

**IN THE SUPREME COURT OF THE UNITED KINGDOM
ON APPEAL FROM:
THE COURT OF APPEAL CIVIL DIVISION**

2011/0619

R (on the application of KAMEL BOURGASS and TANVIR HUSSAIN)

Appellants

-and-

THE SECRETARY OF STATE FOR JUSTICE

Respondent

-and-

HOWARD LEAGUE FOR PENAL REFORM

Intervener

STATEMENT OF FRANCES RACHEL CROOK

Table of contents

1. Introduction
2. Background to the Howard League for Penal Reform
3. Segregation and solitary confinement
4. An overview of the use of segregation in England and Wales
 - The number of people segregated*
 - Reasons for segregation*
 - Length of segregation*
 - Who is segregated?*
5. Segregation in practice: what is at stake for the prisoner
 - Risk of death*
 - Risk to mental health*
 - Austere physical conditions in which segregated prisoners are held*
 - Restrictions on meaningful contact with the outside world*
 - The indefinite nature of segregation*
6. Fairness
 - Anomaly*
 - Representations before segregation*
 - Reasons*
 - Challenging on-going segregation*
 - Examples of procedural fairness from other contexts and jurisdictions*
7. Conclusion

I, Frances Rachel Crook, of 1 Ardleigh Road, London, N1 4HS shall state as follows:

1. INTRODUCTION

1.1 I am the chief executive of the Howard League for Penal Reform and have overall responsibility for policy and organisational strategy in line with the charity's strategic objectives as agreed by the Board of Trustees.

1.2 I was appointed chief executive of the Howard League for Penal Reform in 1986. I was awarded an OBE for services to youth justice in the 2010 New Year Honours List. I was appointed a Senior Visiting Fellow at the London School of Economics in 2010 and at the Scarman Centre at Leicester University in 2013.

1.3 I am duly authorised to make this statement on behalf of the Howard League for Penal Reform. The contents of this witness statement are true to the best of my knowledge, information and belief.

2. BACKGROUND TO THE HOWARD LEAGUE FOR PENAL REFORM

2.1 Founded in 1866, the Howard League for Penal Reform is the oldest penal reform charity in the UK and has around 9,000 members, including prisoners and their families, lawyers, criminal justice professionals and academics. The Howard League has consultative status with both the United Nations and the Council of Europe. It is an independent charity and accepts no grant funding from the UK Government.

2.2 The Howard League campaigns for less crime, safer communities and fewer people in prison. It aims to achieve these objectives through conducting and commissioning research, carrying out investigations aimed at revealing underlying problems and discovering new solutions to issues of public concern. Its objectives and principles underlie and inform the charity's Parliamentary work, research, legal and participation work as well as its projects.

- 2.3 The Howard League has a legal department which provides front line advice and representation to young people in the criminal justice system aged 21 and under in relation to prison law and public law matters. Our legal department has assisted many segregated prisoners over the years. Where appropriate, the Howard League's legal practice informs its policy and research work within the organisation.
- 2.4 The Howard League's wider policy work draws on almost 150 years of experience in the field of penal reform and involves working with policy-makers, representatives from the prison service and the National Offender Management Service, academics and international bodies concerned with the treatment of prisoners.
- 2.5 The Howard League has detailed knowledge, experience and understanding of the policies and procedures that apply across the prison estate and prisoners' experience of those policies and procedures. This includes the issues surrounding the segregation of prisoners and the legal team regularly deals with prisoners who are segregated or at risk of segregation and require assistance. Publications and work relevant to segregation undertaken by the Howard League include:
- 2.5.1 Submissions to the Harris Review (2014) highlighting the links between the segregation of young adults and the incidence of self-inflicted deaths;
 - 2.5.2 The Carlile Inquiry (2006), commissioned by the Howard League and led by Lord Carlile of Berriew QC, which examined and recommended changes in the use of segregation (amongst other things) on children in the secure estate;
 - 2.5.3 Participation by Frances Crook, the Chief Executive of the Howard League, on the first-tier of the Ministerial Council on Deaths in Custody, which brings together decision-makers responsible for policy and issues relating to deaths in custody.
 - 2.5.4 *Secretary of State for the Home Department v S.P.* [2004] EWCA Civ 1750, the leading authority on the requirements of procedural fairness when segregating children, in which the Howard League represented the claimant, SP.

3. SEGREGATION AND SOLITARY CONFINEMENT

- 3.1 While the term 'solitary confinement' is not used in connection with the practice of separating prisoners from other prisoners in the UK, in our experience it is not unusual for prisoners who are segregated to experience levels of isolation that are equivalent to solitary confinement. The Special Rapporteur of the Human Rights Council on torture and other cruel, inhuman or degrading treatment or punishment has made the connection explicit by stating that 'solitary confinement is also known as "segregation" ¹.
- 3.2 Segregated prisoners often spend 22 hours a day or more in their cells, as detailed below. There is an emerging consensus that 'solitary confinement' involves the physical isolation of individuals in their cells for 22 to 24 hours a day. The Special Rapporteur adopted the following definition in a report to the General Assembly of the United Nations on 5 August 2011:

"The physical and social isolation of individuals who are confined to their cells for 22 to 24 hours a day."²

- 3.3 The Special Rapporteur also relies on the Istanbul Statement on the Use and Effects of Solitary Confinement adopted on 9 December 2007 at the International Psychological Trauma Symposium in Istanbul. This was a gathering of international experts on the subject of solitary confinement who arrived at the following definition:

"Solitary confinement is the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day. In many jurisdictions prisoners are allowed out of their cells for one hour of solitary exercise. Meaningful contact with other people is typically reduced to a minimum. The reduction in stimuli is not only quantitative but also qualitative. The available stimuli and the occasional social

¹ Page 8-9, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, Inhuman or degrading treatment or punishment, 5 August 2011, <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

² Page 9, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, Inhuman or degrading treatment or punishment, 5 August 2011, <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>.

contacts are seldom freely chosen, are generally monotonous, and are often not empathetic.”³

- 3.4 Her Majesty’s Inspectorate of Prison’s (HMIP) Annual Report 2012-2013 describes how in segregation units, “[a]part from a shower and a phone call, most prisoners remained locked in their cells nearly all day with nothing to do.” For example, HMIP describes the segregation regime at Garth prison as “minimal”:

“With the exception of prisoners attending the health care department, no off-unit activities took place. There was no gym or PE equipment available and no activities provided. Prisoners only came out of their cell to exercise (for just 30 minutes), shower and to collect their evening meal from the unit servery, which in total amounted to around 45 minutes a day. This was particularly unsuitable and detrimental to the well-being of those prisoners staying on the unit for long periods.”⁴

- 3.5 In two reports by Independent Monitoring Boards (“IMB”) for the reporting years 2013–2014, the term ‘solitary confinement’ is used to describe the segregation regime. The report for Whitemoor prison, explicitly justifies the use of the term:

“...we routinely observe prisoners held in segregation, including the one held for the entire period under review and more – and who attempted suicide. We adhere to the use of the term solitary confinement, by which we mean being held alone in a cell for 23 hours a day – often without a TV or working radio, and with no meaningful

³ Page 1, The Istanbul statement on the use and effects of solitary confinement adopted on 9. December 2007 at the International Psychological Trauma Symposium, Istanbul, http://www.univie.ac.at/bimtor/dateien/topic8_istanbul_statement_effects_solconfinment.pdf.

