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Disciplinary adjudications as potential rehabilitative opportunities

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Introduction

Rehabilitation efforts in prison are likely to be most successful when all aspects of prison life are informed by an understanding of crime, rehabilitation and desistance. Recently, researchers¹ have suggested methods of making prisons more rehabilitative by focussing on the climate and environment in prisons and on the skills staff use in daily interactions (such as core correctional practices²) as well as on specific rehabilitation programmes.

In the community, research has shown that probation staff following principles of both pro-social modelling and Risk, Need and Responsivity (RNR)³ intervention techniques and skills in their supervisory interactions can have a significant positive effect on reoffending rates.⁴ In residential settings, even short (e.g. five minute) daily interventions have been found to produce a surprisingly strong impact on psychological functioning.⁵ Taken together, this research would suggest that the quality and nature of all interactions, formal and informal, between prisoners and prison staff have the potential to impact positively on rehabilitation, even if the contact lasts for only a short time.

However, the prison regime includes a number of primarily punishment-based practices. For example, rule-infractions are dealt with through punishment-focussed processes such as IEP⁶ warnings, disciplinary reports and subsequent adjudications. As punishment is known to be an ineffective means of changing behaviour in the long

term, this raises the question whether processes that are traditionally punitive can also be opportunities for rehabilitation?

Disciplinary adjudications occur in every prison, often daily and in large numbers. In 2015, across the whole prison estate, there were 148,023 adjudications; (with proven outcomes reached in 102,531 of them).⁷ Training for adjudicators focusses primarily on applying the process correctly. There has been relatively little attention given to the conduct or outcome of adjudications (other than the consideration given as part of Restorative Justice initiatives); whether they actually promote compliance with rules and reduce the frequency or severity of rule breaking, or whether there could be other more effective ways of responding to poor behaviour. This study aimed to investigate whether a greater focus on rehabilitation might be possible in the way adjudications are conducted.

Method

For this exploratory study, 13 adjudications⁸ from four different types of prisons⁹ in England were observed, recorded and transcribed verbatim. A high proportion of adjudications in the participating prisons were adjourned, so the number observed in this study was fewer than originally planned. Prisoners and adjudicators completed short semi-structured interviews with the researcher after the adjudications. They were asked about their experiences, behaviour and contributions, the decisions made and the approach taken. The transcripts were analysed using

1. Cullen, F. T., Jonson, C. L., & Eck, J. E. (2012). The accountable prison. *Journal of Contemporary Criminal Justice*, 28, 77-95; Smith, P., & Schweitzer, M. (2012). The therapeutic prison. *Journal of Contemporary Criminal Justice*, 28, 7-22.
2. Andrews & Bonta (2010). *The Psychology of Criminal Conduct* (5th ed). London: Routledge; Core correctional practices include pro-social or anti-criminal modelling, cognitive restructuring, open, warm and respectful communication, reinforcement, and opportunities for skill building.
3. Andrews & Bonta (2010). *The Psychology of Criminal Conduct* (5th ed). London: Routledge.
4. Bonta, J., Bourgon, G., Rugge, T., Scotty, T-L., Yessine, A. K., Guttierrez, L., & Li, J. (2010). *The Strategic Training Initiative in Community Supervision: Risk-Need-Responsivity in the real world 2010-01*. ISBN No.: 978-1-100-15750-4; Chadwick, N., Dewolf, A., & Serin, R. (2015). Effectively training community supervision officers: a meta-analytic review of the impact on offender outcome. *Criminal Justice and Behavior*, 42, 977-989; Trotter, C. (1996). The impact of different supervision practices in community corrections: Cause for optimism. *Australian and New Zealand Journal of Criminology*, 29, 29-46.
5. Dau, W., Schmidt, A., Schmidt, A.F., Krug, T., Lappel, S.E., & Banger, M. (2011). Fünf Minuten täglich: Kompass – eine stationäre Kurzintervention für junge Cannabis-Partydrogenpatienten nach dem Bonner Modell – Junge Sucht. *Sucht*, 57, 203-214.
6. Incentives and Earned Privileges scheme, through which good behaviour is incentivised and bad behaviour is challenged with loss of incentives.
7. Ministry of Justice (2016). Offender management statistics quarterly: October to December 2015.
8. A high proportion of adjudications in the participating prisons were adjourned, so the number observed in this study was fewer than originally planned.
9. A Dispersal prison, Category B Local prison, Young Offender Institution and a prison holding women.

