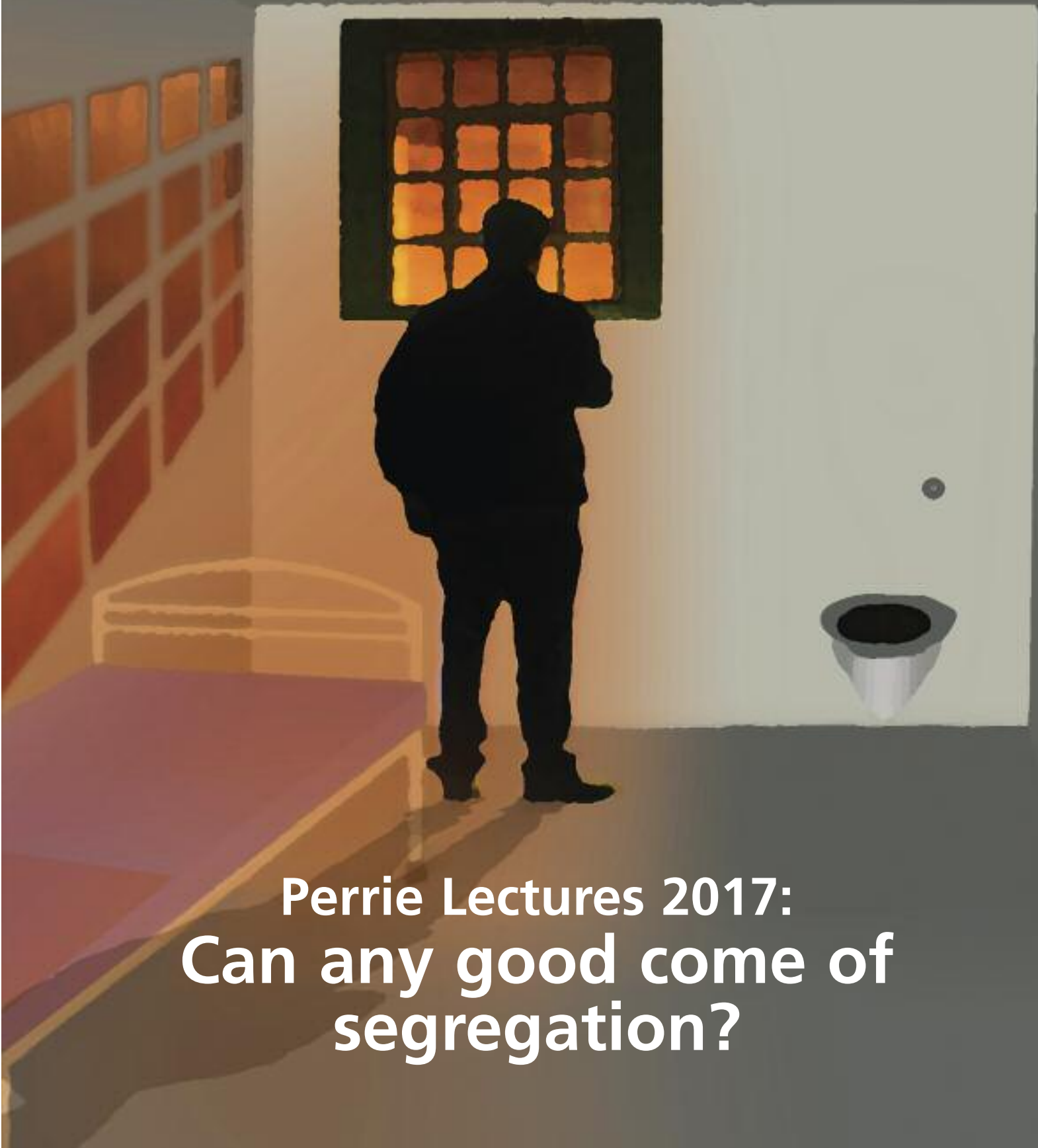


# PRISON SERVICE JOURNAL

March 2018 No 236



**Perrie Lectures 2017:  
Can any good come of  
segregation?**

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The Editorial Board wishes to make clear that the views expressed by contributors are their own and do not necessarily reflect the official views or policies of the Prison Service.  
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# Editorial Comment

*Prison Service Journal* has a long-standing partnership with the Perrie Lectures. Each year, articles are published based upon the annual lectures. This is a partnership of which the *Prison Service Journal* is proud.

The Perrie Lectures is an annual event which has the purpose of stimulating dialogue between criminal justice organisations, the voluntary sector and all those with an academic, legal or practical interest in offenders and their families. It is hoped that the event will contribute towards improving the care of offenders, and advancing penal policy, in its broadest sense. The Lectures are named in honour of Bill Perrie, who retired from the Prison Service in 1978. He worked as a prison governor for 32 years, latterly at HMPs Hull, Long Lartin, and Birmingham. He was noted for his contribution to the development of hostels, working out schemes, and regimes for long term prisoners.

The 2017 the Lectures took the title of 'Tackling Segregation: Can any good come of isolation?'. As the speakers illustrate, this question may be approached from a number of different perspectives. What are the different forms of segregation that take place in prisons in the UK and elsewhere? What are the reasons for segregation and the potential benefits, or at least the necessity, of this to the organization and prison community? What are the harmful effects of segregation on those who experience it and those who administer it? How do different people respond and adapt to segregation? How can the use of segregation be minimized and the harms be ameliorated?

The speakers included international expert in segregation and supermax, Dr. Sharon Shalev, who draws upon research in the UK, US and New Zealand. She sets out for principles against which practice should be assessed: solitary confinement should only be used in very exceptional cases, as a last resort, and for a short a time as is absolutely necessary; segregated prisoners should be offered access to purposeful activities and have meaningful social interactions; segregation units should place reintegration at the heart of their functions and improve 'exit' strategies, and; segregation must not be imposed on vulnerable people, on those at risk of suicide or self-harm, or on anyone awaiting assessment for transfer to a secure hospital. Richard

Vince, Executive Director of the Long Term and High Security Estate, and Russ Trent, Governor of HMP Berwyn, both offer examples from practice of how they are attempting to put those principles into practice. Both of these accounts offer distinctive examples of value-based prison leadership. These deserve to be read by practitioners as a source of guidance on pragmatic and principled actions that can be taken in prison segregation units.

In his lecture, Dr. Kimmett Edgar of the Prison Reform Trust, focusses on those prisoners who are 'segregated by choice'. That is those who engineer the use of segregation and resist attempts to reintegrate them into the mainstream prison regime. Drawing upon interviews with prisoners, Edgar offers three primary reasons for segregation by choice. The first is 'structural crisis', this is the wider problems of prison regimes, violence and drugs. The second is 'conflict management', that individuals have needs they want to be met and segregation is a way of drawing attention to these and creating pressure to have them met. The third is 'individual meanings', where those in segregation are attempting to manage themselves and their own wellbeing by accessing segregation. Edgar offers a way of thinking about this particular problem and provides examples of how this has been addressed in practice.

The regulation of segregation is addressed in articles by Dr. Laura Janes, Legal Director of the Howard League for Penal Reform, and Alex Sutherland, Chair of the Independent Monitoring Board at HMP Whitemoor. Dr. Janes provides an account of the use of legal systems to challenge the use of segregation, particularly against children. This has led to some practices being declared unlawful, although Dr. Janes observes that such judgements are not always acted upon in practice. Sutherland offers an account of the role of Independent Monitoring Board members in observing and reporting on the use of segregation in prisons. He is candid in recognizing the limitations of this and the struggles that IMB members have in having their concerns acted upon effectively. Both of these accounts highlight the strengths and weaknesses of the systems for regulating the use of segregation.

This edition also supplements the lectures with two additional articles. The first, by forensic psychologist Flora Fitzalan Howard, is an overview of

international research on the effects of segregation. The conclusions are rather stark: segregation can have some significant negative effects on people's psychological health, particularly for anxiety, depression and self-harm; using segregation to manage custodial misconduct may be ineffective, and; it may also increase people's risk of future serious or violent recidivism. Jack Merritt from University of Cambridge addresses the segregation of children and young people. While this covers the same theme as Dr. Janes article, it takes a different approach, looking from the perspective of an academic lawyer rather than a practicing lawyer.

The *Prison Service Journal* is proud to publish these articles and to continue the partnership with the Perrie Lectures. The 2017 Lectures provide a diverse and illuminating perspective on the critical issues facing those who live and work in prisons today.

Finally, this edition sees the announcement that Dr Laura Kelly, Lecturer in Criminology at the University of Central Lancashire, has won the *Prison Service Journal* Prize for Outstanding Article 2017. Dr Kelly's article 'Suffering in Silence: The unmet needs of d/Deaf prisoners' was voted as the article published during the year that best reflected the aim of the journal to inform theory and practice.

# The effect of segregation

*Flora Fitzalan Howard is a Registered Forensic Psychologist in the Evidence-Based Practice Team in Her Majesty's Prison and Probation Service.*

**In addition to being deprived of one's liberty by being sentenced to prison, a proportion of the people in the care of Her Majesty's Prison and Probation Service (HMPPS) may experience a deeper form of custody and exclusion by being placed in segregation units for a period.**

The aim of this article is to summarise the findings of a review of the more robust international evidence on the effect of segregation. Mental and psychological health, custodial conduct and recidivism outcomes were examined.