⁴Page 28, HMIP report into HMP Garth August 2014, <http://www.justiceinspectores.gov.uk/hmiprison/wp-content/uploads/sites/4/2015/01/Garth-web-2015.pdf>.

occupation – interspersed with only very occasional contacts with prison officers, usually through a closed door.”⁵

- 3.6 The Howard League has represented and assisted many prisoners, including children and young people who have described similar regimes. Last year the Howard League assisted a 19 year old while he was detained in Hindley YOI whom I shall call ‘A’. A was segregated from the beginning of April 2014 until mid July 2014. He told us that during this three and a half month period he had no association, the only time out of his cell was for a shower, a telephone call and 30 minutes for exercise (although he was let out of his cell in order to clean the segregation unit at the very end of that period) and he had to eat all meals in his cell alone.
- 3.7 Another young person the Howard League assisted was a child detained at HM YOI Feltham, whom I shall call ‘B’. B described how while in the segregation unit he lost his enhanced status and was in virtual isolation for 23.5 hours a day. B had no access to television or radio and had no access to education. He described how he felt that contact with staff, including healthcare, was cursory.
- 3.8 It is striking how often segregated prisoners, including children, are locked in their cells with nothing at all to do and then only let out for “association” or “exercise” alone. The combination of reports by HMIP, IMBs and our own experience from assisting prisoners in segregation support the argument that, in practice, there is often no difference between solitary confinement and segregation.

4. AN OVERVIEW OF THE USE OF SEGREGATION IN ENGLAND AND WALES

The number of people segregated

- 4.1 As far as we are aware, the number of prisoners subject to segregation is not publicly available. The Howard League is aware that Parliamentary Questions

⁵ Page 11, IMB Annual Report in HMP Whitemoor, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/whitemoor-2013-2014.pdf>.

concerning the number of people segregated and how many of these people have protected characteristics have been asked.⁶ However, no answers have been provided and it appears that there is no central data available.

- 4.2 The lack of data available about segregation is contrary to the requirements of the Prison Service Order (PSO) on segregation that makes provision for a 'segregation monitoring and review group' (SMARG) which is responsible for reviewing the monitoring the implementation and adherence to the PSO on Segregation in each prison⁷. The absence of robust data collection concerning the segregation of prisoners is a theme that appears time and again throughout HMIP and IMB reports. HMIP's Annual Report 2012-13 states that "the analysis and documentation of segregation were inadequate in many prisons."⁸ Even where data was recorded properly, HMIP still found failings, such as at HMP Bedford, "the collection of data on segregation was generally very good, but the monthly segregation monitoring group did not use them in any meaningful way to identify and address trends".⁹
- 4.3 The Howard League has attempted to build up a picture of the prevalence and extent of segregation through analysis of a number of documents including HMIP reports, IMB reports, the Prisons and Probation Ombudsman ("PPO") reports and our own experience.
- 4.4 The prevalence of segregation and length of time prisoners are segregated for varies markedly across the prison estate. It is striking that a number of prisons, both open and closed, including North Sea Camp, Spring Hill, Blantyre House, Send, Askham Grange and Hatfield manage without a designated segregation unit at all. The IMB reported that Send, a closed adult women's prison, "does

⁶ Written question - 218558

⁷ Section 5, PSO1700

⁸Page 25, HMIP Annual report 2012 – 13

<http://www.justice.gov.uk/downloads/publications/corporate-reports/hmi-prisons/hm-inspectorate-prisons-annual-report-2012-13.pdf>.

⁹ Page 29, HMIP report into HMP Bedford (January - February 2014), <http://www.justiceinspectors.gov.uk/hmiprison/wp-content/uploads/sites/4/2014/06/Bedford-2014-web.pdf>

not have a Segregation unit, a policy viewed by the Board as commendable because it has a positive effect on the atmosphere within the prison.”¹⁰

- 4.5 In contrast, HMIP reports highlight a number of prisons where the use of segregation seemed continually and excessively high. The report into the Isle of Wight prisons in June 2012 said “[t]he use of segregation was high. At the time of the inspection, all three units were at full capacity and had been either full or close to full during the previous six months. At Parkhurst and Albany, a large number of prisoners had been held in segregation for long periods over the previous six months.”¹¹

Reasons for segregation

- 4.6 Prisoners are segregated for a variety of different reasons including good order and discipline, to prevent a prisoner associating with other particular prisoners or while a prisoner is awaiting an adjudication. Prisoners are also segregated for their own protection. While I can see that very occasionally this might be necessary as a very short term measure, it is sometimes used routinely and for unjustifiably prolonged periods. For instance, it was reported that at Wealstun prison “[s]taff and prisoners alike described a culture of managing bullying by removing the victim to the segregation unit”¹². Such a use of segregation unfairly punishes the victims and fails to address the causes or punish the perpetrators.
- 4.7 There are instances of segregation being used where there is no clear reason to justify it. For instance, HMIP’s Annual Report for 2012-2013 highlights one of the most disproportionate uses of segregation where, “at New Hall, a new arrival who refused to hand over open toed-sandals and a strappy top (clothing allowed at her sending prison but not at New Hall) was restrained,

¹⁰ Page 13, IMB Annual Report HMP Send 2013-2014, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/send-2013-14.pdf>.

¹¹ HP20, page 13, HMIP report into HMP Isle of Wight (May – June) 2012, <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/i-o-w-2012.pdf>.

¹² HP12, page 11, HMIP report into HMP Wealstun (August 2011), <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/wealstun2011.pdf>

put in the segregation unit and had her clothes cut off as she was forcibly strip searched.”¹³

- 4.8 HMIP’s report into Altcourse prison also raised concerns about whether segregation was warranted in many cases: “[b]etween December 2013 and May 2014, there had been 518 cases of segregation, which was very high for the type of prison. The records we sampled did not assure us that all uses were warranted or for the shortest time.”¹⁴
- 4.9 There were similar concerns at Doncaster prison where HMIP recorded that: “[i]n the previous six months, 459 prisoners had been held in the [segregation] unit, over half before an adjudication had taken place, a measure usually reserved for prisoners who cannot be held safely on the wing. Many cases that we examined showed that this was not always the case.”¹⁵ Further examples of “inappropriate”¹⁶ use of segregation in the cases of vulnerable prisoners were recorded at Hewell prison where it was reported that prisoners were segregated while awaiting accommodation on the vulnerable prisoner unit or while on constant watch.
- 4.10 In our experience, the vast majority of segregation decisions are for internal good order and discipline reasons or in the prisoner’s own interests and do not raise matters of national security or intelligence. In all these cases, the giving of reasons and evidence will be neither administratively burdensome nor sensitive. Many of the prisoners who are removed from association are disturbed and damaged individuals who may have acted out or behaved in a particular way as a result of their vulnerabilities and present no risk to national security.

¹³ Page 52, HMIP Annual Report 2012-2013, <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hm-inspectorate-prisons-annual-report-2012-13.pdf>.

