PROCEDURE FOR THE CONDUCT OF AN ADJUDICATION BY A BOARD OF VISITORS

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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 Board 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 it is important, if possible, to discover what in fact happened if staff or inmates are not to feel dissatisfied with an adjudication. 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.

THE ROLE AND RESPONSIBILITIES OF THE ADJUDICATOR

3. An adjudication must be seen in the context of the custodial setting; the adjudicator's approach to his responsibilities will be influenced by this. A departmental working party on adjudication procedures in prisons had this to say, in its 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. This adjudicating body must establish the facts, evaluate the evidence and 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. Most of the penalties therefore take the form of depriving the prisoner of something for which good conduct is supposed to be a prerequisite. Forfeiture of remission is perhaps the most significant example of this. But the consideration also applies to the forfeiture of various discretionary amenities (which we discuss in more detail in paragraphs 80-86).

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 seems to us to emphasise two requirements: first the need for those who carry out adjudications on prisoners to be people who are familiar 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 (and whose role in the proceedings is considered in more detail in paragraph 54 below)."

EVIDENCE AT ADJUDICATIONS – GENERAL

4. It will be evident from the foregoing that adjudications by a panel cannot be, and are not, subject to all the procedural and evidential rules obtaining in a court of law. As at a court however, the accused must have the opportunity to give his side of the story and bring out the facts that challenge the evidence against him. He must not be convicted unless the panel is satisfied of his guilt. It is open to a panel to dismiss a charge notwithstanding that an inmate pleaded guilty.

5. 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. If when an inmate is seeking to give his side of the story 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.

6. The accused must hear, and have the opportunity to challenge all the evidence against him. 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.

Written evidence

7. The panel may accept written evidence, but if the accused denies or explains away a particular piece of written evidence, its reliability may be put in doubt. For this reason, a previously-prepared written statement may be accepted as evidence only if 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 had such an opportunity. If the writer is not present the hearing should be adjourned. One of the uses of written evidence may be to corroborate evidence given orally at the adjudication.

Hearsay evidence

8. 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 from another establishment is being dealt with, when a reporting officer has to reply 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. On the other hand, if the accused admits to the truth of the statement of the reporting officer it may be unnecessary to call for further evidence.

Offences involving charges against more than one inmate

9. 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.

Evidence from a member of the public

10. 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.

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 offences committed by him.

NOTES

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.

ii. If an earlier enquiry has been conducted by Board members the adjudicating members should be different from those who conducted the earlier inquiry.

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 26 and 40).

2. It is helpful for the adjudicating panel to have an advance list of witnesses whom the prisoner wishes to call (see paragraphs 18 and 35).

NOTE

The accused is not required to indicate in advance the witnesses he would like to call, but if he does so efforts 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. A record of the proceedings should be taken down on Form 256.

NOTE

The record of the adjudication does not need to be verbatim -- the main points should be taken down fully, and irrelevancies and repetitions left out – but it should be a faithful record of all the evidence relevant to the decisions reached 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.

4. During the hearing it may appear that the facts constitute a similar but less serious offence than that charged. In those circumstances a charge may be reduced by the adjudicating panel during the hearing.

NOTE

Governors may not prefer alternative charges. Where the facts of a case adduced at the hearing are clear, but not sufficient to supply every ingredient of the offence charged, though sufficient to supply the ingredients of a charge for some other offence, there is no objection to a charge being reduced to another of the same nature, eg from gross personal violence to assault, provided

A. this is made clear to the inmate and recorded;

B. the inmate is served with a fresh Form 1127 (Notice of Report) and if he so wishes is allowed sufficient time, eg by an adjournment to a later time or a later date, to prepare his defence to the reduced charge;

C. the alteration is made during the course of the hearing, and not after the accused has been found not guilty of the original charge.

A charge of a more serious, or different, nature should not be substituted.

5. It is open to an adjudicating panel to order a remand 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 for the first hearing. The Governor should be asked to consider whether the accused should be kept apart from other inmates during the adjournment.

BEFORE THE HEARING

6. 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.

NOTE

If a charge is not one provided for in the Rules, it is not an offence against discipline, so cannot be sustained, eg an allegation against an officer may be false, or it may be malicious, but it is only an offence under the Rules if it is both false and malicious.

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.

NOTES

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, Rule 47(7) refers to a prisoner having an unauthorised article "in his cell or room or in his possession". The charge should only specify the alternative relevant to the case, ie "in his cell", "in his room" or "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 10.00 am 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. 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.