## The use of segregation

Segregation units in English and Welsh prisons serve the purpose of removing a person from the main prisoner population. Approximately 1,500 cells are currently set aside for segregation in the estate.<sup>1</sup> HMPPS primarily uses segregation for adults in custody to punish rule breaking (Prison Rule 55 — cellular confinement of up to 21 days), to stabilise and prevent the mainstream prison population from the negative influence of individuals (Prison Rule 45b — Good Order or Discipline), and to protect individuals from threat (Prison Rule 45a — own protection).

Segregation has been described as 'deep custody' (p. 131).<sup>2</sup> In England and Wales the person is removed from association with other prisoners, placed on a restricted regime and spends the majority of time alone in their cell. They should have access to a shower, one hour of (usually solitary) exercise a day, and limited use of a telephone. They have limited access to their property, and are generally not allowed a television. Access to basic health and mental health services are available, but access to other services (such as education or Offending Behaviour Programmes) is usually very limited or impossible.

The reasons for segregation and descriptions of facilities and regimes in other countries (such as in the United States where much of the research has been conducted), seem broadly similar to ours; however, some can have more extreme conditions. In England and Wales segregation units tend to exist within a larger prison, whereas in the United States entire prisons can be designated for segregation (such as the 'supermax'

prisons), and human contact can be more limited and periods of segregation can last for considerably longer than they do here.

The reasons for placing a person in segregation means that this group of people are likely to be complex and varied, often with multiple needs. They may pose a risk of harm to themselves, to others, or to both. This group includes people who can be very vulnerable and challenging to manage.

## Examining the effect of segregation

If we are using this form of custody for safety and stability in prisons, and as a punishment for rule breaking, it is vital that we understand what effect this has. What happens to people who experience segregation? Does this experience affect their mental or psychological well-being, their later conduct in prison and their longer-term outcomes after release, and if so, in what way?

The effect of segregation is a contentious subject. A considerable number of studies have tried to examine its effects and different views of the impact, and the ethics, of segregation abound.<sup>3</sup>

Coming to a clear conclusion about the effect of segregation is difficult. Much of the existing research is limited in its design, so that it becomes impossible to attribute any changes that people experience (or lack thereof) to the experience of segregation itself. One could reasonably argue that, for example, as segregated people are likely to have greater levels of risk and complexity (explaining their segregation in the first place), this might potentially explain poorer outcomes, rather than their period of segregation causing these.

From a methodological perspective, the only way to confidently ascertain the *cause* of an effect is to conduct a randomised control trial (RCT), in which prisoners are randomly assigned to either segregated or mainstream locations, and their outcomes compared over time. Briefly put, the random allocation produces two groups that are comparable in both observable and unobservable ways, and so if their outcomes differ we can be more confident that this was caused by the only difference between them — whether they were segregated or not.

1. Shalev, S., & Edgar, K. (2015). *Deep custody: Segregation Units and Close Supervision Centres in England and Wales*. Prison Reform Trust.
2. Shalev, S., & Edgar, K. (2015). *Deep custody: Segregation Units and Close Supervision Centres in England and Wales*. Prison Reform Trust.
3. For a summary of some of the studies and their methodological quality see: Morgan, R. D. et al., (2016). Quantitative syntheses of the effects of administrative segregation on inmates' well-being. *Psychology, Public Policy, and Law*, 22(4), 439-461.

As decisions to segregate people are responsive to their behaviour or circumstances, we cannot easily, practically or ethically apply random allocation. In the absence of this possibility, the next best option is to artificially create comparable groups, by taking segregated and non-segregated people, and using advanced statistical methods<sup>4</sup> to control for pre-existing group variations that could explain differences in outcomes. For example, risk of reoffending, criminogenic need and previous mental health diagnoses. This design is not perfect, as we can only control for variables that we can measure, and so it does not allow us to draw *causal* conclusions like from an RCT, however, it takes us much closer to an answer. Unfortunately, most research on segregation uses less-robust methods, making it difficult to know what is what.

### Scope of the review

Only studies considered more robust, and tested people's mental and psychological health that over time, custodial conduct or reoffending outcomes, were included. In total, 18 studies were summarised. This included a handful of RCTs and a larger number of more robust quasi-experimental studies (such as those described above). In addition, drawing on the wider evidence-base and psychological theory, explanations for the findings are proposed.

As the summarised research took place in other countries, an additional recent and in-depth study of segregation units and Close Supervision Centres (CSC) in England and Wales is referred to. This did not quantify the effect of segregation, however, it explored prisoners' perceptions of processes, treatment and the impact of segregation.

### Limitations of the review

As nearly all of the studies included in the review were quasi-experimental, we still cannot draw absolute causal conclusions about the impact of segregation. However, with the weight of evidence available from this better quality research (a small number of RCTs and the

more robust quasi-experimental studies as described in previous sections), we can be more assured in the validity of what we know. While this review sought to identify as many robust studies examining the effect of segregation over time, it is possible that not all existing research has been located and included.

The available research cannot yet give us clear and confident answers to some important questions about segregation. We do not yet fully know if certain groups are affected more or less by segregation than others, for example men compared with women, higher risk compared with lower risk people, or people from different ethnic groups. We also do not yet have enough research comparing the different segregation rules to know how the effects of each may differ in English and Welsh prisons. None of the studies were able to take into account people's criminogenic needs or risk factors, how much contact individuals had with their families, what treatment or services they may have accessed, how the culture of units might vary, what the relationships between staff and prisoners were like, or what the physical conditions were like in the segregation units. These may affect a person's experience of segregation and its impact on their outcomes.

Finally, as none of the impact research came from England and Wales, we cannot be certain that the findings generalise to our segregated prisoners, although there are clearly similarities between our practices and the reasons for segregation and unit regimes in other countries.

### What effect does spending time in segregation have on people's well-being and health?

*Studies reviewed:* Four RCTs<sup>5</sup> and five other studies,<sup>6</sup> from Canada, the United States and Denmark examined the impact of segregation on different health or psychological/psychiatric well-being outcomes. Across the studies, samples included people segregated for reasons similar to our Rules 55, 45a and 45b. Time in segregation across the studies included a few days, a few weeks, or up to a year (and in some studies, it was not clear how long people spent there). Most of the

4. Such as propensity score matching.

5. Walters, R. H., Callagan, J. E., & Newman, A. F. (1963). Effect of solitary confinement on prisoners. *The American Journal of Psychiatry*, 119, 771-773; Gendreau, P. E., Freedman, N., Wilde, G. J. S., & Scott, G. D. (1968). Stimulation seeking after seven days of perceptual deprivation. *Perceptual and Motor Skills*, 26, 547-550; Ecclestone, C. E. J., Gendreau, P., & Knox, C. (1974). Solitary confinement of prisoners: an assessment of its effects on inmates' personal constructs and adrenocortical activity. *Canadian Journal of Behavior Science*, 6(2), 178-191; Gendreau, P. E., Freedman, N., Wilde, G. J. S., & Scott, G. D. (1972). Changes in EEG alpha frequency and evoked response latency during solitary confinement. *Journal of Abnormal Psychology*, 79(1), 54-59.

6. Andersen, H. S., Sestoft, D., Lillebaek, T., Gabrielsen, G., & Hemmingsen, R. (2003). A longitudinal study of prisoners on remand: repeated measures of psychopathology in the initial phase of solitary versus nonsolitary confinement. *International Journal of Law and Psychiatry*, 26, 165-177; Zinger, I., Wichmann, C., & Andrews, D. A. (2001). The psychological effects of 60 days in administrative segregation. *Canadian Journal of Criminology*, 43, 47-83; O'Keefe, M. L., Klebe, K. J., Stucker, A., Sturm, K., & Leggett, W. (2011). One year longitudinal study of the psychological effects of administrative segregation. U.S. Department of Justice; Kaba, F., Lewis, A., Glowa-Kollish, S., Hadler, J., Lee, D., Alper, H., et al. (2014). Solitary confinement and risk of self-harm among jail inmates. *American Journal of Public Health*, 104(3), 442-447; Andersen, H. S., Sestoft, D., Lillebaek, T., Gabrielsen, G., Hemmingsen, R., et al. (2000). A longitudinal study of prisoners on remand: psychiatric prevalence, incidence and psychopathology in solitary vs. non-solitary confinement. *Acta Psychiatrica Scandinavica*, 102, 19-25.



studies involved convicted prisoners, but two focussed on people on remand; most only included men, but some had a mix of men and women. Sample sizes tended to be small, ranging from 16 to around 250, although one very large study examining self-harm used over 134,000 prisoner case records.

