



COMMISSIONER INSTRUCTION 01/2021

DISCIPLINARY PROCESSES – PROCEDURAL FAIRNESS

This Instruction provides directions to officers on the management of charges and hearings for breach of discipline.

In a recent case the Supreme Court ruled that ACTCS had denied a detainee procedural fairness on two grounds: imposing disciplinary penalties before the detainee had the opportunity to challenge the charge; and that the same presiding officer dealt with the charge notice and disciplinary decision.

Pending a full review of the Disciplinary Policy to address the issues raised, in the interim this Instruction addresses the issues by clarifying that:

- a) unless a detainee explicitly accepts both the charge and recommended disciplinary action by **signing** the charge notice, they must be considered to be challenging the charge;
- b) when a detainee challenges a charge, no disciplinary action may be taken until after a hearing has been held; and
- c) the Presiding Officer who issues the Charge Notice and the Presiding Officer who holds the hearing on the charge must be two different people.

In accordance with the Detainee Disciplinary Policy and Detainee Disciplinary Operating Procedure, when an alleged breach of discipline is reported, a Presiding Officer (Presiding Officer 1) will determine whether to charge the detainee with the breach.

When a detainee has been served with a Discipline form 3 – Charge Notice and Indicated Penalty the charge can be dealt with by consent or by holding a hearing.

Discipline by consent

The detainee has agreed to have the matter dealt with by consent ONLY if they have ticked the box on the form to admit to the disciplinary breach, ticked the box on the form to agree to the disciplinary action recommended in the notice and signed the form.

Holding a Disciplinary Hearing

Where the detainee has not ticked both boxes and/or signed the form, they must be considered to have elected NOT to have the charge dealt with by consent. The matter must then proceed to a Disciplinary Hearing. Disciplinary penalties must NOT be applied before the hearing has been held and the charge proven

When a disciplinary hearing is required, a different Presiding Officer (Presiding Officer 2) must oversee the process. Appropriate notes and/or recordings of the hearing must be made to inform a




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decision. An officer must not act as Presiding Officer 2 if the officer made a report in relation to the alleged breach or the investigation of the alleged breach or acted as Presiding Officer 1 in relation to the alleged breach (Corrections Management Act 2001, s170).

The Discipline form 3 – Charge Notice and Indicated Penalty has been updated.


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