\*In either of these cases the Governor may order that it should take effect immediately, or that it should commence on the expiration of an award of the same nature imposed for the current offence.

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(45) Ensure the awards are correctly entered in the appropriate spaces on Form 256 before it is signed and dated.

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(45) Where awards are made in respect of more than one charge each Form 256 should show separately the awards for each.

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APPENDIX SEVEN

Notice of the revision of the Manual on  
Adjudications and comment thereupon

HM Prison Service  
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Cleland House  
Page Street  
London SW1P 4LN  
Telephone 01-211 3000  
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Our Ref: PDG/88 129/84/1

**REVISION OF THE GREEN MANUAL ON THE CONDUCT OF ADJUDICATIONS IN PRISON DEPARTMENT ESTABLISHMENTS**

As you may know, we have decided to produce a revised Manual to coincide with the changes to the Prison Rules and the prison disciplinary system that are planned to come into effect in April 1989. We are anxious to ensure that the revised Manual is produced before next April, so that it can be used for Board of Visitors training planned for January to March 1989.

I enclose a copy of the draft revised manual, and I would be very grateful to receive your comments on the new format and contents. The major changes are:-

1. The combining of the Board of Visitors and Governor's sections of the Manual - this reflects our view that, with a few exceptions, the procedure and standards required are the same for Boards of Visitors and Governors.
2. The Division of the General Guidance into distinct sections on various aspects of the conduct of adjudications, including the effect of legal judgments on the procedure.
3. The introduction of a continuous narrative in the Model Procedure.

There are a few points that should be noted in the enclosed draft:-

1. Section 7 on the interpretation of the prison charges is missing, as the exact wording of the new charges has yet to be finalised. Similarly, Appendix 6, - Extract from Prison Rules - has not been included.
2. Negotiations are still proceeding with the associations representing the magistrates courts service over the use of qualified clerks drawn from their service to act as clerk at Board of Visitors adjudications. References to the use of such clerks in the draft manual assumes a successful conclusion to those negotiations. If that does not come about, or the manner in which they will be employed is altered, then an appropriate amendment to the draft manual will be required.
3. In Section 2 Para 15, advice is given on which Governor grades should carry out adjudications, following the

introduction of Fresh Start. The advice stated in the draft manual should not be regarded as agreed policy, and may be subject to alteration once the Department's policy has been finalised. It is intended to issue an instruction on this matter in due course.

4. In Section 2 Para 1, reference is made to Governors ensuring that at least one of their senior staff has received appropriate training in the proper interpretation of offences, and is available to offer advice to officers on appropriate charges to lay. This is in response to concern expressed at the possible lack of local expertise and advice available to officers. This is a matter that is being explored with P6 Division and the Training College, and further details will be made available later.
5. Page numbers, both for the main text and the index will be added once the final draft is typed, as will any missing references to certain paragraphs.
6. The single sheets carrying the title of each sections will be produced as coloured cards in the finalised manual, with a tab on the side of the card for easy reference.

I would be grateful if you could let me have any comments you may wish to make by 30 September.

Yours sincerely



S M BIRKETT

(ROTGM)

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Deborah Loudon/Steve Birkett  
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Your reference  
Our reference PMQ/FMS  
Date 10 October 1988

Dear Deborah and Steve

DRAFT REVISED MANUAL ON ADJUDICATIONS

Thank you for sight of the draft. Most of my comments are noted on the text, ... returned herewith. Various of them require amplification as follows:-

Section 3, p.15

It is bad advice and, I venture, a misundersanding of the caselaw to conclude that legal representation is "not available at governors' adjudications". It seems to me, post-Leech, that we know an adjudicating governor to be acting judicially and not managerially. Thus, if faced with a request for legal assistance or representation at the hearing, he must exercise his discretion in a judicial way. This should be on all fours with the boards exercise of discretion under the Webster J criteria in Tarrant. It does not, of course, mean that the adjudicating governor would have to grant the request. I can only recall being asked twice since the Leech judgement and, I must admit, on one of the occasions I fudged it. I said that if I found there to be a case to answer I would be remanding the matter to the BoV and the prisoner could make his request to them. In the other I consciously applied the Webster J criteria and found there to be no need for legal or other representation.