¹⁴ 1.59, page 27, HMIP report into HMP Altcourse (June 2014), <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/Altcourse-2014-web.pdf>

¹⁵ 1.68, page 28, HMIP report into HMP Doncaster (March - April 2014), <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/08/Doncaster-Web-2014.pdf>

¹⁶ 1.77, page 29, HMIP report into HMP Hewell (July 2014), <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/11/Hewell-web-20141.pdf>

Length of segregation

- 4.11 The length of time that people have been segregated for varies hugely from a number of hours to over five years. While the use of segregation is reported to be high in many prisons and in some cases may be unwarranted, for the most part, the average length of stay in the segregation unit is relatively short.
- 4.12 Of greater concern is the relatively small number of prisoners who find themselves in segregation for extended periods of time. For instance, HMIP's report into Dartmoor prison found that of the 85 prisoners who had been segregated in the previous six months, six had remained on the unit for over 20 days.¹⁷ Similarly, at Thameside prison it was reported that "[a]lthough few men are held in CSU for periods in excess of 4 weeks, there have been several instances during the year when a prisoner has been in the unit for considerably longer than this."¹⁸ The IMB report for Brixton prison for 2012-13 noted that "several prisoners were held in the CSU for a long time, one for almost four months. Long CSU stays were for a variety of reasons: men were unfitted for resettlement, recategorised to B, refusing to share a cell, or were a risk to their own or others' safety on the wing. The NOMS process for transferring these 'difficult cases' seemed to break down completely."¹⁹ The IMB report for Bullingdon prison 2012 – 2013 reported that 'At least two prisoners were held for more than 95 days in the SCCU. The reasons for 'long stayers' include lack of availability of specialist transport and waits for mental health unit beds.'²⁰
- 4.13 A number of HMIP reports have considered the average length of stay in segregation. At Feltham prison, which holds children and young adults, HMIP

¹⁷ 1.62, page 27, HMIP report into HMP Dartmoor (December 2013), <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/dartmoor-2013.pdf>

¹⁸ Page 12, IMB Annual Report HMP Thameside 2013-2014, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/thameside-2013-14.pdf>

¹⁹ Page 19, IMB report <http://www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2013?a=85231>

²⁰ Page 15, IMB report <http://www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2013?a=89173>

found that “stays were not long, at an average of three days.”²¹ Swinfen Hall prison for young adults recorded that the “average length of stay was around 10 days but a significant minority remained segregated for much longer.”²² At Risley prison the average time spent in segregation was a little longer at 10.7 days, but in the last quarter of 2010 only one prisoner had spent more than three months in segregation.²³ While there are a small number of prisons where it was found that the average stay in the segregation unit was much longer²⁴, in Howard League’s experience, generally it is only a small number of prisoners who find themselves in long term segregation. A number of those however, end up trapped in the system and are transferred between segregation units across the prison estate.

- 4.14 There are particular concerns about the conditions in which long term segregated prisoners are held. For instance, HMIP’s report into Manchester prison describes how “the regime was satisfactory for most prisoners held there for short periods but very restricted for the small number of long stay prisoners.”²⁵ In response to a previous recommendation, HMIP’s report into Camp Hill prison noted “[s]ome prisoners had been located on the unit for many months, and managers indicated that they had considerable difficulties arranging suitable transfers for prisoners who could not return to normal location at Camp Hill.”²⁶

²¹ 1.52, page 28, HMP/YOI Feltham (Feltham B – young adults) (July-August 2014), <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2015/01/Feltham-B-YA-web-2014.pdf>

²² 1.61, page 27, HMP/YOI Swinfen Hall (June - July 2014), <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/11/Swinfen-Hall-final-report-web-2014.pdf>.

²³ 7.27, page 62, HMIP report into HMP Risley (February 2011), <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/Risley-2011.pdf>

²⁴ At HMP Wakefield, HMIP found that “the average stay of segregated prisoners was about 12 weeks”, (1.60, page 27, HMIP report into HMP Wakefield (June-July 2014) <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/11/Wakefield-web-2014.pdf>.)

²⁵ HP16, page 13, HMIP report into HMP Manchester (September 2011), <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/manchester-2011.pdf>

²⁶ 6.29, page 72, HMIP report into HMP Camp Hill (February 2009), http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/camp_hill_2009-rps.pdf.

4.15 Similarly, HMIP has raised concerns about the psychological effect of long term segregation at Wakefield prison: "[s]ome prisoners spent long periods in segregation. The regime was impoverished and did little to prevent psychological deterioration. Prisoners spent nearly all day locked up with little to do. Generally, planning systems to address the needs of segregated prisoners were also underdeveloped."²⁷

4.16 There are also examples of excessively long segregation. For example HMIP's report on Bronzefield prison refers to a woman segregated for six years:

"We were dismayed that the woman who had already been in the segregation unit for three years in 2010 was still there in 2013. Her cell was unkempt and squalid and she seldom left it. Although more activities had been organised for her and better multi-disciplinary support was available, she still had too little to occupy her. Her prolonged location on the segregation unit amounted to cruel, inhumane and degrading treatment – and we use these words advisedly. The treatment and conditions of other women held for long periods in segregation was little better."²⁸

Who is segregated?

4.17 I am very concerned about discriminatory practices in the use of segregation. While those who identify themselves as 'white British' make up over 70 per cent of the prison population, this group accounts for only just over one third of requests to the Howard League for help with problems around segregation. HMIP's Annual Report 2011-2012 notes that "[e]thnic monitoring showed that proportionately more black and minority ethnic than other prisoners were

²⁷ S44, page 17, HMIP report into HMP Wakefield (June - July 2014), <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/11/Wakefield-web-2014.pdf>

²⁸ Page 5, HMIP report into HMIP Bronzefield (April 2013), <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/bronzefield-2013.pdf>.

segregated ... at some establishments."²⁹ The IMB report on Feltham for 2012-2013 noted that the percentage of BME prisoners located on the segregation unit compared with white prisoners was consistently high each month at around 85/90%³⁰. Concerns about the comparatively high use of segregation for BME young people were also noted in the IMB report for Isis prison in 2013³¹.

4.18 HMIP's Annual Report for the previous year summarised the discriminatory use of segregation:

"[P]risoners from a black or minority ethnic background, foreign nations, Muslim prisoners and those under the age of 21 were more likely to report having spent time in the segregation or care and separation unit in the last six months. At both Norwich and Whatton, we reported that black and minority ethnic prisoners were disproportionately more likely to be segregated."³² Equally, at HMP Durham, a different sort of discrimination was reported where it was found that "young adults, who comprised just 8% of the prison population, were disproportionately represented."³³

4.19 The Howard League is also concerned about the numbers of prisoners with mental health problems and other psychological vulnerabilities who are segregated. As far as the Howard League is aware, there is no central data on this.³⁴ Nevertheless, the latest HMIP Annual Report is clear that "[t]oo

²⁹ Page 42, HMIP Annual Report 2011-2012, <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hm-inspectorate-prisons-annual-report-2011-12.pdf>

³⁰ Page 15, IMB report, <http://www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2013?a=93182>

³¹ Page 19, IMB report <http://www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2013?a=102822>

³² Page 25, HMIP Annual Report 2010-2011, <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hmip-annual-report-2010-11.pdf>

³³ Page 5, HMIP report into HMP Durham (December 2013), <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/05/Durham-2013-web.pdf>

³⁴ See the response to the Parliamentary Written Question 218558

many prisoners in crisis were held in segregation in poor conditions and without the exceptional circumstances required to justify this.”³⁵ The IMB report into Whitemoor prison criticises the way in which the segregation unit is run, describing it as the “warehousing of the mentally vulnerable”.³⁶ The IMB report into Highpoint prison for 2013-2014 says:

“The Board still has grave concerns regarding prisoners with quite severe mental health problems being located on the SAU, sometimes for long periods of time whilst they are assessed for transfer to a more appropriate placement. This often involves having to be sectioned under the Mental Health Act, and this involves securing funding and specialist treatment from the appropriate Healthcare Authority. The Board continues to stress that these situations are intolerable, both for the staff who have to deal with these very disturbed individuals and the prisoners themselves.”³⁷

4.20 The IMB report into Lancaster Farms prison for young adults also reported frustration at its view that at times the segregation “unit holds a number of problematic or vulnerable prisoners, needing careful management, who are difficult to relocate on normal residential units. The time taken to transfer some of these prisoners to other prisons providing the required interventions is unacceptably long.”³⁸

4.21 It is clear that segregation units are not appropriate for mentally vulnerable prisoners who also often require specially trained staff to take care of them. At Portland prison it was reported that “[t]he Board continues to find the CCU staff competent and caring, although there are now too many occasions when

³⁵ Page 9, HMIP Annual Report 2013-2014, http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf.