**Summary of findings:** The findings suggest that people in segregation tend to have significantly more psychological difficulties (such as distress, depression, hopelessness and anxiety) than people who are not in segregation. However, spending time in segregation appears to have mixed effects. Compared to the non-segregated comparison groups, some studies showed segregated people improved over time, some showed they worsened and some showed no differences between the groups. Two particular areas that segregated people appear to worsen on, or to develop problems in, during segregation, are anxiety and depression. The one study that looked at self-harm also suggested that segregation is associated with more harming behaviour. People punished with solitary confinement were around seven times more likely to self-harm (and around six times more likely to potentially fatally self-harm). Interestingly, a study that found no significant changes while people were in segregation, found that once segregated prisoners were moved back to mainstream prison location, they showed significant improvements in levels of anxiety, depression and psychological functioning.

**A possible explanation:** The varied reasons for segregation, and the varied population, might explain why there are mixed findings regarding the impact of segregation on well-being and mental health. As segregation units can house particularly high numbers of people with mental illness, these individuals may be particularly vulnerable to the stresses and pains of imprisonment, and the lack of social interaction and contact experienced in segregation.<sup>7</sup> Prisoners who are segregated for their own protection (and perhaps out

of choice), might experience and interpret their time there differently to those who are segregated more clearly against their will, or for punishment purposes. Perhaps the answer lies in differences in individuals' personality or coping capability.<sup>8</sup> For example, resilience — the ability to adapt to changing and stressful circumstances — may influence how a person copes with time in segregated conditions. Further, research has identified that prisoners who feel they have some control over events and outcomes (an internal locus of control) adjust more effectively to prison, report being less depressed, anxious and angry, and experience less stress than prisoners with an external locus of control (where they believe events are out of their control).<sup>9</sup>

Two particular areas that segregated people appear to worsen on, or to develop problems in, during segregation, are anxiety and depression.

### What effect does spending time in segregation have on institutional behaviour?

**Studies reviewed:** Four studies<sup>10</sup> from the United States looked at whether spending time in segregation affects people's subsequent behaviour in custody. Three looked at behaviour at person-level, and the fourth looked at the effect of opening four supermax facilities to see what impact this had on violence in the prison systems of those States (so this looked at changes in rates for areas, rather than for individuals). Across the studies,

samples included people segregated for reasons similar to our Rules 55 and 45b. Time that prisoners spent in segregation varied; 15 days in one study, 90 days in another, and it was not clear how long people were in segregation in a third. The study examining the effect of opening supermax facilities measured outcomes for at least two subsequent years in each site and for substantially longer in some. Men were included in all of the studies, and women in at least one. Sample sizes ranged from 228 to over 3,800.

**Summary of findings:** The findings suggest that segregation as a punishment, and when used similarly to our Rule 45b, does not lead to differences in later

7. Hayney, C. (2017). 'Madness' and penal confinement: some observations on mental illness and prison pain. *Punishment & Society*, 0(0), 1-17.
8. O'Donnell, I. (2016). The survival secrets of successful solitaires. *The Psychologist*, 29, 2-5.
9. Goodstein & Wright, 1989; Zamble & Porporino, 1988; Mackenzie and Goodstein, 1986; Goodstein, 1979; as cited in Pugh, D. N. (1993). The effects of problem-solving ability and locus of control on prisoner adjustment. *International Journal of Offender Therapy and Comparative Criminology*, 37, 163-176.
10. Morris, R. G. (2016). Exploring the effect of exposure to short-term solitary confinement among violent prison inmates. *Journal of Quantitative Criminology*, 32, 1-22; Medrano, J. A., Ozkan, T., & Morris, R. (2017). Solitary confinement exposure and capital inmate misconduct. *American Journal of Criminal Justice*. DOI: 10.1007/s12103-017-9389-3; Lucas, J. W., & Jones, M. A. (2017). An analysis of the deterrent effects of disciplinary segregation on institutional rule violation rates. *Criminal Justice Policy Review*, 1-23. DOI: 10.1177/0887403417699930; Briggs, C. S., Sundt, J. L., & Castellano, T. C. (2003). The effect of supermaximum security prisons on aggregate levels of institutional violence. *Criminology*, 41(4), 1341-1376.



misconduct (any, minor or major rule violations) or violence specifically in custody, or change how long it is before a person goes on to break prison rules. In other words, it appears to have a null effect — it does not seem to deter people or change their later conduct in prison. This was the same for people followed up for one year, two years and three years. Opening four supermax facilities also did not change rates of prisoner-on-prisoner violence in those States. Changes to prisoner-on-staff violence showed inconclusive/mixed effects (increasing in one State after supermax opening, decreasing in another, and not changing in two).

*A possible explanation:* Punishment comes to us very naturally, especially when we want to reinforce rules and laws to people who transgress them. In fact, research has shown that we are so motivated to punish others that we are prepared to pay to do this even when there is no personal benefit.<sup>11</sup> But does it work? Research has identified a number of underlying conditions for punishment to effectively change or deter poor behaviour,<sup>12</sup> which include immediacy (the punishment must follow soon after the misconduct), certainty (the punishment must always follow the misconduct) and intensity (the punishment must be intense). If these are not all present, as they rarely are in responses to custodial misconduct, poor behaviour is not suppressed. From an evidence-based perspective then, we would not expect punishing prisoners with segregation to have a positive effect on their future rule adherence.

Research on parenting<sup>13</sup> has revealed that certain approaches lead to acceptance and internalisation of social rules and behaviour. More authoritarian approaches relying on rigid and punitive approaches do not seem to achieve this, and instead can lead to increases in disobedience and the person learning to

avoid immediate negative consequences rather than develop pro-social behaviour. Furthermore, expecting segregation to change someone's behaviour assumes that their misconduct was a rational choice, in that the person knew the potential consequences and weighed this up 'in the moment'. However, often people do not think this way, such as when behaving impulsively or when under the influence of drugs or alcohol. In these circumstances, more severe sanctions have little or no deterrent effect.<sup>14</sup> Finally, evidence points to a number of unintended side effects of punishment.<sup>15</sup> It can interfere with desirable behaviours (such as communicating or engaging with others), risks the development of learned helplessness (which has been linked to depression, stress and poor coping), can negatively affect the relationship with the punisher (in this case prison staff) and models that using negative behaviours to control others is socially acceptable. As such, in the light of evidence it is unsurprising, and explainable, that when segregation is used to punish and control, it is not associated with improved custodial outcomes.

... we would not expect punishing prisoners with segregation to have a positive effect on their future rule adherence.

#### **What effect does spending time in segregation have on recidivism?**

*Studies reviewed:* Five studies from Canada and the United States<sup>16</sup> looked at recidivism outcomes for people who had been segregated, compared to non-segregated groups. The samples included people segregated mainly for reasons similar to our Rule 45b, but one included voluntary segregation (presumably like our Rule 45a). Three studies were of supermax prisoners who spent at least three or four months in those conditions continuously, or at least 40 per cent of their sentences there (which means they were segregated for longer than we typically do in England

11. Fehr, E., & Gächter, S. (2002). Altruistic punishment in humans. *Nature*, 415, 137-140.
12. Andrews, D. A., & Bonta, J. (2010). *The psychology of criminal conduct* (5th ed). London: Routledge.
13. Baumrind, D. (1991). The influence of parenting style on adolescent competence and substance use. *Journal of Early Adolescence*, 11, 56-95; Maccoby, E. E., & Martin, J. A. (1983). Socialization in the context of the family: Parent-child interaction. In P. H. Mussen & E. M. Hetherington (Eds.), *Handbook of child psychology: Vol. 4. Socialization, personality, and social development* (4th ed., pp. 1-101). New York: Wiley; Weiss, L. H., & Schwarz, J. C. (1996). The relationship between parenting types and older adolescents' personality, academic achievement, adjustment, and substance misuse. *Child Development*, 67, 2101-2014.
14. Robinson, P. H., & Darley, J. M. (2004). Does criminal law deter? A behavioural science investigation. *Oxford Journal of Legal Studies*, 24, 173-205.
15. For a summary of this research see: Andrews, D. A., & Bonta, J. (2010). *The psychology of criminal conduct* (5th ed). London: Routledge.
16. Lovell, D., Johnson, L. C., & Cain, K. C. (2007). Recidivism of supermax prisoners in Washington State. *Crime & Delinquency*, 53(4), 633-656; Lovell, D. & Johnson, C. (2004). *Felony and violent recidivism among supermax prison inmates in Washington State: A pilot study*. Seattle, WA: University of Washington; Mears, D. P., & Bales, W. D. (2009). Supermax incarceration and recidivism. *Criminology*, 47(4), 1131-1166; Motiuk, L. L., & Blanchette, K. (2001). Characteristics of administratively segregated offenders in federal corrections. *Canadian Journal of Criminology*, 43, 131-143; Butler, H. D., Steiner, B., Makarios, M. D., & Travis III, L. F. (2017). Assessing the effects of exposure to supermax confinement on offender post-release behaviours. *The Prison Journal*, 1-21. DOI: 10.1177/0032885517703925.

and Wales). The fourth study was of supermax prisoners who spent *any* time in those conditions; the median amount (middle point) of time spent there was one year. It was not clear how long people were segregated for in the fifth study. Four studies only included men, and it was unclear whether the fifth included women too. Four studies looked at three-year reconviction outcomes; one looked at 1-year rearrest and 7-year reincarceration and reconviction outcomes. Sample sizes ranged from around 110 to around 2,500.