The argument that any case serious enough to merit representation ought to be before the BoV cannot be sustained in the face of the European Court of Human Rights decisions in Engel (the Dutch soldier boys case in 1976). The Court had to decide on what constituted a fair hearing and on what constituted a criminal charge which would attract the protection of Article 6. The nature of the offence and the severity of the penalty risked were significant factors.

"What belonged to the criminal sphere were deprivations of liberty liable to be imposed as a punishment except those which by their nature, duration or manner of execution cannot be appreciably detrimental"

In that case, "strict arrest in a disciplinary unit" was held to fall within the definition of that which would attract the protection of the Article (c.f. loss of remission, confinement to cell).

I am aware of the dicta of Lord Goff in ex parte Hone to the effect that he found it difficult to envisage circumstances in which representation before a governor would ever be appropriate. Indeed, the courts in the Irish Republic which have been some years ahead of our own in guaranteeing procedural protection to prisoners at adjudication have rejected the possibility. But remember that Lord Goff was speaking obiter. Governors' adjudications were not at issue in the case. Unfortunately my copy of the Leech judgement is in Durham and my draft thesis is with my supervisor. However, I urge you to recall some of the dicta of Lord Bridge in Leech to the effect that whereas the governor is a servant of the Secretary of State, he is not in that role when adjudicating. He would

"rightly send packing" (I think those are the words) any civil servant in Whitehall who tried to influence how he should proceed.

It is quite clear that a solicitor might have difficulty in securing legal aid funding for the purpose of representing a prisoner before a governor. That is not a matter that should concern us. What we should look to is "Wednesbury unreasonableness". If the governor is to act judicially he must certainly "direct himself properly in law - he must call his own attention to the matters which he is bound to consider ... if he does not he may truly be said ... to be acting unreasonably" (Lord Greene M.R. in Associated Provincial Picture Houses v Wednesbury Corporation 1948 1 KB 223 at 229). Any fetter, eg a Home Office instruction that legal representation is not allowed at a governor's hearing, would clearly inhibit a reasonable use of discretion. In Tarrant representation could be permitted because nowhere, at law, was it excluded. The same applies here.

#### Section 3, pp 17-18

The ECHR did not hold in Campbell and Fell "that a prisoner charged with the old charges of mutiny and g.p.v. to an officer should be granted legal representation if he requests it". The right to legal representation (as opposed to the right to ask for it) arose because mutiny and g.p.v. constituted "criminal charges or matters" and thus fall within the parameters of Article 6. This is why I prefer the way that advice is phrased at Appendix 3. Perhaps the words "criminal charge or matter" should be substituted for "especially grave offence" in that place.

#### Section 3, p.18

Norley (and ex parte McGrath which is similar) can no longer be seen as good law in respect of a board only having to exercise its mind on the question of representation or assistance if asked to do so. It has been overtaken by the law of "legitimate expectation". (See Lord Bridge in Leech and ? my law report is in Durham) in CSSU v Minister of State (the GCHQ case). F.1145 places the onus to ask on the prisoner. But F.256 notes it as a requirement of the board to ask if he wants the question to be addressed.

#### Section 4, p.29

It might be helpful to incorporate in the text the C27/84 stuff on when it is appropriate to remand under R.48 and when under R.43.

#### Section 8, p.6

I have difficulty understanding 12(ii). If it is addressed to the governor I guess he should get at least as far as formally putting the charge to the inmate. If it is addressed to the board it is superfluous, since the matter would not have got as far as them had the CPS decided to take no action or had the forensic analysis not been confirmed positive.

