



Out of control: punishment in prison

Howard League for Penal Reform

Key points

- As prison conditions have severely deteriorated due to overcrowding and a lack of staff, there has been an explosion in the number of additional days of imprisonment imposed on prisoners for breaking prison rules.
- The number of additional days handed down in 2016 increased by 34 per cent compared to 2015. Since 2014, the number of extra days imposed has increased by 75 per cent.
- Additional days were originally designed for the punishment of incidents of unacceptable behaviour but now they have become a routine behaviour management tool in out of control prisons.
- In 2016, 289,605 additional days were handed down to prisoners who were found to have broken prison rules. This equates to over 793 years of additional imprisonment.
- The Howard League legal team has worked with hundreds of children and young adults accused of breaking prison rules or misbehaving who face additional days in prison. In the charity's experience, additional days make the problems in prisons worse. They add to the overcrowding problem, fuel a sense of injustice in prisons and are applied disproportionately to children, young adults and ethnic minorities.
- Prison governors and directors have a choice in how they respond to rule-breaking and misbehaviour by prisoners. They can manage it themselves, with loss of privileges or restorative solutions or they can refer a case to a costly external adjudicator (a judge), who has the power to impose additional days of imprisonment.
- Excessive use of extra days is indicative of poor leadership and governors and directors who are struggling to maintain control. Comparable prisons use additional days at wildly differing rates.
- Use of additional days should end. Misbehaviour can and should be constructively responded to by prison managers. Scotland abolished use of additional days a decade ago and there has been no discernible deterioration in prisoner behaviour as a consequence.

What are adjudications and how do they work?

Adjudications are part of the prison disciplinary system. Crimes committed by prisoners can be referred to the police, but any prisoner who is accused of breaking a prison rule can be tried and, if proven guilty, punished through the internal disciplinary system. The hearings are called adjudications.

When a prisoner is charged with breaking a rule and faces an adjudication, the first hearing is in front of a prison governor or other senior member of prison staff (sometimes known as a governor's or an internal adjudication). If the prisoner is found guilty a range of punishments including removing privileges, access to money and access to work can be imposed. If the prisoner is over 18 they can also be punished with solitary confinement.

Additional days cannot be imposed at an internal adjudication, but prisons can refer the case to an external adjudicator who has that power (termed external adjudications). External adjudicators are district judges who come to the prison to hear the cases referred to them. External adjudicators are able to impose up to 42 days of additional imprisonment onto the end of custodial part of a person's sentence. Prisoners are entitled to apply for legal representation when their case goes before an external adjudicator, but not for governor's adjudications.

The Howard League has a specialist legal team that has worked with hundreds of children and young people in prison. Adjudications are the most common issue that children and young adults raise when they call the legal advice line. Their experiences and problems have led the charity to look at the adjudication system across the prison estate and how it might be improved.

Prison conditions

Use of adjudications and additional days needs to be looked at in the context of what is going on in prisons. The rise in adjudications and additional days has coincided with a rapid deterioration in safety and conditions in prisons.

The prison system is severely overcrowded. There are approximately 10,000 more people in prison than there is space for. This means that 20,000 people are 'doubled-up' and share cells designed for one person. Usually these cells will contain bunk beds, a chair and an open toilet. Overcrowding is worse in some prisons than others. For example, Leeds is one of the most overcrowded prisons; it is designed to hold

fewer than 700 men but routinely holds over 1100. Between 2015 and 2016 the number of additional days imposed at Leeds prison rocketed by over 2,000 per cent. 186 additional days were handed down in 2015 compared to 4,394 in 2016.

As prisons have become more overcrowded the number of staff employed in prisons has been reduced. Between 2010 and 2016 the number of frontline prison officers fell by around a quarter (approximately 5,000 staff) (National Offender Management Service (NOMS) 2017) as prison budgets were cut. The Ministry of Justice has now accepted that too many prison officer jobs were lost and is now trying to recruit 2,500 more. To date, it has been unsuccessful. Despite constant recruitment campaigns there were only 122 more prison officers in March 2017 than in March 2016 (ibid).

Overcrowding and understaffing has led to a safety crisis. Since 2010 recorded assaults in prisons have soared by 82 per cent (Ministry of Justice 2017a). Assaults against staff have increased even more with 6,844 in 2016, compared to 2,848 in 2010, an increase of 140 per cent (ibid).

On average, somebody takes their own life in prison every three days and self-harm is at epidemic levels. Recorded self-harm amongst men in prison increased from 14,346 incidents in 2010 to 32,504 in 2016. In the last year alone, the increase has been 30 per cent (ibid) After falling for many years, the number of incidents of self-harm amongst women in prison is rising again (ibid).

