

23 September 2002

Dear Crime Practitioner,

Revised Prison Adjudication System

The recent European Court of Human Rights (ECHR) judgement in the case of Ezeh & Connors v. the United Kingdom has led to changes to the arrangements for prison disciplinary hearings where the potential penalty is the award of additional days in custody as a punishment for breaches of prison rules. In response to this judgement, the Prison Service is introducing changes to the system.

The purpose of this letter is to inform you of these changes and the implications for CDS funding in such matters.

The Revised System

The Prison Service has summarised the revised system as follows:

“A prisoner who commits an offence against Prison or YOI Rules must be charged, save in exceptional circumstances, within 48 hours of the offence being discovered. The subsequent adjudication is opened by the Governor no later than the next day, unless that is a Sunday or public holiday.

If the offence is comparatively minor, the Governor may choose to complete the hearing. If a finding of guilt is reached, the Governor has a range of punishments which can be imposed. If the offence is a more serious one, the Governor may choose to adjourn the adjudication for referral to an independent adjudicator. Prisoners have a right to be legally represented at hearings conducted by independent adjudicators.

The role of the adjudicator, whether a member of Prison Service staff or an independent adjudicator, is the same. It is the responsibility of the adjudicator to enquire into a report of an alleged offence and to decide whether a breach of Prison or YOI Rules has been established beyond reasonable doubt. The style of the hearing is inquisitorial but in most other respects it is like a court of law. The adjudicator must ascertain the facts and must be prepared to question, in a spirit of impartial inquiry, the accused, the person bringing the charge and any witnesses. The principles of natural justice apply. The adjudicator must ensure at all times that the prisoner understands what is happening.”

Practitioners may require a copy of the Prison Service Discipline Manual. This will soon be available from the Prison Service website, www.hmprisonservice.gov.uk. Until then, copies may be obtained from the Prison Service on 020 7217 2908.

Funding and Reporting

Representation in prison disciplinary matters is available as Advocacy Assistance under the General Criminal Contract Specification, Part A, paragraph 5.2.1(d)(iv). That paragraph states that Advocacy Assistance is available in proceedings before a Governor or other prison authority. An adjudication before an independent adjudicator is deemed to be proceedings before a prison authority.

An application for Advocacy Assistance may be granted by a contracted supplier as a devolved power. Such an application must be approved in accordance with the relevant rules in the General Criminal Contract Specification (Part B, Section 4). As set out at Part B, Rule 4.4, the financial qualifying criteria must be met before Advocacy Assistance is granted. With regard to the merits qualifying criteria, where the alleged offence is such that the matter is referred to an independent adjudicator because of the seriousness of the matter the merits test set out at Part A, paragraph 5.3 will be met and representation under Advocacy Assistance may be provided. Where the offence is dealt with by the Governor (and therefore additional days may not be awarded under the new arrangements), representation under Advocacy Assistance may only be provided where permission is specifically granted by the Governor. Given the new arrangements we would consider that such instances will be extremely rare.

Advocacy Assistance conducted in proceedings before a Governor or other prison authority is subject to a work limit of £1500 and should be reported using claim code 4B. That claim code should be used for all adjudications, those heard by a prison Governor and those heard by an independent adjudicator.

Where representation is not provided, the matter cannot be claimed as Advocacy Assistance. In these circumstances Advice and Assistance may be given, subject to the merits qualifying criteria at Part B, Rule 2.5, and the financial qualifying criteria at Part B, Rule 2.6, being met. This work is subject to a work limit of £300 and should be reported using claim code 4A.

We will monitor the operation of adjudications and will review the arrangements for funding this work in the near future.

Consequences of ECHR judgement (Stafford v. the United Kingdom) - update

In Focus on CDS 8 (August 2002), we highlighted the ECHR judgement in the case of Stafford . This ruling has implications with regard to the release of mandatory life prisoners.

The article explained two points. First, that the Government is considering the consequences of the judgement. Second, that once the Government has announced its response, the Commission will consider the impact in terms of funding and will provide further guidance.

To date, the Government has not made any announcement. Once it has done so, we will contact you further.

Yours faithfully



Richard Collins

Head of CDS