*Summary of findings:* The findings show a mix of null and negative findings for reconviction outcomes. Four studies showed no significant differences in overall reconviction or reincarceration rates between segregated and non-segregated people, although one found significantly higher rates of returning to custody, and returning to custody for a new crime, for segregated prisoners. The single study that looked at rearrest after one year found no significant differences between the two groups overall, but did find worse outcomes for the people who were in supermax for at least 90 days. When looking only at more serious and violent reoffending, three studies found that segregated prisoners were significantly more likely to be reconvicted. Being released directly from segregation seemed to be potentially associated with poorer outcomes too. Two studies found that these people had significantly higher rates of reconviction (one also found that these people reoffended much faster) than people who moved from segregation back to mainstream location before their release. A third study did not replicate this finding though.

*A possible explanation:* What we know so far about the potential for punishment to have little

positive effect on, or to even worsen, behavioural outcomes provides a possible explanation for these findings. There is very scarce empirical evidence demonstrating that punishment effectively deters future offending,<sup>17</sup> and a considerable amount of good quality research has demonstrated that people who experience imprisonment fare similarly or worse in the longer-term compared with people who receive non-custodial sanctions.<sup>18</sup> Research has identified a range of possible reasons for why this might be.<sup>19</sup> Imprisonment may sever people's pro-social bonds, such as by losing a partner and employment while they are separated from the community. It may increase anti-social ties by placing people in a deprived and criminal culture, in which they may be introduced to new criminal techniques or anti-social peers.

Imprisonment might reinforce a person's identity as a criminal, making it harder for them to break away from this in the future. It is possible that prisons provide less support and services than those available to people on community sanctions. Finally, there are a number of barriers to resettling into the community after release from prison, related to the stigma of being a former prisoner, such as being unable to find a job or appropriate housing.

We do not know if or how time in segregation might exacerbate these hypothesised

reasons for the effect of incarceration on recidivism. It is possible (but as yet untested) that segregation adds greater reinforcement to an antisocial identity (such as being 'a rule-breaker' and 'disruptive'), makes contact with family and visits even more challenging, places individuals in closer quarters (although not physically able to interact) with people who are also viewed as the most 'difficult', and removes chances to engage in

When looking only at more serious and violent reoffending, three studies found that segregated prisoners were significantly more likely to be reconvicted.

17. Andrews, D. A., & Bonta, J. (2010). *The psychology of criminal conduct* (5th ed). London: Routledge; McGuire, J. (2004). *Understanding psychology and crime. Perspectives on theory and action*. Maidenhead: Open University Press.
18. Villettaz, P., Gillieron, G., & Killias, M. (2015). The effects on re-offending of custodial vs. non-custodial sanctions: An updated systematic review of the state of knowledge. *The Campbell Collaboration*, 1; Jolliffe, D., & Hedderman, C. (2015). Investigating the impact of custody on reoffending using propensity score matching. *Crime & Delinquency*, 61(8), 1051-1077; Mews, A., Hillier, J., McHugh, M., & Coxon, C. (2015). *The impact of short custodial sentences, community orders and suspended sentence orders on re-offending*. Ministry of Justice, London; Bhuller, M., Dahl, G. B., Loken, K. V., & Mogstad, M. (2016). *Incarceration, recidivism and employment. Working Papers in Economics No.7/16*. Department of Economics, University of Bergen: Norway; Siren, R., & Savolainen, J. (2013). No evidence of specific deterrence under Penal Modernisation: imprisonment and recidivism in Finland. *Journal of Scandinavian Studies in Criminology and Crime Prevention*, 14(2), 80-97; Cochran, J. C., Mears, D. P., & Bales, W. D. (2014). Assessing the effectiveness of correctional sanctions. *Journal of Quantitative Criminology*, 30, 317-347; Mitchell, O., Cochran, J. C., Mears, D. P., & Bales, W. D. (2017). The effectiveness of prison for reducing drug offender recidivism: a regression discontinuity analysis. *Journal of Experimental Criminology*, 13, 1-27; Mueller-Smith, M. (2015). *The criminal and labor market impacts of incarceration*. Department of Economics, University of Michigan; Stemen, D. (2017). *The prison paradox: More incarceration will not make us safer*. Vera Evidence Brief. Vera Institute of Justice: NY.
19. For summaries of this research, see: Cochran, J. C., Mears, D. P., & Bales, W. D. (2014). Assessing the effectiveness of correctional sanctions. *Journal of Quantitative Criminology*, 30, 317-347; Jolliffe, D., & Hedderman, C. (2015). Investigating the impact of custody on reoffending using propensity score matching. *Crime & Delinquency*, 61(8), 1051-1077.

activities that could facilitate better outcomes and successful resettlement (albeit usually in the short-term in England and Wales). It is possible, for some people, that the pains of imprisonment<sup>20</sup> might be more painful in segregated conditions.

### What do we know about segregation in England and Wales?

A recent study<sup>21</sup> of segregation units and CSCs in England and Wales included interviews with 67 prisoners (50 of whom were in segregation units) and 74 staff. Surveys were sent to prisons to gather information, and processes (such as adjudications and reviews of people with active Assessment, Care in Custody and Teamwork (ACCT) documents)<sup>22</sup> were observed. Of the 50 segregated prisoners interviewed, 19 had engineered a move to the segregation unit (for example by refusing to return to their cell, or climbing on the roof). The most common reason was to pressure the prison to transfer them, but reasons also included self-protection and not wanting to share a cell.

Overall, the segregation units were characterised by social isolation, inactivity and increased control over prisoners. Regimes were impoverished; most exercise sessions were 30 minutes long or less, and in some units prisoners had to choose between having a shower and getting exercise. Relationships between staff and prisoners were reported to be good, and over half of the prisoners perceived officers to be supportive.

Over half of the segregated prisoners who were interviewed reported having three or more of the following: anger, anxiety, insomnia, depression, difficulty concentrating and self-harm. The study did not compare this with reports from the non-segregated population. Some of the prisoners self-reported deteriorating mental health while segregated, and others believed there was a direct link between their segregation and their self-harm or thoughts or suicide. The study did not distinguish between problems that

pre-existed their segregation, however. Furthermore, prisoners were given a list, based on previous segregation research, of problems or ill effects of segregation, and asked if they experienced these, which may lead to over-reporting. Roughly equal numbers of the interviewed prisoners reported experiencing some benefits, as the number reporting no benefits, from segregation. The current mental health difficulties of a small proportion of the sample appeared to make segregation a better environment for them (albeit temporarily) than the mainstream prison location, supporting or improving their mental health. For example, the social isolation could reduce anxiety,

help them to feel safe and calm, and to let them relax. People who engineered their segregation were more likely to find some benefit in it, than those who had not engineered this.<sup>23</sup>

### Conclusions and implications

It is internationally accepted that due to the reasons for their segregation, this group of people often have multiple and complex needs, may behave in challenging ways and may be very vulnerable too. In England and Wales there are no widespread specialist services designed specifically to meet the needs of segregated people (although a small number of prisons are currently piloting new approaches, such as in the

High Security prison Estate).<sup>24</sup>

The research findings summarised here suggest that segregation can have *some significant negative effects on people's psychological health, particularly for anxiety, depression and self-harm. For the most part, however, psychological outcomes over time seem to look quite similar to those for prisoners who are not segregated.* This does not minimise the potentially adverse effects that segregated people may experience, but suggests that these effects do not tend to be greater than the effects or pains of incarceration more generally. The findings also suggest that *using segregation to manage custodial misconduct may be ineffective. It may also increase people's risk of future serious or violent recidivism.* Given the evidence-base

Over half of the segregated prisoners who were interviewed reported having three or more of the following: anger, anxiety, insomnia, depression, difficulty concentrating and self-harm.

20. Sykes, G. (1958). *The Society of Captives: A Study of a Maximum-Security Prison*. Princeton, NJ: Princeton University Press; Crewe, B. (2011). Depth, weight, tightness: Revisiting the pains of imprisonment. *Punishment & Society*, 13(5), 509 – 529.

21. Shalev, S., & Edgar, K. (2015). *Deep custody: Segregation Units and Close Supervision Centres in England and Wales*. Prison Reform Trust.

22. Used for prisoners who are at risk of suicide or self-harm.

23. Personal communication with Dr Kimmett Edgar, Prison Reform Trust, 08.02.18.

24. Category A prisons, or high security prisons, can be described together under the term 'High Security Estate'.

for what works (and does not work) to effectively change behaviour, and the evidence about the impact of imprisonment on reoffending outcomes, these findings are unsurprising.

Segregation is not usually designed to help people learn how to behave differently and resettle effectively into a community. The kinds of services and interventions on offer in prisons that are designed to achieve these goals (such as Offending Behaviour Programmes and education courses), are generally not available to people in segregation. Furthermore, although many staff in segregation units in England and Wales may sincerely desire and be highly motivated to help the people in their care to achieve progression and better outcomes, for many reasons units are often focussed primarily on containing people (although there are, of course, exceptions).