³⁶ 5.7.6, page 11, IMB Annual Report HMP Whitemoor 2014, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/whitemoor-2013-2014.pdf>

³⁷ Page 18, IMB Annual Report Highpoint 2013, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/highpoint-2013.pdf>

³⁸ Page 14, IMB Annual Report HMYOI Lancaster Farms 2013, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/lancaster-farms.pdf>

untrained staff are drafted in for short periods due to the general extreme leanness of staffing at Portland.”³⁹ The report goes on to say that while staff generally manage well “it is quite wrong that the prison service should be expected to do this work.”⁴⁰ The Howard League’s experience of working with prisoners subjected to long term segregation is that they often tend to be the most disturbed and vulnerable prisoners, characterised by being young, institutionalised, with mental health difficulties and histories of self-harm or attempted suicide. The Howard League has worked with a number of young people who have been segregated for long periods pending a transfer to hospital under the mental health act or who have self-harmed prolifically while detained for many months in segregation.

4.22 One case involved a vulnerable child known as SP⁴¹, who had a long history of self-harm. SP was sent to a prison aged 17, following a chaotic and distressing childhood. Her treatment in the prison system is the subject of an independent inquiry triggered by the fact that she self harmed so much while in prison that her life was at risk. In relation to her periods of time in segregation the background information on the inquiry, which refers to her as ‘Susan’ states: “Susan spent frequent periods in segregation or ‘safe cells’ stripped of all her possessions and with nothing to distract her from her emotional distress. Her self-harm spiralled out of control until she was losing pints of blood. She sought transfer to a secure psychiatric hospital under the Mental Health Act, but medical opinion was divided. She was hospitalised over 20 times. The prison was simply unable to respond appropriately and resorted to transferring her to another prison “to give the staff a break”⁴².

4.23 The Howard League’s experience is that segregating vulnerable and disturbed people tends to only exacerbate their existing problems.

³⁹ 5.7.1, page 15, IMB Annual Report HMP and YOI Portland 2013-2014, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/portland-2013-14.pdf>

⁴⁰ 5.7.2, page 15, IMB Annual Report HMP and YOI Portland 2013-2014, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/portland-2013-14.pdf>

⁴¹ SP v Secretary of State [2004] EWCA Civ 1750

⁴² See <http://www.howardleague.org/susan-story/>

5. **SEGREGATION IN PRACTICE: WHAT IS AT STAKE FOR THE PRISONER**

5.1 It is clear that there is an increased risk to the personal integrity, health, mental health and even life of prisoners in segregation. This is reflected in the high number of people on suicide watch in segregation units and the high number of deaths in segregation units reported by practitioners, HMIP and the PPO. These risks are often heightened by virtue of the austere physical conditions in which segregated prisoners are held, an issue raised time and again by HMIP, the IMB and the PPO. It is our experience that prisoners who are segregated also find that meaningful contact with the outside world, including access to legal advisors, is severely restricted. The indefinite nature of segregation is also a source of real concern for many prisoners we have assisted and this has also been recognised as a source of concern by the IMB, HMIP, PPO and the Special Rapporteur on Torture. Practitioners have also noted that prolonged use of segregation also has a detrimental impact on other aspects of a prisoner's sentence planning, progression and rehabilitation. Finally, many prisoners we have spoken to have felt a stinging sense of injustice when they believe a decision to segregate has been imposed or continued unfairly that is contrary to the rehabilitative aspects of prison life. All of these concerns are heightened in the case of prisoners with pre-existing vulnerabilities and protected characteristics.

Risk of death

5.2 The risk of death in segregation is now well recognised by those who run the prisons in England and Wales. Procedures around segregation, which are governed by PSO 1700 (the "PSO"), were reviewed in 2006 with the result that the PSO was amended in light of the number of self-inflicted deaths within segregated environments between 2001 and 2006. The PSO states that "with this in mind" it "now places greater emphasis on maintaining the safety of prisoners in segregated environments."⁴³

⁴³ Page 4, PSO 1700.

- 5.3 Notwithstanding the measures set out in the PSO to prevent the risk of suicide in segregation the PPO Annual Report 2013 – 2014 refers to a disproportionately high number of deaths in segregation:

“During the year there were a number of deaths in segregation units, including some prisoners who were being supported through ACCT procedures. Prison Service instructions recognise that there are a disproportionately high number of self-inflicted deaths in segregation units and require that prisoners on an open ACCT should only be segregated when they are such a risk to others that no other suitable location is appropriate and then only in exceptional circumstances.”⁴⁴

- 5.4 HMIP reports that between 2013 and 2014 there were seven deaths in segregation:

“Our previous concerns that too many prisoners in crisis and at risk of suicide or self-harm were segregated not only continued this year but in some cases were sadly warranted – at least seven segregated prisoners took their own lives, of whom at least four were on an ACCT at the time of their death and one had an ACCT closed shortly beforehand. In around a quarter of reports, including Huntercombe, Moorland, Norwich, Rochester and Thameside, we found that segregation was used too frequently for prisoners on an ACCT and without full consideration of whether this was the right place to care for them.”⁴⁵

- 5.5 In one of the instances of suicides discussed in the PPO Annual Report 2013-2014, a man self-harmed the day after he was placed in segregation. The appropriateness of him being held in segregation was not reviewed and no exceptional measures were put in place. He was found hanging in his cell

⁴⁴ Page 21, PPO Annual Report 2013–2014, http://www.ppo.gov.uk/wp-content/uploads/2014/09/PPO-Annual-Report-2013-14_FINAL_web.pdf.

⁴⁵ Page 29, HMIP Annual Report 2013–2014, http://www.justiceinspectors.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/10/HMIP-AR_2013-141.pdf.

after two days in the segregation unit.⁴⁶ The PPO also carried out an investigation into another prisoner who took his own life at HMP Bullingdon in August 2013. The man, who had not been identified as a risk of suicide or self-harm by the prison, was punished for refusing to move cells by three days cellular confinement in the segregation unit. When he returned to the wing, his original cell was no longer available and he refused to go to the only vacant cell. He was returned to the segregation unit and locked in a cell at 12.00pm. Staff found that he had hanged himself at 12.30pm and he was confirmed dead. While the PPO report concluded that staff at Bullingdon prison could not have foreseen or prevented his death, the case serves as a reminder of the effect that segregation can have on individual prisoners within a very short time.

- 5.6 It is also clear from considering a number of reports produced by Coroners following inquests into the deaths of prisoners that segregation is often highlighted as an area of concern that requires action to prevent deaths in the future.⁴⁷

Risk to mental health

- 5.7 It is widely accepted that solitary confinement carries risks of harmful psychological and physiological effects. Sharon Shalev, a leading academic working in this area, cites a study by Haney which found that "[a]ll studies of prisoners who have been detained involuntarily in solitary confinement in regular prison settings for longer than ten days demonstrated some negative health effects".⁴⁸ Shalev refers to another study that compared subsequent admission to psychiatric hospitals in Denmark for prisoners held in solitary confinement compared to those held with other prisoners. The study found

⁴⁶ The case of Mr G, page 22, PPO Annual Report 2013-2014, http://www.ppo.gov.uk/wp-content/uploads/2014/09/PPO-Annual-Report-2013-14_FINAL_web.pdf

⁴⁷ Such reports were made under Rule 43 of the Coroners Rules 1984 and are now made under Regulation 28 of the Coroners (Inquests) Regulations 2013. Reports concerning failings in the segregation process that are connected to prison deaths include the reports following the inquests of David Hull in 2006 and Jeff Parkes in 2011 and reports following deaths in prisons in West Yorkshire and Greater Manchester in 2010; in Dorset in 2011; and in Wales in 2012.