content analysis.¹⁰ This technique objectively identifies and quantifies characteristics in material. The behaviours (mainly oral, that is speech) of prisoners and adjudicators were coded and counted. Particular attention was given to rehabilitative skills of adjudicators and the ways prisoners responded.

The coding frame was created from existing research identifying behaviours that might help bring about rehabilitative change or the opposite, and be indicative of prisoner learning and change or the opposite. It was then refined according to the specific content of the transcripts. The final codes were applied to all transcripts, and four were independently second-coded so intercoder reliability could be calculated.¹¹ The reliability of 20 codes fell within the 'good' and 'very good' ranges.¹² Ten fell within the 'moderate', two within the 'fair' and one within the 'poor' ranges.

Frequencies of each behaviour, and average frequencies of behaviours per adjudication and per minute were considered to explore differences in adjudication content. Transcripts were explored for patterns in behaviours, and how participants perceived the adjudications was considered using the interview data.

Results

Some behaviours were observed much more frequently than others, and the behaviours of adjudicators and prisoners varied considerably across the adjudications (i.e. certain individuals displayed certain behaviours more frequently). Tables 1 and 2 present the total frequency, and the average frequency per adjudication, for each behaviour.

Seven themes capture the patterns or differences across adjudicator and prisoner behaviours:

1. Change-oriented¹⁴ behaviours elicited through questioning

Adjudicator questions that elicited engagement and change-oriented behaviours were open and either Socratic or non-Socratic.¹⁵ Non-Socratic open questions were used the most, often towards the start of adjudications to elicit prisoners' account of events. This engaged prisoners in the process, but rarely helped to develop their insight into their behaviour.

Table 1: Adjudicator Behaviours

<i>Adjudicator Behaviours</i>	<i>Total</i>	<i>Average</i>
Collaborative working	175	13.5
Active listening	110	8.5
Dignity and respect	67	5.2
Open or open and Socratic questions	61	4.7
Closed questions	57	4.4
Praise and reinforcement	47	3.6
Reframing	27	2.1
Preventing comments or discussion	24	1.9
Confrontational, adversarial or disrespectful	17	1.3
Warmth	16	1.2
Problem solving and skill building	11	.9
Concern/care about well-being	11	.9
Advising and raising concern without permission	10	.8
Empathy and/or understanding	10	.8
Warning	10	.8
Not responding to well-being concerns/distress	7	.5
Emphasising choice/control	5	.4

Table 2: Prisoner Behaviours

<i>Prisoner Behaviours</i>	<i>Total</i>	<i>Average</i>
Engaging with the adjudication ¹³	413	31.8
Believing treatment or punishment is unfair	48	3.7
Responsibility taking	40	3.1
Excusing, minimising or blaming others	38	2.9
Non-criminal identity or intent	37	2.9
Defiance	36	2.8
Lack of personal agency, helplessness	28	2.2
New learning, reflections, insight	21	1.6
Change talk and pro-social intent	20	1.5
Pro-social behaviour or change	17	1.3
Apology	13	1.0
Cognitive thinking skills	13	1.0
Pro-social behaviour planning	12	.9
Pro-criminal attitudes or beliefs	11	.9
Sustain talk	10	.8
Lack of engagement/disengagement	1	.1

10. Holsti, O. R. (1969). *Content Analysis for the Social Sciences and Humanities*. Reading, MA: Aldison-Wesley; Smith, C. P. (2000). Content Analysis and Narrative Analysis. In H. T. Reis & C. M. Judd (Eds.), *Handbook of Research Methods in Social and Personality Psychology* (p. 313-335). Cambridge: Cambridge University Press.