NOTE

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 Board. Nevertheless, he should be given notice of the Board'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. there has been an initial inquiry into the charge(s) by the governor in accordance with Prison Rule 48(3).

NOTE

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. 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

NOTE

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 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 the Board or the governor but is not an appropriate case to refer to the police.)

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; or

NOTE

Though one or more of the charges fall within i. or ii. there may be others that do not, which the governor has referred in order that all the charges against the accused that arose from a single incident may be dealt with together.

iii. because although none of the charges against the accused falls within i. or ii. above, one or more charges against one or more other inmates allegedly concerned with the accused in the same incident have been referred to the Board for adjudication.

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.

NOTE

Form 1145 is the only advance information given to the inmate about the procedure followed at an adjudication by a Board (see paragraph 8).

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 Board 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. See paragraphs 27 and 41.

NOTE

The Rules provide 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. 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.

OPENING PROCEDURE

It is the responsibility of the Chairman to see that the following steps are taken, either by the Chairman or by the clerk, and that they and the responses of the accused are recorded on Form 256.

7. Identify the accused.

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

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

10. Read out the charge(s).

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

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

NOTE

8-12. If the panel 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) (see note to 6c), the hearing should not proceed until this has been remedied, the hearing being adjourned if necessary.

13. Ask the accused in respect of each charge whether he pleads guilty or not guilty.

NOTES

i. 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.

ii. 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.

If the accused pleads not guilty or he refuses to plead, proceed in accordance with paragraphs 14 to 30 inclusive, but

if the accused pleads guilty, proceed in accordance with paragraphs 31 to 44 inclusive.

THE HEARING (if the accused has pleaded not guilty or has refused to plead).

14. 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.

NOTES

i. There is no objection to the reporting officer reading out his evidence from a previously prepared statement, which may 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 should be accepted and the hearing continued in accordance with paragraphs 31 to 44.

iv. If the reporting officer is temporarily not available to give evidence in person the situation should be explained to the accused, and unless the absence is likely to be more than 3 weeks (or less where an earlier hearing of the case is imperative, eg because the discharge of the accused is imminent) it should be left to him to decide whether the hearing should proceed with just 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 postponed 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 choses to await the availability of the officer and he is being kept apart from other inmates, the Chairman should ask the Governor whether segregation is still necessary.

v. If the reporting officer is unlikely to be available within 3 weeks (or sooner where an earlier hearing is imperative) the advice of the Governor should be sought.

15. Repeat 14 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 witness has no such right to refuse.

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

NOTES

i. If an essential witness is temporarily unavailable the guidance given in notes iv. and v. to 14 in respect of the reporting officer should be followed.

ii. 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, the officer in charge should be asked to make the arrangements to ensure that he has no such opportunity.

16. 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 recorded in the evidence at the time it is produced.

NOTE

For disposal of exhibits, see note ii. to 29.

17. 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.

NOTE

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 6c.

18. If the accused asks to call witnesses, whether named in advance (see paragraph 2) or during the hearing, 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 useful 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 witness has no such right to refuse. 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.

NOTES

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. If questions to the accused indicate that he wishes to call a number of witnesses whose evidence the panel considers to be irrelevant the panel is not bound to call them.

ii. If an essential witness is temporarily unavailable see notes iv. and v. to 14.

19. 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.

NOTE

If the accused has asked to call a witness who appears to have a useful contribution to make (see paragraph 18 above) but who is not available to give evidence in person, it should be left to the accused to decide whether he would like the hearing to be postponed until the witness can be made available. The Chairman 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 postponed longer than 3 weeks (see notes iv. and v. to 14 above) nor should a witness be required to travel from another establishment unless the offence charged was serious. If in such circumstances a written statement from the witness will not suffice it may be appropriate to dismiss the case since the accused will not have had an opportunity of fully presenting his defence.

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

21. After all the witnesses have been heard, 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 25 below).

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

NOTE

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 his representative 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.

23. When the panel have come to a decision on their finding, then, depending on the practice followed (see paragraph 22 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 as need to be present.

NOTE

See note to 22.

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

NOTE

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

IF THE FINDING IN RESPECT OF ANY CHARGE BEING HEARD IS ONE OF GUILTY:

25. 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 if that person is readily available. If no plea in mitigation is put forward, this fact should be recorded on Form 256.

