



Punishment in Prison

The world of prison discipline

the Howard League for Penal Reform

Key points

- Prisons operate disciplinary hearings called adjudications where allegations of rule breaking are tried
- The majority of adjudications concern disobedience, disrespect, or property offences, all of which increase as prisons lose control under pressure of overcrowding and staff cuts
- A prisoner found guilty at an adjudication can face a variety of punishments from loss of canteen to solitary confinement and extra days of imprisonment
- Almost 160,000 extra days, or 438 years, of imprisonment were imposed in 2014 as a result of adjudications
- The number of additional days imposed on children has doubled since 2012, even though the number of children in prison has halved
- Since 2010 the number of adjudications where extra days could be imposed has increased by 47 per cent. The running cost of these hearings is significant, at around £400,000 – £500,000 per year
- Adjudications are not sufficiently flexible to deal sensitively with the needs of vulnerable children, mentally ill and self-harming people, who may face trial and sentence without any legal representation. The process and punishments often make their problems worse
- Two prisoners breaking the same rule can get different punishments depending on whether they are on remand or sentenced, and what category of sentence they have received.
- Two children breaking the same rule can get different punishments depending on what type of institution they are detained in.

The world of prison discipline

Life in prison is framed by the Prison Rules 1999 and the Young Offender Institution Rules 2000. These rules set out the parameters of what can and cannot be done in prison. Those who break the rules can be brought before disciplinary hearings called adjudications.

Most cases are tried by a prison governor and, except in very limited circumstances, there is no right to legal representation. Cases that are sufficiently serious to attract the risk of additional days may be referred to a visiting district judge (known as an “external adjudicator”). Up to 42 additional days can be imposed at any one sitting. Additional days will extend a prisoner’s date of release. Certain prisoners cannot be awarded additional days. These include children who are serving Detention and Training Orders and anyone serving an indeterminate sentence. Prisoners who are on remand are awarded prospective days which can only be activated if the person is subsequently given a prison sentence.

A prisoner can not receive additional days beyond the final end date of the sentence. This means that the most challenging prisoners could be released without any period on licence in the community.

It is possible for prisoners to apply for some of the extra days to be remitted following a period of good behaviour. Prisoners are often not aware of this process and are generally not assisted with this application.

Many of the acts that are punished with additional days of imprisonment would not result in a prison sentence had they been committed in the community.

Both prison governors and external adjudicators can hand down a wide range of punishments, including cautions, loss of access to canteen, loss of earnings and cellular confinement (which is the same as solitary confinement). Children can be subjected to all these punishments except solitary confinement. Adults can be placed in cellular confinement for up to 21 days. Young adults aged 18 – 21, can be placed in cellular confinement for up to ten days.

Inappropriate use of adjudications

There has been a remarkable increase in the use of adjudications and the imposition of extra days.

The system of adjudications has bloated beyond its originally intended use, which was to punish incidents of unacceptable behaviour. Instead, in the most

out-of-control prisons it has become a routinely used behaviour management technique.

The majority of adjudications concern disobedience, disrespect or property offences. Ministry of Justice (MOJ) data from 2014 show that overall ‘disobedience or disrespect’ type offences are the most frequently charged, followed by ‘unauthorised transactions/ possessions’ (MOJ, 2015). These make up around two-thirds of all offences punished in 2014.

As frustrations increase among people in prison, due to overcrowding and staff cuts, it is not surprising that prison staff are resorting to the disciplinary system with increasing frequency.

There is no doubt that the prison system is in chaos. Staff cuts, violence and a general deterioration in safety in prisons have been reported by the MOJ and HM Inspectorate of Prisons. The number of assaults and incidents of self-harm are the highest in a decade. In the 12 months to June 2015 there were 17,581 assault incidents, up 13 per cent from 15,548 incidents the previous year, and 28,881 reported incidents of self-harm, an increase of 21 per cent on the previous year (MOJ, 2015a).

Since May 2010 the number of frontline prison officers in English and Welsh prisons has been reduced by almost 40 per cent (Howard League, 2015). The HM Chief Inspector of Prisons, has stated that increased rates of suicide, self-harm and violence are at least in part attributable to the reduction in the number of prison officers (HMIP, 2014). The Prison Officers Association stated that staff shortages are to blame for the increased frequency of riots, protests and other disturbances.

