

# insideinformation – fact sheet

## Adjudications

### Information courtesy of Parlby Solicitors Plymouth

#### Adjudications

Did you know that as of 23 January 2006, the Governors Adjudication Discipline Manual gives prisoners the right to request that a solicitor represent them in any Governor Adjudications? A prisoner must make it clear to the Governor that they want representation rather than merely seeking advice from a solicitor. It is important that a prisoner contacts their solicitor as soon as they receive the F1127 (nicking sheet) to establish whether they are eligible for representation. In some circumstances a prisoner will not be eligible for representation but a solicitor may still be able to provide advice to enable a prisoner to put forward their case.

#### Access to a Solicitor

The Governors Adjudication Discipline Manual makes it clear that prisoners are entitled to access to a solicitor. The adjudicator must adjourn any hearing if legal advice and assistance is requested. The Governor must provide a fresh date for the next adjudication hearing at that initial hearing. Failure to do so may amount to an error and could be subject to an appeal. When the Governor opens the adjudication it is very important that a prisoner makes it clear that he wishes the services of a solicitor to represent him at the adjudication rather than just merely seeking advice from a solicitor. The Governor must make a note of this request for legal representation on form F256 and write down their decision on the request together with their reasons. If a Governor refuses to allow the prisoner legal representation, depending on the reasons stated for the refusal, this may be subject to an appeal. The criteria on which the Governor must consider a request for legal representation is based on the Tarrant principles which were established in a case R v Secretary of State for the Home Department ex parte Tarrant as long ago as 1984.

#### Tarrant Principles

It is imperative that a prisoner contacts his solicitor immediately he is placed on a charge in order that the solicitor can determine whether the prisoner's circumstances fall within the Tarrant Principles. It may be necessary for a solicitor to prepare representations on how the prisoner's circumstances fall within the Tarrant criteria. These representations can be submitted prior to the Governor Hearing in order to expedite a solicitor's attendance at any hearing. The principles to be demonstrated are as follows:-

- a) How serious is the charge and potential penalty – examples may be failed MDTs, refusing a lawful order, possession of unauthorised articles etc.
- b) Any points of law arising – this can be to argue that a definition of an offence is not wholly made out, that there is a procedural error in the F1127 etc.
- c) Capacity of the Prisoner – this encompasses literacy, speech, language or other medical problems which will affect the prisoner's ability to present his own case.
- d) Procedural difficulties – this encompasses the need for witnesses for the defence to be called and cross examination of prison staff.
- e) Speed – it is imperative that any prisoner who has charges laid against them must seek the advice of a solicitor immediately to see if they fall within the Tarrant principles. The solicitor needs to be made aware of the prisoner's circumstances and defence as soon as possible to effectively represent a prisoner at the Governor's adjudication.
- f) Fairness – as with any tribunal hearing the prisoner's human rights in relation to a fair hearing are paramount particularly if prison officer evidence needs to be refuted.

If a prisoner is not eligible for legal representation at a Governor's adjudication there are some points that a prisoner should be aware of:

### **Segregation**

It is not automatic that a prisoner should be segregated following referral to the Governor. Any decision to segregate must be based on the type of offence and the risk of intimidation of witnesses or collusion. Any reasons for the segregation must be noted on the core record F2050. A solicitor may assist by requesting copies of a prisoner's record to establish that any segregation has been properly justified in the circumstances and not undertaken as a matter of routine.

### **Form F1127**

When a prisoner receives form F1127 it must be served within 48 hours of the alleged offence occurring. The form must contain enough information to allow the prisoner an opportunity to prepare any defence. The serving officer must complete the service part of the F1127 when the form is issued to the prisoner. If it is not completed at the time it cannot be inserted later or this can amount to procedural impropriety, and again may be subject to appeal. It is imperative that the form is completed properly, as any finding of guilt as a consequence of an improperly completed form can be appealed and ultimately quashed.

### **Defence Witnesses**

If a prisoner has potential witnesses to his defence, and wishes to call them, the Governor is under a duty to call the witnesses. However, the Governor does not have to call witnesses if he believes that there is no material information, it is an attempt to render hearing unmanageable or already accepts the truth of the prisoner charged. The Governor must write clearly on the adjudication record the reasons for refusing to call defence witnesses. Failure to call witnesses by the Governor may amount to a procedural irregularity subject to appeal, as the prisoner will not have had a fair hearing. A solicitor will be able to assist any prisoner in appealing a Governor's adjudication if it has not been conducted properly or fairly. It is imperative that legal advice is sought straight away due to the time limits for appealing decisions. If you are in any doubt about your prisoner rights then it is important to call and ask a solicitor – it is more than likely to be free for those with neither assets nor large income.

## **IMPORTANT NOTICE**

Information is given on a strictly 'without-liability' basis, and should be considered for use as guidance only. If you propose taking further action based upon this information you are strongly advised to take further and more specific legal advice before doing so.

**insidetime** *the National Newspaper for Prisoners*

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