#### Omission

In the area of disclosure, adjudicators should be reminded that if they visit the scene of the alleged offence, the accused should go with them. Two examples arise from my own experience. One was at Long Lartin where a prisoner said that a witness in (say) cell D.1/11 might have seen what happened in his own cell since the windows were in line of sight. The panel went to see D.1/11 and were satisfied that it was not in line of sight. Later it transpired that the prisoner had given them the wrong cell number. Had he gone with them he would have known he had been mistaken about that. The second, at Durham, was my adjudication on a man charged under para 20 with causing a disturbance by banging on his cell door. His mitigation was that his alarm bell was not working. Staff evidence was that all the bells on the landing were working. I went to see - staff and prisoner too - and found that his was not working. There is a judicial review case on the point, though being separated from my material, all I can remember is that it relates to a company called "Fairmount Investments".

1.250  
I think that the form dictates that we ask for a plea of guilty or not guilty too early. I think that the inmate should hear the officer's evidence before entering the plea.

Presentation

Prisons are wonderful at working to old rules. Unless the new "Manual" looks different from the old one the chances are that the old one will still be referred to. Do issue a new binder (the old one carries the date October 1984). Make the style markedly different. If the "Green Book" were to be replaced by the "Yellow Pages" that would help.

After all this verbiage I sincerely hope that you do not regret asking for my comments. Please do not regard this as being too adversely critical. Overall I find the draft excellent. I am writing this in my 'digs'. All my earthly possessions are 150 miles away and it will be six weeks or so until we are re-united in south Manchester. For this evening, the wine is taking over from the law. I shall now conclude this letter and the bottle.

With kind regards.

A handwritten signature in black ink, appearing to read 'P M Quinn', with a horizontal line extending to the right from the end of the signature.

P M Quinn

APPENDIX EIGHT

Comment upon the Green Paper  
"Private sector involvement in the remand system", 1988



Remands Unit  
Home Office Prison Department  
Horseferry House  
Dean Ryle Street  
LONDON, SW1P 2AW

Your reference

Our reference

Date *3rd November 1988*

An open letter to the Remands Unit, Home Office Prison Department.

Dear Sirs,

Comment on the Green Paper "Private Sector Involvement in the Remand system", 1988 CM434, London, H.M.S.O.

The Green Paper invites a written response, as indeed did members of the Unit when they visited Risley recently. We do so by way of an open letter which we shall submit to the Prison Service Journal. In this way we hope not only to assist you in your deliberations but also to stimulate a wider debate in the field.

We should confirm, at the outset, that our views broadly coincide with those noted at paragraph 48 of the Green Paper, viz. that it is wrong in principle to place prisoners in the care of private contractors. We cannot subscribe to an ethic that would put the agents of private sector profit in a position of power over private citizens - albeit those remanded to custody. We confine our comments, apart from those about staffing, to that which may be found under the umbrella of control, discipline and punishment and access to legal advice. It is here that we find the Green Paper to be fulsome in generalities and superficial in its addressing of fundamental questions.

i) CONTROL: It is a truism that good security and sound control commence with the trust of satisfactory human relationships. Perhaps security guards could achieve this, though as will be seen, we doubt it. Our concern is for when security and control break down under the proposed model. Presumably, were an inmate in a private centre to transgress the criminal law by committing an arrestable offence, the guard would be as entitled as any other private citizen to arrest and restrain the prisoner until a police officer (or a prison officer carrying that statutory authority) attended to intervene. But would such guards know what is and what is not an arrestable offence? They would themselves be breaking the law were they to get it wrong. Since we know that the majority of offences committed by inmates are offences against the disciplinary code and not against the criminal law we wonder on what authority a civilian guard could do anything in respect of such transgressions. One of the remand prisoners' greatest fears - and we have been talking to some today on the point - is that the result might well be the use of oblique discipline or hidden punishments that the present system tries to avoid. This exposes the weakness of the assumption at paragraph 71 that the existing rights and privileges of remand prisoners would not be changed were remand centres to be privately run.