Extra days handed down as punishment inflate the prison population. The over-use of adjudications exacerbates the problems faced by an already bloated prison system that is creaking at the seams.

Out of control: exponential rise in ‘extra days’ adjudications since 2010

Offences referred to an external adjudicator should be reserved for the most serious breaches of the prison rules. Unlike hearings before the prison governor, the district judge has the power to award additional days of imprisonment.

Since 2010 the number of external adjudications has increased by 47 per cent from 14,741 in 2010/11 to 21,629 in 2014/15. During the same period the prison population has increased by less than one per cent (from 84,897 in March 2010 to 85,681 in March 2015).

Information obtained by the Howard League shows that the number of external adjudications has

increased year on year. In 2014, the number of external adjudications increased by over 4,000, from 17,511 in 2013 –14 to 21,629 in 2014 –15. This is a 24 per cent increase on the previous year.

The Secretary of State for Justice has not released up to date information about the cost of external adjudications for 2014 –15 (HC Deb 17 June 2015 WA 2909). Figures released in 2014 reveal that the cost of external adjudications for 2013 – 2014 was £411,750 (HC Deb 22 July 2014, c1157W). The total spend during this period on adjudications in Young Offenders Institutions was £102,595 with the highest reported spend being at Aylesbury at around £2,000 per month. External adjudications are disproportionately used against young people, who make up less than one tenth of the prison population but account for around one quarter of the spend on external adjudications.

It is likely that the cost of running external adjudications has increased to around £500,000 a year. This figure does not include the cost of additional incarceration.

Year	Number of external adjudications	Change on previous year
2010 – 2011	14,741	
2011 – 2012	15,210	+3%
2012 – 2013	16,055	+6%
2013 – 2014	17,511	+9%
2014 – 2015	21,629	+24%

160,000 extra days

Almost 160,000 extra days, or 438 years, of imprisonment were imposed in 2014 as a result of adjudications. External adjudicators gave additional days of imprisonment 10,119 times in 2014. This is a 12 per cent increase on the previous year.

New guidelines issued by the Chief Magistrate in April 2015 will increase the number of extra days imposed.

There has been an alarming 32 per cent increase in the number of female prisoners who have been punished with additional days in the last year. Additional days awarded to children have virtually doubled in the last year.

The cost of the extra detention imposed in 2014 is in the region of £15 million.

Many of the acts that are punished with additional days of imprisonment would not result in a prison sentence had they been committed in the community, but may be acts of defiance or frustration due to deteriorating prison conditions and little access to activity, exercise or human company.

Additional days per prison in 2014

Private prisons	Number of extra days given in each prison in 2014	Average population
Altcourse (G4S)	1,344	1,119
Birmingham (G4S)	4,011	1,431
Bronzefield (Sodexo)	1,058	499
Doncaster (Serco)	753	1,124
Dovegate (Serco)	1,099	1,107
Forest Bank (Sodexo)	3,427	1,430
Lowdham Grange(Serco)	525	908
Northumberland (Sodexo)	4,640	1,333
Oakwood (G4S)	4,934	1,582
Parc (G4S)	4,224	1,401
Peterborough (Sodexo)	681	942
Rye Hill (G4S)	417	602
Thameside (Serco)	63	883
TOTAL (Private)	27,176	14,361

Public prisons	Number of additional days given in each prison in 2014	Average population
Aylesbury	9,428	418
Bedford	203	492
Belmarsh	229	876
Brinsford	3,288	461
Bristol	1,738	595
Brixton	1,891	734
Buckley Hall	111	447
Bullingdon	903	1,095
Bure	81	627
Cardiff	1,229	800
Channings Wood	709	722
Chelmsford	545	661
Coldingley	510	510
Cookham Wood	207	139