⁴⁸ Page 21, *A sourcebook on solitary confinement*, Sharon Shalev, http://solitaryconfinement.org/uploads/sourcebook_web.pdf

that "probability of being admitted [to hospital] for psychiatric reasons was about 20 times as high as for a person remanded in non-solitary confinement for the same period of time" (Sestoft et al. 1998:105).⁴⁹

- 5.8 The Howard League has represented a number of young people, including SP, who have experienced prolonged periods of segregation, several of whom have eventually been transferred to hospital under the Mental Health Act 1983. One young person, whom I shall call 'C', now in a special high secure hospital, recently compared the impact on him of being segregated in a young adult prison with being 'secluded' in a hospital setting. C had been segregated for months on end in prison where there was no acknowledgement of his mental health problems. During that time, C received a number of adjudications for pressing his cell button in order to ask for help. C has since been transferred to a Special Hospital where further testing has revealed that he has significant learning difficulties and hearing loss in both ears. C has described to us how while segregated in prison he felt that he was treated like an animal, with no light at the end of the tunnel. He also described how in the segregation unit, there were no sockets and so he passed his days with a bed, sink and toilet. He was offered books to read and writing materials but this was of no use to him as he is illiterate. His transition from a prison environment to a hospital environment was particularly difficult as he struggled to socialise and integrate with other patients having spent so long in isolation in prison. Several IMB reports raise concerns about prisoners being held in segregation units for extended periods while they await a bed in a psychiatric hospital ward⁵⁰.
- 5.9 Various IMB reports have raised concerns about the inappropriate use of segregation for people with mental health problems, highlighting the extent to which the experience can result in further deterioration. For instance, the 2012 – 2013 IMB report for Long Lartin prison describes how the 'very regrettable' delays faced by men in the segregation unit pending admission to high secure

⁴⁹ Page 21, *A sourcebook on solitary confinement*, Sharon Shalev, http://solitaryconfinement.org/uploads/sourcebook_web.pdf

⁵⁰ For examples, see paragraph 4.12 above and the **2012 IMB report for Highpoint, a Category C training prison** <http://www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2013?a=79665> p20

hospitals 'sometimes result in a degree of deterioration which is obvious even to the layman.'⁵¹

5.10 The possible long term effects of solitary confinement are not as well studied as the short term effects and very much depend on the individual. However, the Special Rapporteur's 2011 report expresses particular concern about the practice of prolonged solitary confinement. He concludes that "15 days is the limit between "solitary confinement" and "prolonged solitary confinement" because at that point, according to the literature surveyed, some of the harmful psychological effects of isolation can become irreversible."⁵² European Prison Rules (2006) also implicitly recognise that solitary confinement, especially over a prolonged period can be damaging by proclaiming that it "shall be imposed as a punishment only in exceptional cases and for a specified period of time, which shall be as short as possible."⁵³

5.11 Some studies have found that the symptoms of segregation decreased soon after transfer to the general population, suggesting that most of the effects of solitary confinement are not long lasting. However, a study by Grassian (2006), again quoted by Shalev, found that:

Although many of the acute symptoms suffered by inmates are likely to subside upon termination of solitary confinement many [prisoners], including some who did not become overtly psychiatrically ill during their confinement in solitary, will likely suffer permanent harm... this harm is most commonly manifested by a continued intolerance of social interaction, a handicap which often prevents the inmate from successfully readjusting to... general population prison and often

⁵¹Page 19, IMB report <http://www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2013?a=67981>

⁵² Page 9, Interim report of the Special Rapporteur of the Human Rights Council on torture and other cruel, Inhuman or degrading treatment or punishment, 5 August 2011, <http://solitaryconfinement.org/uploads/SpecRapTortureAug2011.pdf>

⁵³ Rule 60.5, <https://wcd.coe.int/ViewDoc.jsp?id=955747>.

severely impairs the inmate's capacity to reintegrate into the broader society upon release from imprisonment.⁵⁴

5.12 The Howard League represented a young person, whom I shall call 'D', who spent extended periods of time in segregation, stretching back to his childhood in the secure estate. D recently described the experience of being released into the community on licence having effectively spent several years in segregation: he simply could not cope with ordinary life. The contrast was too great and he ran away on release until being apprehended and recalled to prison.

5.13 HMIP has noted with concern the lack of provisions to ensure that prisoners' mental health did not deteriorate while they were in segregation. HMIP's report into Wakefield (July 2014) noted its disappointment that "structures to provide care and progression planning to these men was very weak, and little was being done to prevent the psychological harm of long-term containment."⁵⁵ Similar findings were reported at HMP Whitemoor where "the segregation regime for a number of long stay residents remained particularly poor and we saw little focus on preventing the inevitable psychological deterioration that results from this."⁵⁶ The IMB report for Whitemoor sets out clear concerns about the mental health of three prisoners in the segregation unit and concludes it is "intolerable that the Prison Service continues to fail to provide suitable accommodation for prisoners who are under severe stress or are mentally ill"⁵⁷:

"In the last quarter of our reporting year the Unit held three prisoners awaiting either assessment by a secure hospital or a bed in one. One

⁵⁴ Page 22, *A sourcebook on solitary confinement*, Sharon Shalev, http://solitaryconfinement.org/uploads/sourcebook_web.pdf.

⁵⁵ Page 5, HMIP report into HMP Wakefield (June - July 2014), <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/11/Wakefield-web-2014.pdf>

⁵⁶ Page 5, HMIP report into HMP Whitemoor (January 2014), <http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2014/05/WhitemoorWeb-2014.pdf>

⁵⁷ 5.7.5, page 10, IMB Annual Report HMP Whitemoor 2014, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/whitemoor-2013-2014.pdf>

of them had been in Segregation since March 2013; at the same time a Close Supervision Centre (CSC) prisoner parked for seven months in Whitemoor was behaving erratically, at times including violence, as well as threats of suicide. We choose the words carefully when saying that the Seg at times resembled Bedlam.”⁵⁸

- 5.14 Seemingly, this lack of planning for the mental health of prisoners held in segregation was also coupled with a lack of awareness and training from staff around safeguarding issues. The report into Acklington prison states that “[s]egregation review boards were not multidisciplinary. Out of 30 seen at random, only five involved a member of healthcare staff”⁵⁹. Similarly, at Nottingham prison, it was found that “[o]nly half of the staff currently working on the segregation unit had undergone mental health training.” The IMB report for 2012-2013 on Frankland prison described the segregation unit as “the default “place of safety” within the prison for those suffering rapid deterioration in mental health.” The report raises concerns about the appropriateness of the segregation unit for the ongoing care of prisoners with acute mental health needs some of whom are on ACCT documents, noting that despite the dedication of staff on the unit, “they are not trained to treat mental health problems.”⁶⁰

Austere physical conditions in which segregated prisoners are held

- 5.15 The total isolation and absence of anything, let alone anything meaningful, to do is a matter of real concern. The eighteenth century notion that prisoners should be separated to encourage reflection and reformation is wholly contrary to modern ideas about how best to prevent future reoffending. The conditions described to the Howard League and reflected in HMIP reports

⁵⁸ 5.7.4, page 10, IMB Annual Report HMP Whitemoor 2014, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/whitemoor-2013-2014.pdf>

⁵⁹ 6.41, page 78, HMIP report into HMP Acklington (June 2009), http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/03/Acklington_2009_rps.pdf

⁶⁰ Page 25, IMB report, <http://www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2013?a=88761>

are often poor and austere. HMIP's Annual Report 2010-2011 summarised the conditions as follows:

"[p]risoners in many segregation units continued to be held in poorly maintained accommodation. Swinfen Hall and Gloucester had particularly bad living conditions. We were concerned that prisoners in some units did not have access to washing facilities and telephones on a daily basis. The state of sanitary facilities was a major concern and special cells and exercise areas were mostly austere."⁶¹

5.16 The IMB report into Pentonville prison published in October 2013 recorded particularly unpleasant living conditions: "[t]he Segregation Unit location (effectively in a basement) is unpleasant and degrading: the lack of natural light, the grim facilities, the impossibility of eradicating cockroaches and the general impression of age and squalor persist."⁶²

5.17 HMIP's report into Belmarsh prison in September 2013 echoes many other inspectorate reports:

"[s]egregation in the main part of the prison was not used excessively but the facility was poor and the quality of staff supervision and engagement was unimpressive. The small segregation unit in the special unit was austere and sterile and the prisoners held there experienced a significant level of isolation that required careful monitoring. It was concerning that on more than one occasion we found this facility unsupervised with a prisoner still there."⁶³

5.18 The report recommended that "the environment, regime and relationships between staff and prisoners in both segregation units should be improved as a matter of urgency."