11. Cohen, J. A. (1960). A coefficient of agreement for nominal scales. *Educational Psychological Measures*, 20, 37-46.

12. Altman, D. G. (1991). *Practical statistics for medical research*. London: Chapman & Hall.

13. This included behaviours such as asking or responding to questions and simply giving their account. The adjudication process naturally lends itself to these occurring frequently as many questions are asked as standard practice. These behaviours were not coded as indicating change or resistance to change, and were of less interest in this study.

14. A collective term used here to describe prisoner behaviours that indicate change or learning, or movement towards this.

15. Socratic questions shape the thought process, facilitating independent thinking, analysis and learning. Non-Socratic questions gather information but do not facilitate thinking.

Socratic questions, that prompt deeper reflection, were less frequent (approximately 30 in total). However, when used they were more often followed by change-oriented responses (such as perspective taking or identifying consequences). For example:

AG:¹⁶ **How do you think the officer felt?**

P: She's not happy, innit? Scared. Shock of her life.

Particularly effective were the rarer questions that specifically facilitated reflection on alternative behaviours and skills that could have been used, or could be used in future.

AG: So with all that in mind, how do you think you could have done things differently to avoid this scenario?

P: I shouldn't have took it out on Mr. X, to be honest. When he opened my door, I should have just accepted that he opened my door and just got my inhaler (inaudible) and just calmed down, yeah, and I'm sorry if you felt threatened, Mr. X, man, because Mr. X is all right, man. *Appears to be sincere*

AG: I appreciate that, cheers.

These questions moved the adjudication from solely punishing the rule breaking, to an interaction that challenged the behaviour and promoted behaviour change, such as reflection and apology. Although infrequent, every observation of a prisoner identifying how he could have behaved differently, or planning to do something differently in the future, followed these types of questions. Prisoners whose adjudications included more open and Socratic questions, and praise and reinforcement, gave more examples of learning in the post-adjudication interviews.

2. Change-oriented behaviours occurring without questioning

Change-oriented behaviours sometimes occurred without any direct facilitation. This may reflect natural variations in prisoners' talkativeness or readiness to engage, the cumulative effect of adjudicator behaviours or deliberate attempts by prisoners to reduce the severity of sanctions.

3. Absence of change-oriented behaviours after questioning

Although there were very rare occasions in which closed questions elicited change-oriented behaviours, the

vast majority did not. Closed questions were asked 57 times. More than half were helpfully used to clarify accounts and avoid misunderstanding. However, as closed questions naturally result in yes/no responses, they miss the opportunity of enabling people to elaborate or reflect further (which promotes learning.)

4. Reinforcing change-oriented behaviours

Although adjudications are punitive procedures, praise and reinforcement were used in six adjudications. Adjudicators typically used these when prisoners showed progress or positive behaviour in custody, or when they identified new ways of behaving, apologised or expressed intent to behave differently. Reinforcement and praise were often used simply but effectively, and this increased the likelihood of the adjudication being a rehabilitative interaction.

AG: The thing here, P, and I accept that, you've stated quite clearly you've, you know now that it's not, it's not acceptable.

P: Yeah, I understand. I understand.

AG: And you've apologised. I fully accept that and I appreciate you seeing that.

AG: So what can you do differently next time?

P: Just not, not go into no one else's cell, innit? Stay in my own cell.

AG: Spot on. And then saves all of this hassle, isn't it?

Another way adjudicators introduced praise and reinforcement was by seeking out positive behaviour and progress to reinforce. On rare occasions adjudicators asked questions about the prisoner's life outside of the adjudication (such as about work or relationships), and found something in the response to praise. This helped to make the interaction more rehabilitative.