Punishment for rule breaking in prison may be warranted. Protecting individuals from harm and

attempting to stabilise the prison population by temporarily removing individuals with undue influence (and providing respite to staff coping with challenging people and complex situations) are also important. However, the evidence suggests that segregation may not be all that successful in achieving its intended goals or in facilitating longer-term change and stability for people living in custody.

The evidence suggests that it is important that the services available in segregation help to mitigate potential adverse consequences, and people are reintegrated as quickly as possible into mainstream location where they can access services that have been shown to positively affect short- and long-term outcomes. Furthermore, as HMPPS aims to develop the rehabilitative culture of prisons, in which all the aspects of prison life support rehabilitation, the purpose, use and regime of segregation units could be reconsidered.

# Can any good come out of isolation? Probably not

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**To get a quick insight into a prison, visit its segregation unit. More often than not, the segregation unit will reflect the true state of the prison: the state of prisoner-staff relationships, the state of safety and security and the extent of drug use. You will also learn about and bullying in the prison — as both the bullies and the bullied often end up in the unit, and about the levels and forms of violence prevalent in the prison and its perpetrators. You will also get some idea about the relationships between line staff and managers, and the leadership style in the prison: how and in what way are managers involved in the unit? Do Governors take a special interest in it? Do they know the prisoners there? Are units constantly full, do they house any long term prisoners, or are there effective safeguards and viable attempts to keep units small and empty?**

But segregation units do not just provide an insight into the state of individual prisons. They also provide an insight into the state of the prison system more generally. And the current state of our prison system, as you would know all too well, is not good. Furthermore, as Andrea Albutt, President of the Prison Governors' Association, recently wrote in an open letter to her members, *'this toxic mix does not have a quick fix and the future looks like more of the same'*.<sup>1</sup>

All this makes it a very good time to discuss segregation, for several reasons. Firstly, there is a real danger of external and internal pressures to expand the use of segregation for the purported purpose of managing this 'toxic mix' and crisis we currently face. Pressures can come from politicians wishing to demonstrate toughness, from unions seeking safety for their members, from ill informed members of the public, or indeed the media. Coupled with the shortage of staff, in particular experienced staff, and lack of resources to manage challenging prisoners in the more individualised, time and money invested ways which we know are required, such pressures to expand the use of segregation may intensify, even if there is no appetite for it within HMPPS — as I think (and hope) is the case.

An increased use of segregation is symptomatic of a system in crisis.

It is also a good time to discuss segregation because, at a time when our prisons are bursting at the seams, when New Psychoactive Substances (NPS) are blighting the lives of prisoners, when violence — towards others and towards one's self — is at an all time high, a time of low staff numbers and brutal budget cuts, segregation units may appear, to some, as islands of peace and quiet, as safe havens. The findings of mine and Kimmitt's Edgar's study of the use of segregation in England and Wales suggest that this is indeed the case: over a third of the prisoners whom we interviewed intentionally 'engineered' their way to the segregation unit by acting in ways which they knew would lead to their segregation.

That a sizeable number of prisoners are seeking-out segregation, with its austere conditions and impoverished regime, seems to me to be a clear marker of a system under pressure. It is not an argument for segregation as a force for good, nor does it suggest that segregation is harmless. To recognise that segregation is a place of refuge for some, must surely be an indictment of conditions in the general prison population. And when conditions on the wings are poor, and people try to work their way into the segregation unit, for whatever reasons, this may lead to pressures to make conditions in segregation even more austere — for example, to take away TVs, or take away prisoners' mattresses during the day, and other such measures. To be sure, we saw early signs of this in a number of the units we visited.

## The practice and effects of segregation

But let me first turn specifically to the question posed by the Perrie Lectures 2017: 'can any good come out of segregation'? It is, after all, a question which some reformers, policy makers and prison managers have, for the last two hundred years, answered with a resounding 'yes'.

1. A personal message from Andrea Albutt, President of the Prison Governors Association, to PGA members, 1 August 2017. Online at: <http://prison-governors-association.org.uk/wp-content/uploads/2017/08/Bulln724H.pdf> (Accessed 10 September 2017).



Back in the 19th century, large isolation prisons, known as the Separate penitentiaries, were built on both sides of the Atlantic, for the stated purpose of reforming convicts through a combination of isolation and firm, but fair, treatment, in a clean and orderly environment. Viewing crime as an infectious disease, it was believed that once alone in a cell, away from the corrupting influences of the outside world and of the prison society, with only their conscience and the Bible as company, prisoners will see the error of their ways, repent and becoming law abiding citizens. Things of course didn't quite work that way and it soon became clear that rather than being reformed many were losing their mind. The use of large scale long term solitary confinement, as a policy, was mostly abandoned though, interestingly, in some countries later than in others — Sweden, for example, only abandoned the 'Separate' prisons in 1946. Some of the prisons which were built in the 19th century to accommodate the long term isolation of prisoners (for example Pentonville, opened in 1842) are still in use today, and those of you who have worked in them would be aware of some of the challenges presented by their thick walls and inflexible design.<sup>2</sup>

I have described elsewhere the proliferation of the Separate penitentiaries as a 'first wave' of solitary confinement.<sup>3</sup> This was followed by a 'second wave' in the 1970's, manifested in behaviour modification and control units, where segregation was the precursor to various psychological programmes designed to modify the behaviour of those labelled as disruptive, violent or challenging. Fast forward to the 1990s and a 'third wave' of large scale solitary confinement, in the form of an explosion in the USA of super-maximum security, or 'supermax' prisons — newly designed and purposely built to house a large number of people, often over a thousand, in perpetual solitary confinement for long periods of time. Having mushroomed across the US throughout the 1990s early 2000s, by 2004 the Federal Government and most (44) States operated at least one such 'supermax', housing between 25,000-30,000 individuals in conditions of

physical and social deprivation, and subject to tight control, for many years — in some cases even decades.<sup>4</sup> Importantly, these prisons operate alongside, not instead, of 'regular' seg units, meaning that between 80 to 100 thousand people are segregated from others at any given time across the US.<sup>5</sup>

Supermaxes were built against a background of populist politics, with strong lobbying from the prison-industrial complex, at a time of an economic downturn which hit rural communities, where these prisons were being built, particularly severely. These were all important drivers, and you can read all about it in my book on supermax prisons, but it is worth mentioning one other important factor which contributed to the proliferation of supermax prisons at that time they did — the state of prisons. Overcrowding, worsening prison conditions, long lockdowns and rising levels of unrest, assaults and protest were prevalent in prisons across the US at the lead-up to their introduction. Sounds familiar?

Supermax prisons were proposed and promoted by prison managers, backed by the unions, as the solution for managing this volatile situation. The stated purpose of the new isolation prisons was to manage the 'worst of the worst' in the prison system, though the numbers of course don't add up and it is hard to imagine that 30,000 individuals can really be the 'worst of the worst'. Nonetheless, it was argued that by removing the most challenging prisoners from the general prison population, and 'concentrating' them in dedicated units, the wider prison will be able to function safely and these prisons will also act as a deterrent for misbehaviour on the wings. This policy was not new. What was new was the scale of these prisons, the length of time people could remain isolated in them, and the number of people they house in strict solitary confinement, devoid of human contact and human touch, which were designed out by prison architects using the latest technologies.

Again, things did not work quite as officially intended and it soon became clear that holding tens of

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2. More on the design and functions of the Separate penitentiaries in: Evans, R. (1982) *The Fabrication of Virtue: English prison Architecture 1750-1840*. Cambridge: Cambridge University Press.

3. Shalev, S. (2009) *Supermax: controlling risk through solitary confinement*. Devon: Willan publishing.

4. Ibid.

5. Beck, A.J. *Use Of Restrictive Housing In U.S. Prisons And Jails, 2011-12*. Bureau of Justice Statistics October 23, 2015 ; Baumgartel, S., Guilmette, C., Kalb, J. et al. *Time-In-Cell: The ASCA-Liman 2014 National Survey of Administrative Segregation in Prison* The Liman Program, Yale Law School and the Association of State Correctional Administrators, August 2015.

thousands of people in strict solitary confinement for years on end was a costly failure, and that supermax prisons were, to quote from my supermax study, 'expensive, ineffective and they drove people mad'. In the last few years, after what seemed like an unstoppable trend in the US, the Federal Government and a number of states have started to dramatically scale back on their use of supermax confinement. I shan't labour the parallels between the situation in the US in the late 1980s / early 1990s and the current state of our prisons, but I think these should be borne in mind by anyone considering an increase in the use of solitary confinement as an option.