⁶¹ Page 27, HMIP Annual Report 2010-2011, <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hmip-annual-report-2010-11.pdf>

⁶² Page 16, IMB Annual Report HMP Pentonville 2013-2014, <http://www.justice.gov.uk/downloads/publications/corporate-reports/imb/annual-reports-2014/pentonville-2013-14.pdf>

⁶³ Page 5, HMIP report into HMP Belmarsh (September 2013), <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/belmarsh-2013.pdf>

Restrictions on meaningful contact with the outside world

- 5.19 Although regimes vary from prison to prison, it is often the case that prisoners who are lucky enough to have legal advisors struggle to contact them while segregated. The young person I have already referred to as C and who spent many months in the segregation unit at HM YOI Swinfen Hall has described how while in the segregation unit, he was allowed only two phone calls a week and one was at a weekend – if he missed his slot to call his lawyer in the week, he would have to wait another week. As an illiterate prisoner, he could not contact his lawyer by any other means. On the whole prisoners who contact the Howard League advice line rarely now have lawyers that are able to assist them with issues such as their treatment in segregation or its impact on their sentence plan. This is because legal aid is now only available for prisoners who are either facing an independent adjudication or the possibility of release by the parole board⁶⁴.
- 5.20 There are also real concerns about the extent to which contact with the outside world can be meaningful, especially where a prisoner's mental health has deteriorated in the segregation unit. Last year, I attended a seminar convened by the Howard League and the Association of Prison lawyers. I heard several lawyers provide examples where clients who they had been representing for other matters, such as a criminal appeal or parole matter, found that after a period of segregation, they could no longer take informed instructions from the client. One lawyer described how she was unable to even have a conversation with her client such was his deterioration during the period of segregation and another described how her client who had learning difficulties and a history of mental health had become floridly psychotic in the segregation unit, resulting in his eventual transfer to a high secure hospital. Whereas she had previously been able to take instructions from this client, when she went to visit him in the segregation unit, he would not even come to his door. The lawyer later explained how his grandmother who was his primary carer as a child was worried sick as she was too elderly to visit him

⁶⁴ See para 6.11 below

and was unable to have a meaningful telephone conversation with him following his deterioration in segregation.

The indefinite nature of segregation

5.21 One of the greatest frustrations expressed to us by prisoners who call the Howard League help line is simply not knowing when their segregation will end. The young person I have referred to as C described it like being back on remand again. The sense of hopelessness is palpable.

5.22 The PSO states that "the aim is to return a prisoner to normal location as soon as it is practicable to do so." In order to assist a prisoner to transfer back to the main wing the PSO provides that "[i]f segregation is to continue the prisoner is told the reason(s) why both orally and in writing"⁶⁵ and "[t]he prisoner is given a copy of the behaviour and intervention targets that they have been set at the Review Board"⁶⁶.

5.23 According to HMIP's Annual Report 2011-2012 all too often this does not happen:

"routine reviews for prisoners remaining in units for longer than 14 days lacked sufficient depth. Subsequent targets for prisoners to achieve reintegration on mainstream wings were too generic, with little focus on underlying issues relating to prisoners' continued segregation... this was despite Prison Service Order 1700 which required formal care and reintegration planning processes."⁶⁷

5.24 Similar shortcomings were identified in HMIP's Annual Report for 2010-2011 which concluded that "in most cases, reviews of prisoners in segregation remained perfunctory, with little emphasis on reintegration to a normal

⁶⁵ PSO 1700, clause 4.2, page 34.

⁶⁶ PSO 1700, clause 4.2, page 34.

⁶⁷ Page 33, HMIP Annual Report 2011-2012,

<http://www.justiceinspectors.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hm-inspectorate-prisons-annual-report-2011-12.pdf>

residential unit or meaningful target-setting to challenge and address poor behaviour."⁶⁸

5.25 Similar concerns are found in many inspectorate reports into individual prisons. The report into Belmarsh prison from September 2013 states that:

"[w]e were not aware of any plan for prisoners in segregation to progress to a less restrictive regime. Documentation lacked clear instructions about what they had to do to achieve a change in the circumstances of their segregation. This lack of clarity on opportunity for progression could lead to despair and associated risks of self-harm."⁶⁹

5.26 The IMB report for Whitemoor high security prison for 2012-2013, which raised very serious concerns about the number of mentally ill prisoners being held for extensive periods in the segregation unit, describing it as a "waiting area for prisoners who should be located elsewhere but cannot be", emphasised the endless nature of the process⁷⁰:

"Too often we hear in CSU Reviews that the situation for an individual is inexcusable but that Whitemoor staff have no idea when something will happen, making the stay seem indefinite."

Detrimental impact of segregation on prisoners' sentence planning, progression and rehabilitation.

5.27 It is clear that removal to the segregation unit is highly disruptive for prisoners and interferes with their sentence planning and progression. A young adult, who the Howard League assisted and who I shall refer to as E had been segregated for about five months continuously when we were first asked to

⁶⁸ Page 27, HMIP Annual Report 2010-2011, <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hmip-annual-report-2010-11.pdf>

⁶⁹ 1.105, page 33, HMIP report into HMP Belmarsh (April 2014), <http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/belmarsh-2013.pdf>

⁷⁰ Pages 11 -12, IMB report, <http://www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2013?a=81573>

represent him in relation to sentence planning issues (which at that time were legally aided). The reason why he needed help with his sentence planning was because he was soon to have a parole board review. He had almost served the whole of the term of his sentence for his punishment and yet he had not done any offending behaviour work at all. As a child he had been on a full care order and he had a diagnosis of PTSD from his early life experiences. He did not get any visitors and being segregated compounded his feelings of isolation, hopelessness and loneliness. His behaviour was both disturbed and disturbing. He had spent most of his time in jail, both in the children's estate and the young adult estate, lurching from crisis to crisis with over 30 adjudications and long spells in segregation. Yet this young person managed to engage over time with the Howard League legal team, to develop a relationship of trust and to start to work constructively with his offender supervisor and staff in prison. His sense of hopelessness and being unable to challenge his lot was a huge inhibitor to his progress prior to being legally represented. A crucial step in his journey was being able to get out of the segregation unit by being transferred from the prison where he had become stuck, with the help of our legal team.

- 5.28 Assisting prisoners who have become stuck in the system to progress in their sentence is a difficult task, made even more difficult following with withdrawal of legal aid for prisoners' sentence planning issues. For instance, HMIP found that at Lincoln prison "[n]one of the prisoners on the unit were subject to any reintegration planning to encourage and manage their safe return to normal location. We calculated that around a third of all prisoners located on the unit and half of Rule 45 prisoners were transferred out of the unit without their underlying issues having been addressed."⁷¹

Sense of injustice

⁷¹ 1.74, page 27, HMIP report into HMP Lincoln (November 2013), <http://www.justiceinspectors.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2014/04/Lincoln-2013.pdf>

5.29 In their day-to-day contact with prisoners, including children and young adults, and their families the Howard League's legal team deal with the resentment and stinging sense of injustice experienced when the decision to segregate has been imposed or continued unfairly. The absence of an opportunity to understand the reasons behind the move, how segregation may come to an end or feel in a position to challenge it effectively and before an independent decision maker is a huge barrier to building trusting and respectful relationships with staff that are necessary for them to move on and progress. Since legal aid has been removed for sentence planning issues, which includes segregation, the Howard League is confined to doing its best to help these prisoners through its advice line.