Much concerned with the control of remand prisoners and their environment hinges upon preventive measures. The authority of the Prison Act 1952, expressed in the Manual on Security, empowers prison officers to search and to strip search. Our arguments against strip searching will be expressed in another place, but, if we accept the need for it for the present, we wonder what possible authority can be given to civilian guards to indulge in the practice? Perpetrated by civilians, strip searches could, at one end of a continuum, be seen as inappropriate, and at the other as constituting a serious sexual assault were it to be achieved by force. The rub-down body search could constitute an assault in any case.

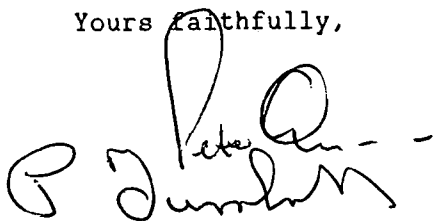
Arguments persist as to whether or not censorship of correspondence is necessary in any penal institution. For the present it is a fact of life in remand centres. Is this really a practice that should be extended to employees of a private security firm who would thus have authority to spy upon legitimately confidential affairs of others? The Green Paper touches upon none of the above matters.

ii) DISCIPLINE AND PUNISHMENT The Governor has a statutory authority to adjudicate. What of the commandant (?) of a private centre - is a civilian to be given such powers? Parallels do exist where civilians exercise disciplinary functions but, to our knowledge, never where questions of the basic liberty of the subject arise. The supervision of a "detention manager " along the Harmondsworth lines (paragraph 47) does not assist since we are unaware of any disciplinary functions vested in this person. The prospect of an itinerant governor was mentioned when you visited us. So be it, but who will be accountable for the way in which any punishment imposed will be administered? At present, staff are clearly accountable to the Governor for that. Surely accountability cannot be to the shareholders. Matters may be complicated when the award is forfeiture of earnings. Prison earnings are minimal. If even they are to be lost to the benefit of a profit making company it can be suggested that exploitation of the weak to the benefit of the strong has triumphed. And what when the itinerant governor has gone away? On whose authority will civilian guards use special (strip) cells? How will they move a prisoner there against his or her wishes without committing an assault? How could a prisoner be segregated for the purposes of good order and discipline? What would constitute such an offence in a private centre? Who would decide?

iii) ACCESS TO LEGAL ADVICE There is a pre Raymond v Honey and pre ex parte Anderson ring to the view expressed in paragraph 92 that a private centre would have to provide some sort of means for lawyers to complain about the conditions (presumably to include treatment) and facilities afforded to their clients. It is absolutely clear that lawyers are able to, and will, do that anyway. Prisoners no longer instruct solicitors because the Secretary of State allows them so to do, as once was the case. The interesting conundrum that should have been addressed by the Green Paper is whether or not accountability for misdeeds will lie with the headquarters of the private contractor or whether the Home Office will be deemed vicariously liable for that done in its name.

We mentioned, above, that we worry about staffing of the proposed private centres. Paragraph 89 notes the "special qualities and skills" needed by staff. Senior police officers have, in the past, shared with one of us, their concern as to the quality of staff recruited by private security firms. Often, it seems, they are those who have been rejected by the police, or the prison service, as unsuitable. Suddenly, it seems, they are to go through a metamorphosis whereby they will be able to exercise skills in which prison officers are already expert. The remand centre officers' ability comes not just from their training but often from a wide experience of the prison, and criminal justice, system as a whole. Skills gained in the former borstals, local prisons and dispersals will have helped him or her to place the inmates' problems in perspective. The officer may have seen the prisoner grow up, been the group officer of their uncles or fathers in training prisons, helped their mothers in mother and baby units or even visited their families. The prison officer knows the rounded character of the inmate and that makes the understanding of his or her problems almost second nature. We doubt that the capacity to care and to control vested in the private guard will approximate to that of the prison officer to any significant degree.

Yours faithfully,

A handwritten signature in dark ink, appearing to read 'Philip Turnbull'. The signature is written in a cursive style with a large initial 'P' and a long, sweeping underline.

PHILIP TURNBULL

PETER QUINN.