5. Adjudicator responses to prisoner engagement or disengagement

Adjudicators responded differently to what prisoners said, and in how they facilitated engagement. They actively listened when prisoners spoke (around eight times per adjudication). This included giving prisoners time to speak, listening indicators (e.g. nodding or saying 'uh huh') and statements that repeated, rephrased or summarised prisoners' words. In contrast, preventing discussion (including cutting prisoners off, dismissing comments or interrupting) was much less frequent. These were seen 24 times in total, during eight adjudications,

16. AG signifies 'Adjudicating Governor' and P signifies 'prisoner'.

and were noticeably different to the times when adjudicators listened.

P: I'd rather have it as dealt with *[by a Judge]*

AG: *[interrupted P]* **But you can't.**

P: I'd like my solicitor to be present.

AG: **You can't do that, I am afraid.**

P: That's not fair. *Upset tone, sense of hopelessness*

AG: **Hello, Mr. X.** *[AG questions Reporting Officer]*

When prisoners disengaged or became defiant (such as interrupting or arguing), adjudicators usually dealt with this skilfully by remaining calm, listening, asking questions or offering clarification. The use of humour was particularly effective in diffusing difficult and emotional interactions, although observed only once. This is shown in the following extract, taken from an adjudication of a prisoner charged with threatening behaviour. The adjudicator asks the prisoner how tall he is, triggering an angry reaction. The adjudicator attempts to help the prisoner understand that how he looks can influence how others interpret his behaviour, even if he doesn't see himself as threatening. The ensuing discussion shows the adjudicator persisting, but struggling a little, to communicate what they mean and reframe the situation. This goes on for some time (so only periodic extracts are provided) and is eventually successful. The prisoner's anger was finally diffused by humour.

P: I'm six foot six but that don't mean nothing, though, boss. *Tone raised, appears frustrated. Sits up, hands moving.*

AG: *[interrupts P]* **Could you bear with me?**

P: *[interrupts AG]* Not being, nothing, you can't, you can't bring my height into it. *Tone and behaviour continues to demonstrate frustration/disagreement.*

AG: **No, but what I'm saying, I'm not, I'm saying you're a big lad and in that —**

P: *[interrupts AG]* That don't mean nothing.

AG: — **somebody, somebody may feel, and the difficult part is, is feelings are a very difficult thing to say you, I cannot tell you how you feel...***[discussion continues]*

....

AG: **[sometime later]...if he feels threatened by your presence, your actions, then that is how he feels.**

P: Yeah, I understand that.

AG: **That doesn't necessarily mean that that was your intention, but it is his feeling.**

....

AG: **[Later on] You know what I mean?**

Erm, you are a big lad —

P: Mm.

AG: — **And so sometimes, and, maybe in that sense you have to be more conscious of that because you may, may come across as intimidating or threatening when you really don't want to be.**

P: Mm, I understand that.

AG: **And that, that's unfortunate. I don't have that problem because I'm not that big, apart from me stomach.** *Said with humour, a little self-deprecating, pointing at stomach.*

P: Yeah. *Smiles and laughs*

This extract illustrates how well humour can be used during emotional interactions, and how attempts to reframe situations can create a learning experience for prisoners. However, this outcome might have been more quickly accomplished through the use of Socratic questions, which would have engaged the prisoner more actively in the learning process (rather than trying to persuade or providing him with the important learning point). For example, the adjudicator could have asked 'when you were talking and behaving that way, how do you think that looked to the officer?'

6. Style of adjudication

The style of the adjudication, and how adjudicators treated prisoners, varied. Overall, adjudicators worked collaboratively with prisoners: explaining adjudication process, content and decisions, checking understanding and offering help. These occurred around 13 times per adjudication, and meant adjudications were 'done with', rather than 'done to', prisoners.

AG: **OK, what I'll do is I'll go through my questions and then we'll have a discussion about it, OK?**

Adjudicators generally treated prisoners with dignity and respect. Respect was coded when they introduced themselves (seen rarely), said please and thank you, and showed an interest in the prisoner as a person rather than just as a 'rule-breaker' (such as discussing employment or progress in education). On average dignity and respect behaviours were observed five times per adjudication.