In 2017 Her Majesty's Chief Inspector of Prisons summed up the prison system in the following terms 'Last year I reported that too many of our prisons had become unacceptably violent and dangerous places. The situation has not improved – in fact, it has become worse. There have been startling increases in all types of violence... [d]uring the past year, I have seen far too many prisoners who are being held in conditions that cannot be described as decent' (HM Chief Inspector of Prisons (HMIP) 2017a).

The prison system in England and Wales is overcrowded, understaffed and unsafe, leaving people in prison fearful and frustrated. As conditions have declined, the number of adjudications and additional days has increased dramatically. Prisons governors and directors are desperately attempting to respond to systemic problems with punishment.

Public prisons

Establishment	Year additional days imposed		Average population
	2015	2016	2016
Askham	32	0	118
Aylesbury	8,413	12,100	427
Bedford	245	411	479
Belmarsh	240	331	834
Brinsford	5,098	5,742	375
Bristol	1,414	3,226	520
Brixton	2,620	6,494	775
Buckley Hall	888	1,550	455
Bullingdon	571	583	1,104
Bure	191	324	643
Cardiff	1,683	2,829	785
Channings Wood	2,699	3,187	702
Chelmsford	985	1,123	700
Coldingley	511	2,306	510
Cookham Wood	784	1,059	150
Dartmoor	467	4,551	633
Deerbolt	4,679	3,327	383
Downview*	n/a	93	178
Drake Hall	1,225	1,266	336
Durham	267	558	893
East Sutton Park	0	104	100
Eastwood Park	582	996	358
Elmley	3,160	2,321	1,110
Erlestoke	2,894	2,140	362
Exeter	1,136	3,372	487
Featherstone	3,608	3,045	679
Feltham	1,526	3,027	499
Ford	1,891	973	477
Foston Hall	1,420	972	338
Frankland	237	491	801
Full Sutton	423	472	585
Garth	797	1,706	835
Gartree	0	7	705
Glen Parva	1,726	2,395	509
Grendon/Spring Hill	82	20	541
Guys Marsh	3,296	6,823	559
Hatfield**	n/a	261	332
Haverigg	2,310	2,392	637
Hewell	1,613	2,220	1,202
High Down	1,036	4,341	1,149
Highpoint	5,790	8,066	1,299
Hindley	2,134	3,255	507
Hollesley Bay	10	16	410
Holloway***	540	n/a	n/a
Holme House	2,205	1,233	1,161
Hull	583	535	1,015
Humber	1,639	3,090	1,045
Huntercombe	246	143	434
Isis	2,346	6,596	601
Isle of Wight	443	158	1,085
Kennet	2,260	5,917	331
Kirkham	1,577	2,637	605

Establishment	Year additional days imposed		Average population
Kirklevington Grange	86	73	241
Lancaster Farms	6,461	6,357	538
Leeds	186	4,394	1,118
Leicester	906	253	328
Lewes	1,915	1,118	635
Leyhill	36	9	503
Lincoln	425	126	574
Lindholme	3,931	5,686	1,003
Littlehey	512	484	1,215
Liverpool	2,874	3,566	1,050
Long Lartin	311	312	530
Low Newton	653	361	337
Maidstone	49	7	588
Manchester	1,397	2,897	1,004
Moorland	575	1,051	983
Mount (The)	2,441	5,328	1,008
New Hall	1,002	848	413
North Sea Camp	20	68	367
Norwich	2,044	2,531	733
Nottingham	2,621	2,096	1,022
Onley	4,235	4,943	740
Pentonville	5,536	9,355	1,302
Portland	4,406	8,380	485
Preston	1,829	976	737
Ranby	2,315	3,984	1,016
Risley	933	2,331	1,095
Rochester	7,317	10,286	744
Send	146	137	276
Stafford	570	626	744
Standford Hill	63	131	460
Stocken	1,216	1,363	749
Stoke Heath	5,216	5,717	755
Styal	1,124	514	473
Sudbury	751	1,177	522
Swaleside	4,080	4,668	1,104
Swansea	1,412	1,219	430
Swinfen Hall	4,024	10,063	604
Thorn Cross	111	0	377
Usk/Prescoed	0	0	527
Wakefield	302	238	720
Wandsworth	4,761	8,131	1,597
Warren Hill	49	0	233
Wayland	4,044	3,583	952
Wealstun	946	1,427	831
Werrington	912	615	116
Wetherby	361	586	270
Whetton	24	303	837
Whitemoor	107	947	439
Winchester	844	1,540	629
Woodhill	562	133	693
Wormwood Scrubs	4,662	3,372	1,258
Wymott	1,304	2,187	1,151
TOTAL (Public)	173,129	247,281	68,814