## HOME OFFICE

Horseferry House, Dean Ryle Street, LONDON, SW1P 2AW

Direct line: 01-211

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Our reference:  
Your reference:

Philip Turnbull and Peter Quinn  
HM Remand Centre  
Warrington Road  
Risley  
Warrington  
CHESHIRE WA3 6BP

15 November 1988

Dear Mr Turnbull and Mr Quinn

Thank you for your letter of 3 November with your comments on the Green Paper, Private Sector Involvement in the Remand System (Cm 434).

Whilst the Green Paper identifies the main issues which would need to be resolved before contracting-out could go ahead, it does not set out to provide all the answers. That is the purpose of the consultation period and the consultancy, and it is particularly helpful to have comments from people in the Prison Service who have practical experience of these matters. May I say that I found our visit to Risley last month extremely valuable, and that I am most grateful to you for following it up with your detailed comments.

As you recognise, we need to identify the precise powers which would be required by the staff of contracted-out remand centres, and the limits of those powers. It would then be for Parliament to decide, in considering legislation on the subject, whether the powers which were needed could properly be conferred on people who were not public servants.

It is also quite clearly necessary to ensure that prisoners would not be exposed to a misuse of powers in a contracted out establishment. You mention the disciplinary framework, the use of strip cells, the segregation of prisoners for good order and discipline and punishment by loss of earnings. It is in relation to such matters that there is likely to be a role for a publicly appointed monitor, as described in paragraphs 65-66 of the Green Paper. The Home Secretary's accountability for the treatment of prisoners would, as paragraph 63 of the Green Paper notes have to be preserved. We envisage that this will be done through systems of oversight and inspection similar to those at other establishments backed up by the permanent presence of a government monitor at the establishment. This is somewhat different from the question of legal liability if prisoners complain about their treatment by the contractor. This would presumably depend on whether, if the complaint was upheld, the fault or negligence was found to be that of the Home Office or of the contractor.

You are right to stress the importance of the quality of staff in a contracted-out centre. We are considering how best to ensure sound methods of recruitment, training, management and support. Staff looking after prisoners will certainly need different qualities from those of which are sought among existing staff of, for example, security companies. It is likely that contractors would seek, at leastly initially, to draw some staff from the prison service to provide the sort of background knowledge and experience which you mention.

The Government's aim in involving the private sector in the remand system would be to reduce prison overcrowding, relieve the pressure on the rest of the prison system, provide better conditions for prisoners and improve value for money. So conditions in any privately-managed establishments would have to compare favourably with what the existing system could provide with up-to-date facilities and without overcrowding.

Thank you again for writing with your comments. We shall take your observations into account in our further work on the Green Paper. An announcement about Ministers' conclusions on the way forward is likely to be made in the New Year.

*Yours sincerely*

*Robert Fulton*

P R A FULTON  
Remands Unit

APPENDIX NINE

H.O.P.D. Statement of Purpose,  
14 November 1988

# B R I E F I N G

## MESSAGE FROM THE DIRECTOR GENERAL

To all members of the Prison Service

Dear Colleague

During my time as Director General the Prison Service has not had a simple and motivating statement of purpose. Now that the Fresh Start changes are in place the Prisons Board thinks the time is right to make such a statement, so that all members of the Service have a common understanding of and commitment to its purpose.

The statement is being given to everyone in the Service through this letter and, for the future, as they join. It will be prominently displayed throughout the Service. It will be placed in our recruitment brochures and annual reports.

**Her Majesty's Prison Service serves the public by keeping in custody those committed by the courts.**

**Our duty is to look after them with humanity and to help them lead law-abiding and useful lives in custody and after release.**

I hope this speaks for itself. But I want to draw out some points.

We are and are proud to be a **Crown Service**.

**We serve our fellow citizens.** That makes us accountable to them for what we do and how we do it: for the way we treat prisoners and how we use the resources which Parliament provides.