26. The Chairman of the panel should then invite the governor or his representative 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. (It is only at this stage that the panel should have access to the Form 1150 of the accused, or to details of his previous prison offences.) Ask the inmate whether he wishes to add anything or to ask any question to be put to the governor or his representative in connection with his report.

NOTE

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.

27. The panel should consider, privately, as in paragraph 22 above, what 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.

NOTES

i. See note to 22.

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 6g).

28. When the panel have decided on the awards to be made, take action as in paragraph 23 above.

NOTE

See note to 22.

29. Announce the awards and if the panel is making awards in respect of more than one charge, whether the awards are to be consecutive to, or concurrent with, other awards.

If an award, or any part of it, 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.**

NOTES

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; and there is no objection to an inmate being told that, quite distinct from his offence and punishment, the governor will no doubt wish to consider the desirability of, eg, placing him on Rule 43 or transferring him to another establishment.

30. 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.

NOTE

It is important that where awards are made in respect of more than one charge Form 256 should show separately the awards for each. See notes to 29.

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 Chairman or other members of the panel may also wish to ask questions for clarification.

NOTES

i. There is no objection to the reporting officer reading out his evidence from a previously-prepared statement, which may 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 the accused himself or through witnesses challenges facts on which the charge is based his plea should be changed to not guilty, and the hearing should be continued in accordance with paragraphs 14 to 30.

iv. If the reporting officer is temporarily not available see notes iv. and v. to 14.

32. Repeat 31 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 witness has no such right to refuse.

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

NOTES

i. If an essential witness is temporarily unavailable see notes iv. and v. to 14.

ii. See note ii. to 15.

33. 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 recorded in the evidence at the time it is produced.

NOTE

For the disposal of exhibits see note ii. to 43.

34. 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.

NOTE

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 6c.

35. If the accused asks to call witnesses, whether named in advance (see paragraph 2) or during the hearing, 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 useful evidence, they should be called. If he is seeking to call someone to support a plea in mitigation this should be allowed if that person is readily available. 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 witness has no such right to refuse. 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.

NOTES

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. If questions to the accused indicate that he wishes to call a number of witnesses whose evidence is likely to be irrelevant or merely repetitive the panel is not bound to call them.

ii. If an essential witness is temporarily unavailable see notes iv. and v. to 14.

36. 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.

NOTES

i. If the accused has asked to call a witness who appears to have a useful contribution to make (see paragraph 35 above), but who is not available to give evidence, see note to 19 regarding possible adjournment.

ii. See also note ii. to 15.

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

38. After all the witnesses have been heard, 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 no plea in mitigation is put forward, the fact should be recorded on Form 256.

39. 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.

NOTES

i. As the accused has pleaded guilty it may not be necessary to follow the procedure at paragraph 22 above.

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

40. The Chairman of the panel should then invite the governor, or his representative, 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. (It is only at this stage that the panel should have access to the Form 1150 of the accused, or to details of his previous prison offences.) Ask the inmate whether he wishes to add anything or to ask for any question to be put to the governor or his representative in connection with his report.

NOTE

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.

41. The panel should consider what awards it will make. Where it does not retire to a separate room to do so the governor and any other members of the staff (including the clerk to the Board) should leave the room, and 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.

NOTES

i. See note to 22.

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 6g).

42. When the panel have decided on the awards to be made, then, depending on the practice followed (see paragraph 41 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 as need to be present.

NOTE

See note to 41.

43. Announce the award, and if the panel is making awards in respect of more than one charge, whether the awards are to be consecutive to, or concurrent with, other awards.

If an award, or any part of it, 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 directions 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.**

NOTES

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; and there is no objection to an inmate being told that, quite distinct from his offence and punishment, the governor will no doubt wish to consider the desirability of, eg, placing him on Rule 43 or transferring him to another establishment.

44. 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.

NOTE

It is important that where awards are made in respect of more than one charge Form 256 should show separately the awards for each. See notes to 43.

APPENDIX

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 other general information cards. If you want to see them and the cards in your cell or room do not contain them, see your officer about it. 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 charge(s) against you, and whether you have made a written answer.

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 Governor / Chairman will read out the charge(s). 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. 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'.

6. 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/Chairman, who will assist you by asking them for you.

7. 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.

8. 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.

9. 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.

10. 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.

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

12. 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 who is readily available 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 connexion with the report.

13. 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.

Note. 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.