[After being found guilty]

AG: **All right, P. Cheers.**

P: Nice one.

AG shakes P's hand, P reciprocates. P instigates a handshake with Reporting Officer, who reciprocates.

Much rarer though was warmth, which included using friendly greetings, use of appropriate humour and acknowledging existing relationships between prisoners and adjudicators. These behaviours were seen only 16 times overall, despite warmth being an important component of rehabilitative relationships.

Adjudicators were rarely observed being confrontational, antagonising or adversarial, although this kind of behaviour was observed a total of 17 times (in six adjudications), where it was seen to prevent prisoner learning and behaviour change. Most of these occasions were coded as a consequence of the tone, which sounded sarcastic, patronising or aggressive, rather than respectful or collaborative.

P: That's why I want, I want my solicitor present for this.

AG: *Tone raised, 'telling' and somewhat aggressive.* **P, I can go through it but you're not going to meet the criteria if you need representation. I have to look at the seriousness and the charge and of the potential penalty. Where any points of law are likely to arise, the capacity of you to present your own case, procedural difficulties, need for reasonable speed, need for fairness and any other issues that you raise for me. The fact that you think your solicitor is going to be able to, erm, produce some evidence that you can't; what is that evidence that your solicitor is going to be able to present to me that you can't?**

P: Well, he's a solicitor do you know what I mean? He can fight my case at the end of the day, Governor (inaudible). It's not my, I don't, and it's like I'm getting punished for something that is not mine.

Showing concern and care for prisoners' well-being, and empathy or understanding for their experiences, can be powerful in rehabilitative relationships. In adjudications these were rare, and when seen they were usually quite superficial examples. However, it was also rare to see adjudicators lack care or concern (such as when prisoners were in distress or disclosed self-harming). An obvious lack of concern was observed seven times in three adjudications, and is illustrated by the following extract where the prisoner was in considerable distress.

P: ...I did admit to it and I was wrong for doing that but if I could have walked away, I would have. I'd rather do that. I was in that situation. It was out of my hands. I couldn't get out the

door (inaudible). *Head in hands, tears in eyes.*

AG: OK. P, you've admitted to grabbing the prisoner, and that is unlawful force. That is an assault. So based on what you've told me and what Mr. X has told me, I find the charge proven. Is there anything else you want to say in mitigation?

P: No. Like I said, I don't go round doing things like that. It was out of my, my control, because the situation I'm in here. ...I don't like confrontation. I do not. She said some really hurtful things and spiteful things. ... *Tears in eyes, looking for eye contact — looking at researcher, Adjudication Liaison Officer, Reporting Officer.*

AG: OK, but that's not, erm, an excuse to assault somebody. *Continues to focus on paperwork, does not make eye contact.*

Advising a person what to do or not do, although often well-intended, is unlikely to facilitate learning or effectively help the person to make changes because people learn better when they reason things out for themselves and when they feel they are making their own choices. Very rarely did adjudicators emphasise that the prisoner had choice or control over their actions, whereas warning or advising without permission was observed more often (although still infrequently).

In their post-adjudication interviews, adjudicators emphasised the importance of a fair and transparent process. During adjudications prisoners made statements about believing treatment in prison or their punishment was unfair 48 times (five related to the adjudications specifically). On most of these occasions adjudicators openly discussed the concerns, and three of these five adjudications were later dismissed. In the interviews afterwards, most prisoners reported feeling they were treated fairly, were offered the chance to speak and had been listened to.

7. Missed rehabilitative opportunities

Throughout the adjudications there were numerous occasions where alternative adjudicator behaviours could have enhanced their rehabilitative potential. Identifying and acting on these opportunities is not simple or easy. However, the study indicated a potential for adjudications to be more rehabilitative than they currently are, even within their remit of investigating and punishing rule-breaking. Two types of missed opportunities were observed in particular: for open and Socratic questions, and for praise and reinforcement.