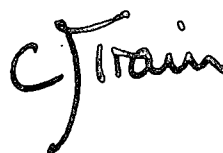
The most severe step a court can take is to deprive people of their liberty. Our part in the criminal justice system is to give effect to the court's decision: **the Service exists to keep people in lawful custody.**

By its very nature locking people up under the criminal law places **two duties** on us all:

- to see that they are not subjected to arbitrary force or discriminated against on racial or any other grounds, are treated with respect, are properly fed, and have their physical and other requirements properly met.
- to do all we can to help them lead law-abiding and useful lives. That applies not just for the future, after release, but also while a person is in prison. The duty of care is discharged and custody secured most surely when the life of a prison is regular – when prisoners are fully, actively and constructively occupied.

Each one of us, wherever we work, has a part to play in making sure the Service matches up to the challenge which this purpose sets us.

Yours sincerely



C J TRAIN CB

APPENDIX TEN

Draft Revision of Prison Rule 47  
and consequent amendments

## PRISON DISCIPLINARY SYSTEM : CHANGES IN RULES

### Codes of Offences

With effect from 1 April 1989 the disciplinary changes which may be laid against a prisoner, Under Rule 47 are as follows:-

- (1) 'Commits any assault'
- (2) 'Detains any person against his will' (inc. hostage-taking)
- (3) 'Denies access to any part of the prison to any officer' (inc. barricading)
- (4) 'Fights with any person'
- (5) 'Intentionally endangers the health or personal safety of others, or by his conduct is reckless whether such health or personal safety is endangered'
- (6) 'Intentionally obstructs an officer of the prison in the execution of his duty'
- (7) 'Escapes from prison or from legal custody' (inc. absconding)
- (8) 'Fails (a) to return prison when he should have returned after being temporarily released from prison under Rule 6 of the Rules or (b) to comply with any condition upon which he was so released'
- (9) 'Has in his possession (a) any unauthorised article, or (b) any article in greater quantity than he is authorised to have' ('unauthorised' eg. a controlled drug, or something the particular prisoner is not authorised to have)
- (10) 'Sells or delivers to any person any unauthorised article'
- (11) 'Sells or, without permission, delivers to any person any article which he is allowed to have only for his own use'
- (12) 'Takes improperly any article belonging to another person or to a prison' (equivalent to theft)
- (13) 'Intentionally or recklessly sets fire to any part of a prison or any other property whether on not his own'
- (14) 'Destroys or damages any part of a prison or other property other than his own'
- (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'

- (16) 'Is disrespectful to any officer or any person visiting a prison'
- (17) 'Uses threatening, abusive, or insulting words or behaviour'
- (18) 'Intentionally fails to work properly, or being required to work refuses to do so'
- (19) 'Disobeys any lawful order'
- (20) 'Disobeys or fails to comply with any rule or regulation applying to him'
- (21) 'In any way offends against good order and discipline'
- (22) (a) Attempts to commit, or (b) incites another prisoner to commit, or (c) assists another inmate to commit or to attempt to commit or any of the foregoing offences.

(S230289.PD2)

## Notes to Reporting Officers

1. Rules 47 - 56 have been revised w.e.f. 1.4.89. The new rule 47 is overleaf. It should be noted that it is no longer possible to lay a charge of mutiny, doing gross personal violence, making a false and malicious allegation against an officer, or repeatedly making groundless complaints. Officers should also be aware of the following changes to the rules:-
  - (i) Rule 48 (1) - 'Where a prisoner is to be charged with an offence against discipline, the charge shall be laid as soon as possible and, save in exceptional circumstances, within 48 hours of the alleged offence being discovered'.
  - (ii) Rule 51 (1) - graver and especially graver offences no longer exist. The Governor may refer any charge to the Board of Visitors if he decides his powers of punishment would be insufficient if the prisoner were to be found guilty.
  - (iii) Rule 51 (3) c(5) - the maximum period of forfeiture of remission that a Board can award on one charge has been reduced to 120 days, and 180 days consecutively for a series of charges arising from one incident.
2. Manual on the Conduct of Adjudications - to accompany the rule changes, a revised manual, in a new yellow binder, has been produced. Copies have been sent to all Grade Vs and above, and all members of Boards of Visitors. A copy has also been sent to an Adjudications Liaison Officer (see below). Section 2 of the manual contains advice on charging.
3. Adjudications Liaison Officer (ALO) - a day's training in the new rules and procedures has been provided for one officer from each establishment. This officer will be able to advise reporting officers on the interpretation of the new code of offences, when charges should be laid, and the proper presentation of evidence, both in writing and orally at adjudications.
4. Forms - revised versions of F254, F256, F1127 and F1145 will be available during 1989. Reporting officers should be aware that the revised F256 will contain a line recording when and by whom the F1127 (Notice of Report) was issued to the accused. In the meantime a written record should be kept of the issue of all F1127s.
5. Transitional Arrangements - Until midnight on March 31 1989, charges should be laid under the old code of offences, but from 1 April, all charges must be laid under the new code (overleaf), irrespective of when the alleged offence took place or was discovered.