Public prisons	Number of additional days given in each prison in 2014	Average population
Dartmoor	1,287	649
Deerbolt	2,818	483
Drake Hall	1,274	309
Durham	85	931
Eastwood Park	943	333
Elmley (Sheppey Group)	2,932	1,223
Erlestoke	694	498
Exeter	869	531
Featherstone	2,491	685
Feltham	2,163	565
Ford	994	491
Foston Hall	236	289
Frankland	305	774
Full Sutton	497	601
Garth	354	733
Glen Parva	2,343	672
Guys Marsh	1,189	564
Haverigg	0	636
Hewell	1,954	1,273
High Down	354	1,143
Highpoint	4,366	1,325
Hindley	1,543	283
Holloway	721	525
Holme House	969	1,203
Hull	84	843
Huntercombe	126	405
Isis	3,629	613
Isle of Wight	281	1,131
Kennet	709	279
Kirkham	176	595
Kirklevington	98	285
Lancaster Farms	2,801	414
Leeds	260	1,209
Leicester	1,247	364
Lewes	1,698	673
Leyhill	167	484

Lincoln	1,063	669
Lindholme	3,013	1,000
Littlehey	1,513	1,085
Liverpool	4,265	1,237
Long Lartin	310	613
Low Newton	411	308
Maidstone	35	589
Manchester	754	1,140
Moorland	612	1,268
Mount	2,333	774
New Hall	934	400
Norwich	1,265	754
Nottingham	1,186	1,065
Onley	2,075	694
Portland	2,489	567
Preston	2,010	702
Ranby	2,531	1,081
Risley	408	1,098
Rochester	8,048	739
Stafford	1,002	711
Standford Hill	85	449
Stocken	1,633	839
Stoke Heath	3,693	650
Styal	733	438
Sudbury	2,659	552
Swaleside	3,894	1,108
Swansea	1,584	438
Swinfen Hall	3,216	585
Thorn Cross	14	327
Wakefield	368	744
Wandsworth	3,525	1,608
Wayland	2,086	990
Wealstun	3,358	804
Wetherby	517	205
Whatton	0	834
Whitemoor	107	452
Winchester	497	671
Woodhill	916	784
Wormwood Scrubs	2,615	1,252
Wymott	835	1,107
TOTAL (Public)	132,321	63,922
TOTAL ALL PRISONS	159,497	78,283

Case study – James

James was a troubled but likeable child aged 17. He grew up in care, moving from care home to care home. He was excluded from school. By the age of 12 he was known to the police. By the age of 16 he was convicted of a serious offence. He received a three year prison sentence.

He was placed in a prison for children aged 15 to 17. When he first contacted the Howard League he had been in prison for almost a year. He had only been allowed access to education a handful of times. He had spent long periods of time in the segregation block or confined to his cell for up to 23.5 hours a day without a TV or radio.

James can be difficult and disruptive. He sees violence as a survival technique in prison. But he is not beyond hope. He can engage with staff and professionals once he has established a relationship of trust. He engaged with a counsellor in prison, with whom he formed a bond.

Professionals believe that he may have mental health problems but he has not been formally assessed.

He had numerous adjudications for fighting and disobedience. He received at least 169 extra days. James was originally due to be released as a child. The additional days meant he was released as an adult without the full support of social services as a “looked after” child.

The additional days to be served at the end of his sentence did not deter James from breaking prison rules.

Additional days for children

Although the number of children in prison decreased, from 1,803 in 2012 to 1,157 in 2014, The number of extra days imposed on children in prison almost doubled between 2012 and 2014.

	Number of children in prison	Number of additional days handed down to children
2012	1,803	1,383
2013	1,279	2,149
2014	1,157	2,683

Of the ten prisons that handed down additional days most frequently in 2014, nine held children or young adults. Over 9,000 days of additional imprisonment were handed down in Aylesbury YO1 in 2014, during which time the average number of occupants was fewer than 500.

There have been significant changes in the way children are punished. Until spring 2015, there

were no separate guidelines for children and young people at risk of extra days. Guidelines have now been published that impose a formulaic reduction in days of up to 20 per cent for young people aged 18 – 21 and up to 40 per cent for children under 18. This is out of line with the rules for other punishments, which must be reduced by half in the case of young people.

These guidelines used by district judges for sentencing young people for breaches of prison rules are too inflexible to incorporate the welfare needs of the child. The guidelines do not take account of the requirement that children should spend the shortest appropriate period of time in custody (Article 37, UN Convention on the Rights of the Child).

Arbitrary and unfair

Under the current system, two people breaking the same rule can get completely different punishments depending on their status (remand or sentenced), the type of sentence and where they are held.