Private prisons

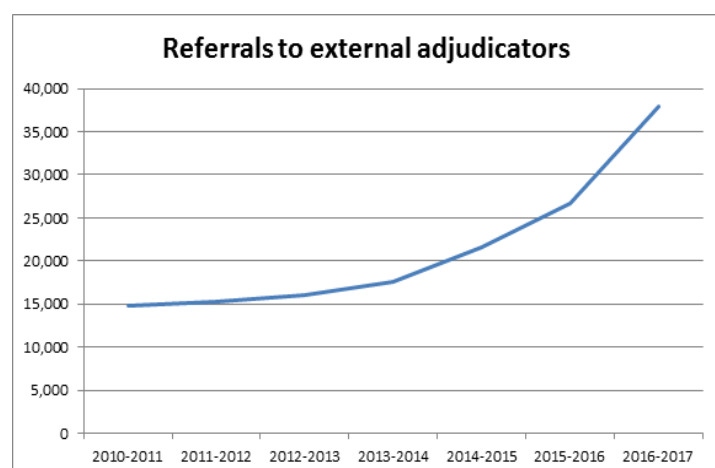
Prison	Number of additional days given in each prison in 2014	Number of additional days given in each prison in 2015	Average prison population 2015
Private			
Altcourse G4S	2,255	1,874	1,006
Ashfield Serco	48	145	400
Birmingham G4S	4,138	5,519	1,444
Bronzefield Sodexo	953	580	554
Doncaster Serco	3,420	6,891	999
Dovegate Serco	4,012	3,968	1,109
Forest Bank Sodexo	5,276	4,751	1,408
Lowdham Grange Serco	1,727	3,008	918
Northumberland Sodexo	7,661	4,269	1,341
Oakwood G4S	5,404	3,663	1,566
Parc G4S	5,891	6,293	1,661
Peterborough Sodexo	907	1,202	1,279
Rye Hill G4S	95	48	622
Thameside Serco	432	113	1,212
TOTAL (Private)	42,219	42,324	15,519
GRAND TOTAL (all prisons)	215,348	289,605	84,333

*re-opened in May 2016 **recorded as part of Moorland prison prior to 2016 ***closed July 2016

An explosion in punishment: over a million extra days

Excessive use of adjudications

Information obtained by the Howard League shows that the number of incidents of rule breaking referred to external adjudicators has increased by 158 per cent since 2010. In the 2016/17 financial year 38,005 incidents were referred to external adjudicators, compared to 14,741 in the 2010/11 financial year.



The adjudication system is unsustainable and being overly and inappropriately used. Adjudications generally, and external adjudications in particular, were originally designed for the punishment of incidents of unacceptable behaviour but now they have become a routine behaviour management tool in out-of-control prisons.

Extra days

In 2016 a total of 289,605 extra days of imprisonment were handed down for breaking prison rules. This equates to just over 793 years of additional imprisonment. The number of additional days handed down has increased by 34 per cent compared to 2015 and an astonishing 75 per cent compared to 2014 levels.

In the last five years approximately 1.1 million additional days have been handed down – over 3,000 years of imprisonment. Over half a million of those days were handed down in 2015 and 2016 alone.

The vast majority of additional days handed down are not for violence. For example, in the final three months of 2016 only 13 per cent of additional days were imposed for involvement in violence. The overwhelming majority were imposed for non-violent infractions of prison rules including unauthorised transactions (61 per cent) and disobedience (13 per cent) (Ministry of Justice 2017b).

The Howard League has calculated that the additional days imposed in 2016 alone will cost approximately £27 million. This is based on the annual average cost of a prison place, which is currently £35,182 (Ministry of Justice 2016). This doesn't include the additional costs of running adjudications and the fees paid to judges to act as external adjudicators.

Additional days are arbitrarily imposed and create a sense of unfairness and injustice. Under the current system two people breaking the same prison rule can face vastly different punishments. Some prisons use external adjudications and additional days far more often than others, meaning people held in different prisons could receive completely different punishments for the same behaviour.

Additional days work differently depending on whether somebody is in prison on remand (awaiting trial or awaiting sentence) or has been sentenced. Remand prisoners will only serve any additional days handed down if they go on to receive a custodial sentence. People serving indeterminate sentences or children serving Detention and Training Orders cannot receive additional days at all. This unequal application of further deprivation of liberty compounds feelings of injustice and frustration amongst prisoners.

Disproportionality

Ethnicity

Black and Minority Ethnic (BAME) prisoners are more likely to be punished with additional days. Ministry of Justice data show that BAME people made up approximately a quarter of the prison population in 2016, but received a third of the additional days handed down in external adjudications.