But how do these two big and important movements in the history of the prison — the Separate penitentiaries of the 19th century and the supermaxes of the late 20th century — help answer the question which we have been set today, namely, if any good can come out of isolation? There are, I suspect, few advocates of the redemptive powers of isolation left in the 21st century. Perhaps that reflects, in part, a more secular western world, and a better understanding of prisoners' rights. But it also most certainly reflects an understanding of the disastrous consequences of solitary confinement. There is a very substantial body of literature and evidence from the 19th century to the present day that reinforces the physically and mentally damaging consequences of segregation on the human mind, and body. Adverse effects range from anger and depression, to hearing voices, self harm and suicide.<sup>6</sup> Difficulties sleeping, problems with concentration and anxiety are also commonly reported, including by participants in our segregation study.<sup>7</sup> This is not surprising. Social isolation, a key component of segregation, is now viewed as a major public health hazard, which, according to the author of a recent large-scale US

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based study could 'be a greater threat to public health than obesity'.<sup>8</sup> Coupled with the other aspects of solitary confinement — increased control of the prisoner and reduced sensory stimulation,<sup>9</sup> this makes for an extreme, and damaging practice. Its effects are such that prolonged solitary confinement, defined as one lasting longer than 15 days, is prohibited under international human rights law as it may amount to cruel, inhuman or degrading treatment.<sup>10</sup>

So my answer to the question 'can any good come out of isolation?', from the point of view of the individual prisoner, is a resounding 'no'. To the extent that it protects some individuals from assault by fellow prisoners, then of course they may be better off in segregation than not, but that seems to me to merely set segregation as a lesser of two evils, rather than suggest that it is a 'good.'

But what of the argument, exemplified by the American supermax phenomenon, which instead focuses on the effect of solitary confinement on prison violence more generally? Here, the statistics offer little support for the central argument — that general population prison violence would be reduced by removing the most dangerous and disruptive prisoners into long term segregation. In fact, a

number of studies suggest that levels of violence actually increase following supermax confinement, and that they negatively affect recidivism.<sup>11</sup> A 2015 study of the effects of disciplinary segregation on prisoners' behaviour, by the US based Robert Morris concluded that:

*Limitations notwithstanding, this study found that exposure to short-term solitary confinement, following an initial act of prison violence, did not tend to impact the likelihood of future violence and/or misbehavior among male inmates.*<sup>12</sup>

6. Shalev, S. 'Solitary confinement as a prison health issue' (2014). Pp 27-35 in: *WHO Guide to Prisons and Health*. Enggist, S., Moller, L., Galea, G. and Udesen, C. (Eds). Copenhagen: World Health Organization.
7. Shalev, S. and Edgar, K. *Deep custody: segregation units and close supervision centres in England and Wales*. (2015) London: Prison Reform Trust.
8. American Psychological Association: *So Lonely I Could Die: interview with Julianne Holt-Lunstad* ahead of her presentation at the American Psychological Association's annual meeting, 5 August 2017. Online at: <http://www.apa.org/news/press/releases/2017/08/lonely-die.aspx> (accessed 10 September 2017).
9. Shalev, S. (2007) A Sourcebook on Solitary Confinement. Mannheim Centre for Criminology, LSE: London. Online at: [www.solitaryconfinement.org/sourcebook](http://www.solitaryconfinement.org/sourcebook) (accessed 10 September 2017).
10. Rule 44 of the UN Standard Minimum Rules for the Treatment of Prisoners ('Nelson Mandela Rules'), 2015 Revision. Online at: [https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E\\_ebook.pdf](https://www.unodc.org/documents/justice-and-prison-reform/GA-RESOLUTION/E_ebook.pdf) (accessed 10 September 2017).
11. Mears, D.P., Cochran, J.C., Bales, W.D, and Bhati, A.S. Recidivism and Time Served in Prison, 106 *J. Crim. L. & Criminology* (2016). Online at: <http://scholarlycommons.law.northwestern.edu/jclc/vol106/iss1/5>
12. Morris, R. (2015). Exploring the Effect of Exposure to Short-Term Solitary Confinement Among Violent Prison Inmates. *Journal of Quantitative Criminology*. 32.



The evidence, then, does not support claims about the system-wide benefits of mass isolation of prisoners, or its benefits in terms of managing disruptive behaviour. And that is important, especially at this time. When I read that Mark Fairhurst, the national chairman of the Prison Officers Association has said that ‘the American experience is the only one left’,<sup>13</sup> I worry. The financial and, far more importantly, human cost of this has been enormous, the prison management benefits highly questionable, and the costs to wider society as yet unknown. So, finally, my answer to the question ‘can any good come out of isolation?’ is ‘no’.

That does not mean that I think that should never happen in any form. I accept that in some circumstances it is hard to see that there are better solutions, at least not without sweeping institutional changes, to, for example, programmes and means to protect vulnerable prisoners, or to manage the extremely small number of truly violent individuals, and then subject to strict safeguards. But that merely makes segregation a necessary evil. If, as I believe, no good can come out of it, then the imperative **must be** to ensure as little bad comes out of it as possible.

In 2014/15, Kimmett Edgar from the Prison Reform Trust and I embarked on a comprehensive study of prison segregation units and Close Supervision Centres across England and Wales. We enjoyed excellent cooperation from the National Offender Management Service — as it was then. As well as a survey of their use of segregation, which was sent to all prisons — though of course not all responded — we visited 15 segregation units and four Close Supervision Centres. We interviewed, in-depth, prison managers (25), segregation officers (49) and prisoners (67), and chatted to many more staff members. In concluding the study, which we titled ‘Deep Custody’, we identified four principles which should underpin the operation of segregation units. In what follows, I set out these principles, and how I think prisons in England and Wales measure up against them. To help put things in context, I also offer some comparisons with New Zealand, where I have recently completed a study on the use of seclusion and restraint in prisons and in other custodial settings.<sup>14</sup>

So, finally, my answer to the question ‘can any good come out of isolation?’ is ‘no’.

## The principles of segregation

So what are the principles that should guide the operation of segregation units? The first principle is that solitary confinement should only be used in very exceptional cases, as a last resort, and for a short a time as is absolutely necessary. It must not be prolonged or indefinite. These stipulations are strengthened by the UN Nelson Mandela Rules which set a time limit of 15 days after which segregation becomes prolonged and thus prohibited. How do various jurisdictions measure against this stipulation? Is solitary confinement only used in exceptional cases for a short a time as possible? Certainly in the US the answer is a resounding ‘no’. But in England and Wales, and in New Zealand too, solitary confinement is not always reserved as a tool of last resort, nor is it only used for ‘as short a time as possible’. There’s a degree of inertia around the use of segregation, by which I mean that it is sometimes used simply because it is there and it’s always been used. In this regard, I’d like to recall what Peter Dawson, a former prison governor and now the Director of Prison Reform Trust, wrote for Open Democracy following the publication of our *Deep Custody* report:

*As a prison governor ... I signed countless documents giving authority for another human being to be kept apart from their peers in these units for most of the day, sometimes for weeks on end...*

*...And, truth be told, I did it all with a pretty clear conscience...*

*I remember nodding approvingly when I was told as a governor that all seg prisoners had had their ‘regime’ for the day. What that actually meant was a shower, 20 minutes walking round a yard (if it wasn’t raining), walking 10 yards to collect two meals, and making a phone call if they had any phone credit left (not likely when they had no means to earn it). It’s called ‘conditioning’ — coming to accept as normal something which really isn’t. And there were occasions when I was conditioned to stop seeing the damage that*

13. ‘Violent prisoners should be locked up for 23 hours a day’: Calls for US lockdown of UK jails By Tom Parry, The Mirror, By Tom Parry, The Mirror, 27 August 2017. Online at: <http://www.mirror.co.uk/news/uk-news/violent-prisoners-should-locked-up-11068061>

14. Shalev, S. (2017) *Thinking outside the box? A review of seclusion and restraint practices in New Zealand*. Auckland: New Zealand Human Rights Commission. Online at: <http://solitaryconfinement.org/new-zealand>

*life in an orderly, well regulated segregation unit still does to people...*

*...I was neither wicked nor negligent... But I was conditioned, and the message of this report is that I may not be alone in that.<sup>15</sup>*

I think that that analysis is correct, and looking at the number of people in segregation suggests that its use may be more commonplace than necessary. In England and Wales, in the first quarter of 2014 (January–March), when we conducted our study, there were 7889 instances of segregation. Almost 30 per cent of these lasted 15 days or longer, the length of time after which the segregation becomes ‘prolonged’ and therefore prohibited under international law, and when the potential for psychological damage from segregation increases. In New Zealand there were four times as many ‘segregation events’ relative to the size of the prison population, but only 8 per cent lasted longer than the 15 days, and very few stays were longer than 30 days.<sup>16</sup>

Now, while segregation may be necessary and even positive for a very short cooling-down period, beyond that it often becomes harmful and counter-productive. Duration is key. Even if one feels that the 15 day limit set by the Nelson Mandela Rules is unworkable, it gives us an idea of the sort of timeframe we should be looking at: certainly not the years, even decades, that individuals may spend in a US supermax, but also not the many weeks they can spend in segregation in England and Wales.

As one of the prisoners we interviewed for *Deep Custody* said:

*[It’s] alright for about a week, peaceful. But after that it just starts messing with your head.*

A mental health professional we spoke to agreed:

*Segregation does have a calming effect. But it [also] does have the isolation, which is the downside, especially if it goes on for months and months.*

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The second principle for the operation of segregation units is that segregated prisoners should be offered access to purposeful activities and have meaningful social interactions. Segregation must not be a ‘dead time’, but a time used to address some of the issues which lead prisoners to the unit in the first place. So how did England and Wales fare in this regard? Our study found a mixed picture.