(S230289.PD3)

APPENDIX ELEVEN

THANKS

I have already acknowledged the assistance of Colin Warbrick and Alastair Papps in the successful completion of this work. Many others willingly gave of their time, expertise and experience. A great debt of gratitude is owed to them for that.

Within Home Office, Deborah Loudon and others in her section, notably Steve Birkett and Sarah Aye-Moung were constant sources of advice on policy regarding adjudications. Pam Lutterloch helped on matters relating to boards of visitors generally. David Burgess, formerly secretary to the Prior Committee, did much "devilling" for me in searching out the evidence needed. Nigel Benger and Bob Wright gave advice on various matters to do with security. Special mention must be made of Terry Weiler. A former assistant under secretary, member of the Prisons Board and chairman of the working party, the Report of which is usually known simply by his name, he offered enthusiastic help when he learned of my field of study. He pointed me to public records that otherwise would have escaped my attention and joined in a most fruitful correspondence. Now retired, Terry Weiler is engaged in his own research into prison conditions, in which I wish him well.

From the academic world I express particular thanks to Graham Zellick of Queen Mary College, University of London and to Roy Light of Bristol Polytechnic. Not only have they commented on parts of this work, but both have given me immense support, over the years, in helping me to sustain my knowledge and interest in the subject area. Mary McAleese of Queens University, Belfast and Kevin Boyle of University College, Galway, provided me with information not readily available within the jurisdiction of the English and Welsh courts. Tony Bottoms allowed me access to the library at the University of

Cambridge Institute of Criminology and Stephen Gregory gave much practical help once I was there. Equally I should thank Karen Prestwood, librarian at the Prison Service College in Wakefield. Her prompt attention to my requests for books could always be guaranteed. Her professional knowledge and experience are presently helping to restore that library to the position of prominence it once held and to which it has not aspired for some years.

Solicitors David Hallmark, Alastair Logan and Michael Fisher shared with me such confidences as are rare and thus added to my more complete understanding of the problems faced by practitioners in dealing with prison matters.

David Wilson of Yorkshire Television seemed ever able to wave a magic wand in producing for me the most obscure of articles from the press of years past.

It will be evident that this paper could not have been completed in its present form without the assistance and cooperation of prisoners. It is difficult for a researcher, and certainly difficult for one from outside "the system" to gain their confidence and trust. The work has benefitted greatly from my discussions with many, but especially with Diana Fleet, Carole Hamner, Manuel Burgo and with one who wished to remain anonymous. I discussed and argued at length with Ella O'Dwyer and with Martina Anderson over some of the ideas expressed: we agreed on very little but their views were highly valued and have informed the shape of part of the work. To those prisoners I offer my heartfelt thanks together with the hope that I have in no way abused the confidence and trust that they placed in me.

Connie Dowson of Durham University took my illegible scrawl and translated it into the present typescript. I thank her for her expertise and also for the speed with which she was able to produce

large volumes of work.

Finally I must mention my children Christopher and Miriam Quinn. They have seen my work over the years and have been a constant source of delight and encouragement. It was Christopher's idea that this paper would have been enhanced by the addition of a few jokes and by giving it a happy ending. Thankyou children. You may well have been right.

P.M.Q.

1989