6. **FAIRNESS**

6.1 Based on the issues and experiences raised by and on behalf of prisoners seeking assistance from our lawyers combined with the information outlined above illustrating what is at risk for a prisoner in segregation, the Howard League is extremely concerned about the lack of procedural fairness governing the segregation process. This not only poses a huge practical barrier to prisoners who feel unfairly treated but is also very distressing to prisoners and their families.

Anomaly

6.2 The absence of a fair process by which prisoners can challenge decisions about segregation is now wholly anomalous. In almost every other walk of prison life, prisoners are encouraged to participate and feed in their views. While this is much harder for children and young people or people with disabilities, it is still part of the fabric of prison life. For example, there are now specific sections in risk assessment tools that seek the views of the prisoner. Prisoners who cannot pay for legal representation retain the right to legal aid before independent adjudicators when charged with a breach of prison rules. Prisoners are also entitled to seek legal advice (albeit not free) when appearing before the governor for a breach of prison discipline. Special rules are in place to ensure that prisoners appearing before the governor for breaches of prison discipline are afforded additional support if they need it.

Following a complaint made to the PPO by the Howard League on behalf of a child that recommended that information about the advocacy service become mandatory, it is widely accepted that all children are entitled the support of an independent adult at internal adjudications (PPO SC, 35286/2009). Any prisoner may request the adjudicating governor to consider granting a McKenzie friend or allowing representation at an internal adjudication and the governor must consider such a request and set out in writing the reasons for refusing it (PSI 47/2011 2.17). The criteria for granting legal representation at an internal adjudication is set out at Annex A of the PSI at paragraphs 2.10-11 and include, amongst other things, consideration of the need for fairness, the capacity of particular prisoners to present their own case and the seriousness of the charge and the potential penalty. As Simon Creighton notes at paragraph 11 of his statement, the worst punishment now available for a breach of prison discipline is a limited period of segregation. Prisoners also have an established appeal mechanism for challenging IEP downgrades: the Howard League is aware that these appeals are used by prisoners who are able to navigate the system. Categorisation reviews are also subject to an appeals process, albeit that prisoners are no longer able to enlist free legal advice for such appeals.

- 6.3 I understand from the Howard League legal team that in many other areas of prison law where a prisoner appears to have become stuck, such as those facing parole reviews, it is often the commissioning of independent evidence that makes a real difference. It follows that this would apply equally to prisoners in segregation, especially those with mental health problems. For instance, in relation to the young person I have referred to as C, I understand that it was only when a psychiatric report was commissioned for his parole review, that his profound disabilities and mental health problems emerged, prompting his eventual transfer from prolonged periods in segregation to hospital.

Representations before segregation

- 6.4 Despite the specific requirement that young people should be given an opportunity to make representations before being segregated following the

case we brought on behalf of SP⁷², I understand that Howard League lawyers have never known this to happen. The duty established by the SP case is also incorporated into the Prison Service Order on segregation as a mandatory action which is set out in Annex C of PSI 17/2006. It is striking that the head of children and young people's services at Feltham, one of just five children's prisons in the country, wrote to the Howard League recently asking what one of our lawyers was referring to when the child's right to make representations before the decision had been made in accordance with SP was raised. This suggests that the requirement to allow children to make representations before a decision is made to segregate them is little known or simply ignored by staff making decisions about segregation. It is likely that this is because the duty at present is only established in relation to young people and therefore not embedded into staff culture and practice. As far as I am aware, compliance with this mandatory duty is not monitored.

Reasons

6.5 The ability for a prisoner make representations against segregation is hindered unless reason for the decision to segregate is known. The Howard League often finds that prisoners do not understand the reasons why they are segregated. For instance, the Howard League assisted one 19 year old recently, whom I shall call F. F was moved to the segregation unit because of his deemed influence on the wing. He had not received an adjudication. He had no idea what the 'influence' referred to. He had not seen any of the paperwork relating this his review even though he had been in the unit for a week at the point when he contacted us. He felt the move was 'out of the blue' and had no understanding as to why it was happening. I understand that this is not a one off and that, in some cases, the absence of reasons may indicate that there is not sufficient reason to justify the decision to segregate. For example, HMIP's Annual report for 2011 - 12 found that "[i]n the majority of prisons, authorisation records completed by operational managers often did not support decisions to segregate prisoners. At Wandsworth, even the initial health care screening which determines whether segregation is appropriate

⁷² *R (SP) v SSHD* [2004] EWCA Civ 1750

had not been completed.”⁷³ The IMB report for Birmingham prison for 2013 noted “[a]s mentioned previously members have expressed concern when people have been held on security issues with no formal evidence provided.”⁷⁴

- 6.6 On almost all occasions when the Howard League legal team has written to prisons on behalf of a prisoner to ask for reasons for a move to the segregation unit, our lawyers have struggled to obtain anything that provides much assistance. In most instances, and usually after further prompting, we receive a letter defending the prison’s decision but not the original papers. Where the legal team has obtained reasons on behalf of a prisoner, it is my understanding that they are often different from what the prisoner understood or had thought the reason to be.
- 6.7 Disclosure of segregation documentation by the prison service rarely takes place in full or within a reasonable period of time except where judicial review proceedings have been issued. Even then, it often comes at a very late stage. In any event, disclosure of information about the reasons why a prisoner has been segregated has never to my knowledge resulted in the disclosure of information that has posed a security risk or further problems.
- 6.8 One instant benefit of a duty to disclose information about initial and on-going decisions to segregate is that it will require the information to be clearly recorded. In a number of cases where the Howard League has assisted prisoners, it has emerged that highly relevant information is simply not there. For instance, in a decision by the PPO some two years after the incident complained of, it was determined that the failure of Warren Hill prison to keep adequate records of the activities of the young person I have referred to as D when he was segregated as a child for some three months deprived the PPO of an opportunity to determine important aspects of the child’s complaint (PPO

⁷³ Page 32, HMIP Annual Report 2011-2012, <http://www.justiceinspectors.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hm-inspectorate-prisons-annual-report-2011-12.pdf>

⁷⁴ Page 18, IMB report, <http://www.justice.gov.uk/publications/corporate-reports/imb/annual-reports-2013?a=87289>

decision 38072/2009). The PPO recommended that records ought to be kept. Yet it appears that records and information gathered and maintained by prisons remains poor.