In many of the units visited, the ‘regime’ consisted of no more than 20–30 minutes in a barren outdoor yard, a short telephone call and a shower, and these three activities were not always all provided on the same day. But while access to purposeful activity was poor, relationships were very good, and a key strength of many of the units we visited. The vast majority (89 per cent) of prisoners we interviewed said that there

were some officers with whom they got along well, and almost 60 per cent (57 per cent) of segregated prisoners felt that officers were supportive. One man said:

*They’re firm but fair. If I flooded my cell, they wouldn’t hold it against me. They’ve seen it all before, and it won’t make them do what I want. They deal with any situation.*

Often, all this required was simply for officers to interact with the prisoner as another human being. Asked if there were any officers he got on with at the seg unit, one man said:

*Mr. X is funny. We have a laugh. He’s fair. If he says he’ll do something, he’ll do it. He’s a straight talker... He talks to me, he’s helped me a lot.*

Speaking to segregation staff, it was clear that they knew the prisoners in the segregation unit, took pride in their relationship with them, and gave some thought to how best they could assist those under their charge. One officer recounted how:

*[One woman] attacked me a week ago. Next time I opened her door, I never mentioned it. I wanted her to think, ‘Okay, we’re moving on.’ Our job is to get her to move away from*

15. ‘Solitary confinement and avoidable harm’ by Peter Dawson in *Open Democracy*, 17 December 2015. Online at: <https://www.opendemocracy.net/shinealight/peter-dawson/solitary-confinement-and-avoidable-harm> (accessed 10 September 2017)  
16. *Deep Custody* pp 148–149 & *Thinking Outside the Box* pp 25–26 respectively.

*violence. You will never do that by giving her a week behind her door.*

I have to say that for me, the finding that there was little animosity between segregation staff and prisoners was one of the more surprising, and positive, findings of our study. That is perhaps partially a result of having spent many years studying the US Supermax prisons, where no relationships whatsoever exist, and in fact officers are sometimes specifically instructed not to interact with prisoners.

The third principle is that segregation units should place reintegration at the heart of their functions and improve 'exit' strategies. Segregation must not become a warehouse for people for whom there is no other institutional solution. Prisoners should know why they are segregated and how they can leave the segregation unit, and they need to be involved in decisions about what happens once they leave.

The fourth principle is that segregation must not to be imposed on vulnerable people, on those at risk of suicide or self-harm, or on anyone awaiting assessment for transfer to a secure hospital. Any such use must be limited to truly exceptional circumstances, and then only very briefly and under constant observation. I think that there is recognition in England and Wales — not just in Prison Service Orders 1700 (Segregation) and 2700 (Suicide and Self Harm), but also in practice, that segregation units are not suitable for people who are mentally unwell, though our study found that this problem had not been fully resolved.

In New Zealand they also have something called 'at Risk Units' which are essentially segregation units for all intents and purposes, only for vulnerable

prisoners at risk of self harm. This policy, which runs contrary to international human rights law and good practice, is currently under review. In England and Wales, and quite rightly so, the intention — if not always the practice — is to keep vulnerable people out of segregation altogether.

## Conclusion

So, in conclusion: Can any good come out of isolation? No.

Should we be, as the head of the Prison Officers Association recently suggested,

*putting all prisoners in bright orange overalls, shackling them.. keeping them behind sheets of glass when they receive a visitor and locking them up for 23 hours a day if they misbehave?*<sup>17</sup>

Absolutely not.

Rather than 'trying the American way', as he put it, we should learn from the dramatic — and extremely expensive — failure of the US Supermax prisons to deliver safety in the prison system and in the wider communities, and stay well away from the supermax model. Prolonged segregation does not reduce violence, but may contribute to it and it leads to poor mental and physical health.

Are the right steps being taken in prisons in England and Wales to minimise the harms of isolation? Yes and no.

Do we need to continue focussing our attention and shining a light on this deep and far end of the prison system? Absolutely.

17. 'Violent prisoners should be locked up for 23 hours a day': Calls for US lockdown of UK jails By Tom Parry, The Mirror, 27 August 2017. Online at: <http://www.mirror.co.uk/news/uk-news/violent-prisoners-should-locked-up-11068061>

# Segregation — Creating a New Norm

**Richard Vince** is Executive Director of the Long Term and High Security Estate in HM Prison and probation Service.

*'I've seen a lot of men broken by segregation since I've been here. That's not right; that's why it is so important that we do this. We have a responsibility to make this better. It's early days — changing the culture of a segregation unit, particularly in a dispersal, is a big thing to do. But we've seen already that the HOPE(s) approach has started to change the mind-set of staff working in segregation. People are asking questions now which they didn't used to ask. They are starting to question whether it is right to keep someone in segregation, whether it really should be all about punishment, and to start to look for ways to get them out rather than just accept some prisoners staying in there for a very long time. That's a significant achievement'.*

Segregation Unit Custodial Manager, Long Term and High Security Estate.

The Long Term and High Security Estate (LTHSE) is a heavy user of segregation. We have the highest proportion of long term segregated men in all prisons in England and Wales. LTHSE currently holds 248 prisoners in segregation across 15 establishments.<sup>1</sup> The length of stay varies with the longest serving prisoner being held for a total of 598 days. Of the current population:

- ❑ 54 Have been in segregation for less than one week
- ❑ 80 for more than a week but less than a month
- ❑ 69 between 1 month and 3 months
- ❑ 35 between 3 months and 6 months
- ❑ 5 between 6 months and a year
- ❑ 5 men have been in segregation for over 12 months

In recent months we have seen a reduction in the number of long term segregated men however we have seen an increase in the number of prisoners staying between 42 and 84 days.

LTHSE currently holds 52 prisoners under Close Supervision Centre (CSC) conditions. Although the length of stay varies, these individuals tend to be held in CSC conditions for considerable periods of time for intensive work and progress. Of The current CSC Population:

- ❑ 3 have been in CSC for less than 6 months
- ❑ 1 for between 6 and 12 months
- ❑ 11 between 1 and 2 years
- ❑ 17 between 2 and 5 years
- ❑ 10 between 5 and 10 years
- ❑ 4 have been in CSC for longer than 10 years

We have a large group of men who are serving long terms in segregation, many self-isolating and choosing not to leave our segregation units, often for many weeks, months and in some isolated instances a number of years. We are also an estate that has the highest use of deep custody — segregating men in our CSCs under Prison Rule 46 — those that are the most violent in our system. We operate a Managing Challenging Behaviour System (MCBS), which includes a discrete 'central' unit, and some may think that our recently opened Separation Centre for the management of those who present the greatest risk around extremism and radicalisation is another form of segregation. Not so. Whilst removed from general association, these are not segregated conditions that would meet the type of definition internationally accepted as:

*'Confinement of prisoners for 22 hours or more a day without meaningful human contact.'*<sup>2</sup>

I will come back to the specialist units but will begin by looking at segregation units.

There are 12 segregation units in the LTHSE ranging in size from 12 to 35 cells. All are small and isolated. The units contain complex, vulnerable men who frequently have unmet or even unknown needs that contribute to their location and predicament. To deal with this, we relocate these men into a restrictive, intense environment which is well established to be both potentially physically and psychologically damaging and can generate secondary effects of seclusion, perpetuating a vicious cycle whereby segregation makes a person's behaviour worse, which in turn makes it more difficult to relocate them, and so on. This can be compounded by other issues such as the use of force — in men with trauma histories for example, this can re-traumatise them and result in more refractory and violent behaviour.

1. Correct as of 07 September, 2017.

2. UN Standard Minimum Rules on the Treatment of Prisons (2015 Revision) ('Mandela Rules') available at <http://solitaryconfinement.org/uploads/MandelaRules2015UNdocRev.1.pdf> accessed on 05 December, 2017.

Small groups of staff are tasked with the care of this highly complex, challenging and often volatile and violent group of men: add to this complexity high levels of extreme self-harm, dirty protests and various other forms of maladaptive behaviour and you have arguably one of the most challenging environments in which to work, and of course live. The staff receive comparatively little training, supervision or professional development compared to similarly intensive and complex environments. We ask them to work with the men in the units, to seek to intervene and provide them with support to return to main location. We expect them to work across a range of services and co-ordinate care and intervention. For their part the men are expected to modify, or at least moderate, their behaviour, to comply with the unit 'regime' and to 'progress' back to normal location — if they do not then they have been punished, the expectation being they will 'give in' and do as they are told: comply, accept the discipline and authority of the prison.

This is often the reality of the units and it is significantly different to the expectations set out in policy, of which I will speak next. Large groups of highly complex men held in small intense units with the expectation that this will do anything other than compound their situation let alone provide a suitable environment to achieve positive outcomes, either for the establishment or the individual. Could there be a worse environment for an autistic man for example to 'address and improve' his behaviour? The reality is that the complexity of the task means that providing even the most basic care — showers, telephone calls, exercise — can be compromised and, in the absence of any meaning to the situation, a vicious impasse, almost a battle of wills, ensues; a cycle of resistance and punishment.