Remand prisoners can get prospective additional days that will only be served if the person gets a custodial sentence. People on indeterminate sentences and children serving Detention and Training Orders cannot get additional days. Children in non-prison establishments such as secure children’s homes and the privately run secure training centres also cannot get additional days.

Children and young people rarely feel fairly treated by the prison disciplinary system. The Howard League legal team has worked with many young people who have been victims of injustice, including cases where children are beaten up by prison officers and then charged with assault themselves. These abuses of power often target Black and Minority Ethnic (BME) children. In the last 18 months, three-quarters of all children and young people who contacted the Howard League for Penal Reform helpline for assistance with disciplinary matters were BME.

Disproportionate and unnecessary

The Code for Crown Prosecutors requires that a two-stage test is passed before a prosecution for an offence committed in the community is brought. There must be sufficient evidence and it must be in the interests of justice to prosecute.

There is no similar test before charges against prison discipline are made. Prisoners are routinely charged with breaches of the prison rules even where it is clearly not appropriate or fair. Some prisons have been known to operate policies of

charging any two inmates for fighting where two are involved in violence, even where one party is clearly the victim of an assault. There is no process built into the adjudication system to help staff make reasonable adjustments for age or disability, which leaves children to face trial and sentence without any legal representation.

MOJ data show that adults get around one in five adjudications dismissed. In 2011 only one in ten adjudications involving children were dismissed. By 2014 this was down to fewer than one in 20 (MOJ, 2015). The decline in dismissals coincides with the removal of legal aid for advice for prisoners facing governors' adjudications in 2013.

Adjudication punishments often do not factor in the person's particular vulnerabilities and may exacerbate the underlying problem that prompted the adjudication in the first place. The Howard League for Penal Reform legal team has acted for children, disabled and mentally ill people who have been wrongly adjudicated.

A breach of the prison rules may be a cry for help, as illustrated by the tragic suicide of Luke Myers in Liverpool prison in February 2013. The coroner reported that Luke's concerns over an adjudication he was facing was "more than likely a relevant factor in Luke putting himself in a potentially fatal position" (Liverpool Echo, 2015). Luke had been charged with throwing food at a prison officer. He pleaded guilty at an adjudication. He was due to hear what punishment he would receive a few days later.

Young adults (18 – 21) and adults over 21 can be punished with cellular confinement, which the Supreme Court has accepted equates to solitary confinement, for ten and 21 days respectively. The United Nations Special Rapporteur on Torture has found that prolonged solitary confinement, defined as more than 15 days, amounts to torture and has been shown to cause irreversible psychological harm (United Nations

News Centre, 2011). The MOJ does not publish figures on how many days of solitary confinement have been imposed following adjudications. Data shows there has been a 44 per cent increase in the number of women punished with solitary confinement from 2013 to 2014 (MOJ, 2015).

Wrongful adjudications

Peter was 17 years old when he was accused of being in possession of an unauthorised item. The item had been found in his room when he had been out cleaning. Peter had learning difficulties: a report from around the same time found he was functioning like a seven to nine year old child. He did not know he could ask for legal advice. He was pressured into pleading guilty by staff who 'helped' him to write a confession.

Michael was a deaf young person detained in a prison for young adults. He requested a vibrating alarm clock so he would be able to get to work on time. His request was refused. The prison later described a vibrating alarm clock as a 'novelty' item. Michael was later disciplined for failing to wake up on time for work.

Sarah, a mentally unwell young adult woman attempted to set her cell on fire in order to kill herself. Instead of receiving support from the prison she was punished for trying to damage her cell.

A full list of references is available on our website at <http://www.howardleague.org/publications-prisons/>

About the Howard League for Penal Reform

The Howard League is a national charity working for less crime, safer communities and fewer people in prison.

We campaign, research and take legal action on a wide range of issues. We work with parliament, the media, criminal justice professionals, students and members of the public, influencing debate and forcing through meaningful change.

the Howard League for Penal Reform

1 Ardleigh Road
London
N1 4HS

t
e
w

020 7249 7373
info@howardleague.org
www.howardleague.org

Registered charity
No. 251926
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guarantee No. 898514

ISBN 978-1-905994-99-1



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ISBN 978-1-905994-99-1
2015