First, using open and Socratic questions, instead of closed questions, provides prisoners with opportunities to reflect on their behaviour and hopefully learn from this. For example:

Conclusion

P: Yeah. I, I've had a thing, I have a thing for fire, though, innit?

Alternative: what are the possible consequences, for you or others, of starting a fire in your cell?

Socratic questions can particularly help explore and carefully challenge when there is an absence of, or resistance to, change. For example, when prisoners spoke of rule-breaking as reasonable or positive, or viewed change or behaving differently as out of their control.

P: I did. I'm not, I did admit to it and I was wrong for doing that but if I could have walked away, I would have. I'd rather do that. I was in that situation. It was out of my hands. I couldn't (*inaudible*) get out the door (*inaudible*).

AG: OK. P, you've admitted to...*[continues to sanctioning]*

In this case, the adjudicator could have asked questions to explore coping or problem solving strategies the prisoner might have used in other situations (and could be transferred), or developing recognition that skills could be learned in the future.

Secondly, when change-oriented behaviours were demonstrated, opportunities for verbal reinforcement and praise were often missed. Praise and reinforcement makes it more likely that the behaviour will be repeated. The following are two different occasions in which positive behaviours such as taking responsibility, lacking anti-social intent and perspective taking could have been reinforced.

AG: OK. Is everything OK on the wing now?

P: Yeah, yeah, everything's fine, yeah. I've been as good as gold, like. It's been, like, getting behind the door and, like, you know, so...

AG: When's your IEP review? *[continues to sentencing]*

P:It was not to cause any harm or aggression or do anything towards any member of staff or any prisoner. I didn't want it to come to anything like that. That's the reason why I handed it [*a home-made knife*] over, boss, because they weren't listening on the wing. It's not their fault. It's a big wing. ...

[Adjudicator acknowledges what was said, then continues adjudication]

The study explored differences in how disciplinary adjudications in prison are conducted and how these could be used as opportunities for rehabilitative intervention. The findings show that adjudicators can, and some do, use skills that facilitate or support rehabilitative change, despite adjudications not traditionally being seen as rehabilitative opportunities. Adjudicators did not use a rehabilitative approach consistently though, with some using these skills more frequently than others and some skills being used infrequently by all participants. Adjudicators also didn't always use opportunities to question rule-breaking behaviour in ways which could facilitate learning and insight; nor did they use all the available opportunities to reinforce and support progress.

The study had some limitations. A high proportion of adjudications in the participating prisons were adjourned, so the number observed in this study was fewer than originally planned. Causal relationships between adjudicator and prisoner behaviours were not directly tested in this study. Long-term outcomes were not investigated, so it cannot be known whether the behaviours observed and the learning taken translated into longer-term behaviour change.

However, if adjudications can be delivered in a way that facilitates behaviour change, then as a regularly occurring event, which by definition involves prisoners whose behaviour is concerning (i.e. involves alleged rule-breaking), they could have important beneficial outcomes for prisoners and prisons. This does not need to detract from the primary purpose of adjudications: investigating charges and (if proved) conveying punishment. Rather, these aims can be complementary, with rehabilitative skills being used whilst investigating charges, considering and giving sanctions, and in looking to the future by facilitating learning and behaviour change. In these ways, the adjudication process could contribute to a rehabilitative prison climate, although the effects of rehabilitative adjudications are likely to be greater and more durable if they form part of a broader focus on rehabilitation throughout a prison.

In conclusion, adjudications have rehabilitative potential if adjudicators use the skills that research identifies as central to such interactions. For this to happen, adjudicators need to be knowledgeable about, confident using and able to spot opportunities for rehabilitative skills. Training opportunities, such as the Five Minute Intervention training,¹⁷ which is to now be rolled-out into all prisons, or introducing a specific module into the initial training received by adjudicators, would be promising ways forward.

17. FMI training helps custodial staff to respond differently to prisoners during everyday conversations by using these as opportunities to employ rehabilitative skills and practices, and in doing so contribute to a rehabilitative culture.