- 6.9 Concerns about poor recording have been noted by HMIP in its report 2012-2013 which said that "the analysis and documentation of segregation were inadequate in many prisons."⁷⁵ Similarly, HMIP report into Sudbury prison (November 2013) found that "[t]he completion of segregation paperwork was extremely poor and some prisoners had been segregated without proper authorisation."⁷⁶

Challenging on-going segregation

- 6.10 The only way for prisoners to challenge and probe the decision for segregation is by attending SRBs and putting their point across. However, many prisoners, especially children, young people, those who do not speak English and prisoners with mental health problems, struggle to do this effectively without help. It stands to reason that the provision of interpreters is essential to allow prisoners who do not speak English a reasonable prospects of understanding and challenging their segregation without an interpreter.
- 6.11 Nor is the presence of IMB members sufficient protection for prisoners who cannot put their point across. When asked whether the IMB person is present at their reviews, some prisoners are not even sure who the various individuals attending are and, correctly, do not seem to feel that the IMB member is there to support them. The young adult I have already referred to as C recently told the Howard League legal director that it is hard to see IMB members as on your side when they are having cups of tea with the officers. There is no longer any scope for lawyers to make representations in writing to SRBs under the legal aid scheme following the Criminal Legal Aid (General) (Amendment) Regulations 2013. This contrasts with the position of those

⁷⁵ Page 25, HMIP Annual Report 2012-2013, <http://www.justiceinspectors.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hm-inspectorate-prisons-annual-report-2012-13.pdf>

⁷⁶ 1.53, page 25, HMIP report into HMP Sudbury (October - November 2013), <http://www.justiceinspectors.gov.uk/prisons/wp-content/uploads/sites/4/2014/04/hmp-sudbury-2013-14.pdf>

detained under the Mental Health Act who are still entitled to assistance with their progression through the system, covering all issues connected to their treatment provided they are financially eligible for legal aid.

6.12 The only way for prisoners to challenge decisions to segregate them is by way of the internal complaints system. Again, this process no longer falls under the legal aid scheme. While the Howard League assists some prisoners with such complaints *pro bono* it is an intensive and drawn out process culminating in a complaint to the Prisons and Probation Ombudsman, who is under resourced and can often take many months, sometimes even years, to report back. For instance, a complaint made by the Howard League on behalf of the young person I referred to as D about his treatment in segregation as a child in Warren Hill YOI was submitted in April 2009 and not concluded until March 2013. The final report raised grave concerns about what had happened to D. It concluded, amongst other things that D had 'genuine problems coping on normal location. The prison's response was essentially a punitive one. The use of adjudications with increasingly restrictive punishments was likely to have been counter-productive. I have seen no evidence of an individual care plan designed to address the underlying causes of his behaviour or to help him reintegrate.' It also made important recommendations that I have already referred to. However, by the time the report was issued, the unit where D had been detained was no longer in operation.

6.13 While it remains possible to judicially review a decision to segregate, it is not an effective or sufficiently speedy remedy. As far as I am aware, since the legal team was established we have only proceeded to a handful of full judicial reviews where the issue of segregation has been the primary point of challenge. In such cases, the legal team is aware that full disclosure is absolutely key and therefore these matters cannot be dealt with quickly or on an *ex parte* basis. There are several instances where, once a Howard League lawyer has prepared a detailed letter before claim, the prisoner has been moved to another prison. The funding position for preparing letters

before claim is now heavily restricted by 'public law matter starts' which mean that prison law lawyers would need to have a public law contract with the Legal Aid Agency and will only be able to do a certain number of such cases a year for a fixed fee of around £250. As a consequence, it has become very difficult for our lawyers to find suitably qualified lawyers who are willing or able to take on cases where we cannot assist. If the matter does proceed to a full judicial review, new regulations imposed since April 2014 mean that while legal aid can still be applied for on a theoretical basis, lawyers have to work on the basis that they will not get paid unless permission is granted by the High Court. The Howard League's experience of judicial review cases for segregated prisoners is that they are precisely the kinds of fact sensitive cases that will often reach an advanced stage before permission is granted and it is very difficult to know the prospects of success before full disclosure is provided. The requirement to complete the complaints process before initiating judicial review proceedings further reduces the possibility of judicial review as an effective remedy for prisoners who are segregated. The other problem about relying on judicial review as a remedy is that the Administrative Court will not be reviewing the merits of the decision itself but the lawfulness of the decision in accordance with public law principles.

- 6.14 The Howard League regularly hears from segregated prisoners who feel hopeless. While, in our experience, prisoners are sometimes surprisingly satisfied by the outcome of an adjudication that they perceive as fair even if it does not go their way, the pervading sense from segregated prisoners is one of unfairness and hopelessness. This is due to the fact that they often feel powerless to challenge or do anything about their situation. It is not unusual for prisoners to be fearful that a complaint will further disadvantage them. In fact one young person whom I shall refer to as G recently advised a Howard League lawyer that an officer had told him he was remaining in the segregation unit longer because of the delays caused by having to respond to complaints we had submitted on his behalf. It is clear that the ability to go to an independent body will provide hope for prisoners of a fair and unbiased review of the decision.

Examples of procedural fairness from other contexts and jurisdictions

- 6.15 As I have already noted, there are several prisons where the governor has been able to dispense with the segregation unit altogether. However, if segregation is on occasion necessary, there is no reason why it cannot be subject to independent scrutiny with proper legal representation to ensure the process is meaningful. The Howard League believes this is essential if the practice of segregation, along with all the risks inherent within the process, is to continue. As I have outlined, segregation can have very damaging effects within a short period of time and it is for that reason that the Howard League believes that the approach in SP should be rolled out across the estate for all prisoners, along with mechanisms and safeguards to ensure the protection of vulnerable prisoners who can deteriorate in a number of hours.
- 6.16 I am also concerned about those prisoners who are liable to become stuck for indeterminate periods in segregation, without any sense of hope that they will be entitled to an independent and fair review. While I would advocate for an independent review at the earliest opportunity, I see no reason practical reason why this should not happen within at least 14 days of the decision to segregate. Patients detained under s2 of the Mental Health Act 1983 are entitled to a review with full legal representation under the legal aid scheme (irrespective of their means) before the independent Mental Health Tribunal and I understand that the Tribunal has impressive rates of securing hearings within seven days of an application.
- 6.17 In the prison, context I am aware of a number of jurisdictions where aspects of procedural fairness have been embedded into the segregation process, suggesting that a fair and an independent review is not fanciful in this context.
- 6.18 For instance, in New South Wales, reasons for a prisoner's segregation must be provided. In addition, a prisoner can apply to the Serious Offenders Review Council (the Council), an independent statutory authority, one of whose responsibilities is to review segregation directions made under Part 2, Division 2 of the Crimes (Administration of Sentences) Act 1999). The Council is made up of judicial members, officers of Corrective Services and representatives of the community. Any prisoner can apply to Council for a

review after 14 days of being segregated and there is a general obligation on Council to hear all applications. A number of exceptions exist if the applicant fails to state substantial grounds for review, the Council has previously reviewed the prisoner's case and feels there has been no substantial change or if the order was made on the prisoner's own request. According to Matthew Groves, an academic working in this area, "[t]he Council is empowered to determine the correctness of an order and must consider whether the order was made in accordance with criteria similar to those for initial exercise of the power, whether statutory procedural requirements were followed, whether the decision was reasonable in the circumstances and whether it was 'in the interests of the public.'⁷⁷ I understand that a prisoner appearing before the Council is entitled to legal representation and that the Council has the power to direct that the segregation is brought to an end or that the prisoner is transferred to another prison. In Western Australia, Segregation Orders specify the duration of segregation. I also understand that in Canada, segregated prisoners are automatically provided with reasons, entitled to legal advice and an interpreter if they do not understand English or require assistance because of disability⁷⁸.

7. CONCLUSION

- 7.1 Given what is at stake for the segregated prisoner, it is the Howard League's position that the highest standards of fairness should be incorporated into the segregation process. In the case of the many vulnerable prisoners who find themselves segregated, sometimes for prolonged periods for no reason other than their vulnerabilities, significant help and assistance must be built into this process to enable them to achieve a fair review.

⁷⁷ Administrative Segregation of Prisoners: Powers. Principles of Review and Remedies, Melbourne University Law Review, Volume 20, page 650.

⁷⁸Regulation 97(2) of the Corrections and Conditional Release Regulations: <http://laws-lois.justice.gc.ca/eng/regulations/SOR-92-620/section-19.html>

The contents of this statement are true.

Signed: Frances Crook

FRANCES RACHEL CROOK

Dated: 16 January 2018