The preliminary findings of the Lammy Review raised concerns that adjudications were brought disproportionately against BAME prisoners (Lammy Review 2017). These figures also indicate disproportionality in punishments handed down by independent adjudicators and further investigation is urgently required.

Children and Young Adults

Children and young adults in prison are being disproportionately affected by adjudications and additional days. Prisons that hold children have seen some of the largest increases in the use of additional days over the last few years. Cookham Wood, which primarily holds children aged 15-18, handed down 1,059 additional days in 2016, compared to 207 in 2014 and 784 in 2015. Feltham handed down 3,027 additional days in 2016, almost double the 1,526 handed down in 2015. In a recent inspection of Feltham, inspectors found that the prison conditions, particularly around safety, had declined and that 'this had resulted in a cycle of violence and punitive responses, with no obvious strategy to break it' (HMIP 2017b).

These punishments were imposed on a minority of children in the prisons as children on Detention and

Training Orders are not eligible, thereby creating a two-tier system of justice which fails to set an example of fairness and justice to children.

Of the ten prisons that handed out the most additional days in 2016, five (Aylesbury, Rochester, Swinfen Hall, Portland and Isis) predominately hold young adults aged 18-24. In 2016, Aylesbury handed down 12,100 additional days, equivalent to over 33 years of imprisonment. Aylesbury holds approximately 427 teenagers and young men at any one time, meaning that on average a person detained in Aylesbury prison in 2016 received 28 days of additional imprisonment.

The crisis in prisons is particularly acute in institutions holding children and young adults. In his annual report, HM Chief Inspector of Prisons said that 'there was not a single establishment that we inspected in England and Wales in which it was safe to hold children and young people' (HMIP 2017a). In a report on Aylesbury prison, inspectors found that levels of serious violence were high, two-thirds of the young people felt unsafe, a significant number of were locked in their cells for over 23 hours a day, many young people were self-harming and there were too few staff (HMIP 2017).

Case Study

Richard, aged 21, was serving a sentence in a Young Offenders Institution and had an exemplary record, with a job to earn pocket money in the prison and volunteering to help other prisoners. When his mum was hospitalised he wanted to call to find out how she was, but couldn't as he was only allowed to call preapproved numbers. Richard got hold of an illicit mobile phone to call his mum in hospital. He was caught and charged with three offences: possessing a mobile phone, possessing a charger and possessing a cable that connected the phone and the charger. The governor demoted him to basic regime and took his job away from him which meant he wouldn't be earning enough to call his mum in future. He had to spend all day in his cell. The governor also referred him to an independent adjudicator. A Howard League solicitor represented Richard at his adjudication. She presented Richard's exemplary prison record – he had worked hard in his job and had not broken any rules before. She argued that Richard had already been punished by spending weeks on the basic regime. The independent adjudicator had the power to impose up to 42 days additional imprisonment but 15 days were awarded.

A question of management

High use of additional days is a sign of struggling management and poor decision making. Whilst most of the prisons in the estate are under major strain, not all prisons are responding with excessive and capricious punishments. Bedford prison, a local prison and a similar size to Aylesbury, handed down 411 additional days in 2016 – just 3 per cent of the total handed down at Aylesbury. Bedford prison has many challenges, but governors are choosing to respond to problems in a way that solves rather than exacerbates them.

In the private sector, prisons run by the same company are making vastly different management decisions around external adjudications and additional days. Thameside, a large local prison run by Serco and holding an average of 1200 men, handed down 113 additional days in 2016. In comparison, Doncaster prison, also run by Serco and holding around the same number of men, handed down 6,981 additional days, equating to an average of an additional week of imprisonment per prisoner.

Scotland: a different approach

The Scottish Prison Service abandoned the use of additional days around a decade ago. Scottish governors retain an adjudication system and can respond to the breaking of prison rules with loss of privileges, but additional days cannot be imposed under any circumstances. The Howard League visited Scotland to meet officials, ministers and visit prisons.

The Scottish Prison Service prohibited additional days as its experience showed that this was an ineffective and illegitimate

punishment. Officials and governors could find no evidence that they had any positive impact on behaviour. Senior officials described additional days as having the hallmarks of a bad punishment: they were not swift, being served at the end of a sentence, possibly years since the infraction took place; and they were not certain, applied differently in different prisons and by different governors.

Since use of additional days was ended, there has been no discernible deterioration in behaviour or increase in violence in Scottish Prisons. Senior officials from the Scottish Prison Service told the Howard League that there was little to no appetite to bring back the use of additional days. The Chief Inspector of Scottish Prisons has highlighted that Scottish prisons have become a lot safer in the years since.

Governors, directors and officials in England and Wales should follow Scotland's lead and end the use of additional days immediately.

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.

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