International research would suggest that such segregation is ineffective and indeed counter-productive.

In this edition of *Prison Service Journal*, Flora Fitzalan Howard's article reviews the literature on the effect of prison segregation. The research, albeit emanating largely from the US, suggests that using segregation to manage custodial misconduct may be ineffective, as it does not lead to differences in later misconduct or violence: therefore segregation when used similarly to our R45b does not seem to act as a deterrent. This paper also highlights that segregation may actually increase people's risk of future serious or

violent recidivism, with some international studies showing significantly higher rates of reconviction for these crimes in segregated prisoners post-release than non-segregated prisoners. Being released directly from segregation is also potentially associated with poorer outcomes. This adds to the dilemma; as I read it, the message from this paper is that unless you are using segregation as a last resort to manage imminent custodial risk in situ, then it is pretty ineffective at dealing with violence, both in custody and beyond.

Given the operational realities and the international research into the effects and outcomes of long-term segregation we must question whether how segregation is used is consistent with a reforming organisation placing safety and rehabilitation at its centre? Indeed, is it an acceptable level of humanity in a modern society? Is the current use of segregation actually an outmoded concept, something that we will

look back on in years to come and regard as archaic in the same way that we now view the practice of placing suicidal men in 'strip cells'?

Can such an approach do anything more than strip away a man's hope, destroy any meaning that he has in life that enables him to make sense of his predicament and deprivations? Do we debase his humanity and make him merely an object to be managed, devoid of the most

fundamental needs of the human condition; meaning to life and hope? Or can we fulfil the need to maintain order and control, protect others and the person from harm in ways that do not result in further harm and do not debase the individual or indeed our profession? I argue that we can.

To advocate such a position is a difficult proposition in the current operating context but all evidence indicates that whilst segregation, or isolation, can help to contain the immediate presentation or acting out — and we will always need capacity to this — it does not reduce the risk of violence. Indeed it can compound and increase such risk — the diametric opposite of what was intended. Evidence indicates that such use of segregation in fact undermines safety, rather than increases it.

Within LTHSE we choose to focus on the best a person can be, not the worst they have been; we believe in creating meaning, purpose and hope for men often held in the most restrictive conditions that our society tolerates. As Friedrich Nietzsche said: 'He who has a why to live can bear almost any how'.<sup>3</sup>

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3. <https://www.working-minds.com/FNquotes.htm>



## Setting Practice within Policy

Current policy determining segregation practice is set within Prison Service Order 1700.<sup>4</sup> Surprisingly the policy itself has only been subject to three main revisions in the last 17 years: 2003, 2006 and 2009, with amendments to authorisations for long term segregation made as administrative changes in late 2015. Given the pace and nature of change during this time within HM Prison and Probation Service, the lack of policy shift seems surprising, and without being personally critical of those involved, disappointing.

Reviewing the now online, paperless version of 1700 quickly reveals a prioritisation of audit compliance, protocols to offer administrative assurance and a distinct focus on managing those segregated through template forms and paper-based systems. These systems focus on safeguarding and regime access rather than the underlying necessity and original driver for segregation, and do not link explicitly to any exit planning or reducing the duration or depth of segregation itself.

1700 sets the purpose of segregation as per the prison rule being used to authorise its use. This rather sterile application of purpose as set out in the policy is again linked to the associated procedures that must be adhered to dependent upon the rule applied — frequency of observations for example. I accept, of course, that much of our work in the custodial world has to be underpinned by process and given the justifiable level of scrutiny to the use and application of segregation, assurance and compliance are a necessary part of this policy. It is however the seeming lack of any language that speaks of hope, of restoration, of reengagement and reintegration in its most meaningful sense that appears absent from our own policy.

Indeed, you must go through nine sections of 1700 detailing process and audit compliant paperwork before reaching the penultimate section titled 'General Information' to find discussion relating to exit planning and alternatives to segregation. One of these alternatives is transfer to another prison when the following is determined to have occurred — *'the prisoner's attitude and behaviour has become such that staff and others have lost confidence in the prisoner's*

*ability to change in their current environment'*. That is a hard hitting sentence for me to reflect what exists in our current policy, live in 2017. That we have lost hope. That the only option is to transfer that person and their difficulties and likely perennial issues, carried no doubt for years, to another place, for others to begin the process afresh. For those colleagues in the audience joining me from prisons — how many times have you seen this happen? How many Tornado<sup>5</sup> moves have carried these very men across the country, over and over again? This is segregation and segregation policy at its worst. Admitting defeat, sacrificing hope and moving the problem. Our policy allows it, or allows us to consider it at least.

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This is not intended to be a heavy critique of the policy wholesale. Indeed there is a necessity for us to manage refractory behaviour and to manage it safely, safeguarding our staff and other men, for us to ensure the impact of activities such as dirty protest and active violence toward others is minimised. 1700 allows us to do this lawfully, safely and discretely away from the rest of the population. It allows us to ensure external scrutiny has a framework against which to offer a measure of consistency and that a measure of independent authorisation is applied. These are of course necessary and feed into our own very key arguments about why procedural justice

need to be central to our practice.

As we head into a thorough revision of the policy this year, and I am very aware those responsible for carrying this out are here today in the audience, I implore those colleagues to create a policy that challenges us to do what needs to be done — to create a policy that can be so successful that it eliminates the need for segregation and segregation units as we know them today. To be ambitious, to have hope, responsibility, reengagement and integration at its heart and to ensure that our staff have absolute clarity of purpose, unshakable confidence and the resources to do what we are asking them to do.

## An Alternative Way

High Security prisons have been on a journey that aims to re-orientate what Ben Crewe, Alison Liebling

4. Available at <https://www.justice.gov.uk/offenders/psos> accessed on 05 December, 2017.

5. 'Tornado' is a system of regionally and nationally co-ordinated operational support in order to respond to incidents in prisons.

and Susie Hulley would call a 'heavy present' culture<sup>6</sup> dominated by security considerations into being places where there is a clear Rehabilitative Culture.<sup>7</sup> That is not to say, I must be clear, that there is no less a focus on security and preventing escape but we have gradually continued to change our prison cultures into environments that put the person, personal relationships, choice and active citizenship at the heart of the secure communities that we are responsible for.

In the LTHSE context a Rehabilitative Culture is one where all aspects (our behaviours, attitudes, the observable things around us) are safe, decent, hopeful and optimistic about stopping offending. It is a culture that focuses on creating the circumstances, conditions and opportunities to help people change their behaviours and not simply managing them, requiring a careful balance of control (to provide safety) and flexibility (to provide opportunities for learning and change). Rehabilitation isn't something that is done by one particular team or activity. Our environment, relationships, management approach, and the policies and processes we employ across our prisons can all support or undermine rehabilitation and our use of segregation is a key part of this. Focusing on circumstances, conditions and opportunities for people to change rather than simply managing their presentation can change the way we think about how we use segregation. A rehabilitative culture also has a key focus on generating hope; something that is critical for change but something that was lacking for some of our staff and prisoner groups. In working towards developing a more rehabilitative culture people need to know what is in it for them — we are clear that this type of culture improves safety.

### Progress

Alongside our development of Rehabilitative Cultures within our prisons we have, successfully I would argue — but I await a HM Inspectorate of Prisons report on the system shortly to say with authority — changed the CSC system and its ethos. CSC separates the most violent men in our prisons from

Focusing on circumstances, conditions and opportunities for people to change rather than simply managing their presentation can change the way we think about how we use segregation.

the mainstream and holds them — as you would expect — under close staffing supervision. Much of what we have done within CSCs resonates with the chance to change from the current norm of segregation. We have an overarching ethos in CSC of putting the prisoner — the person — at the centre of our approach. We undertake risk assessment, psychological and mental health assessments, multi-disciplinary case management and ongoing review. The aim being progression out of the CSC system permitted by the lowering of risk. We do hold men in CSC in 'deep custody' but this by no means implies that we aim for confinement in a cell without interaction. We work to progress prisoners to open, individualised regimes. A

man living in the CSC at Full Sutton for example will get access to on-unit work and education, regular individual sessions with personal officer and psychologist, association with the other men, self-cook, access to the gym and access to the exercise yard which has poly tunnels and work cultivating a lush floral array of plants and hanging baskets. Such regime expansion is developing across the system. We do not try to 'fix' everything about the man and why he is in prison prior to progression, but we focus on addressing the reasons, issues and needs that brought him in to CSC.

The lessons from the CSC system and the very enabled and therapeutic environments we are creating with rehabilitative culture, and a focus on the person and progression at their heart, whilst still managing risk, and still operating very detailed procedural security, I think, is the best example and lesson for how a system can change and where we can go with segregation. This will allow us to change from the norm where the blunt instrument of segregation and cellular confinement is the only solution to risk.

So, in real terms, what precisely have we done to reduce seclusion in our CSC and segregation units since 2015, and to improve the quality of life and progression prospects of the men living within them?

Firstly, as discussed, we are working hard to develop the culture and environment in segregation and CSC units: the foundation for this is the continuous

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6. Crewe, B., Liebling, A., and Hulley, S. (2014) *Heavy/Light, Absent/Present: Rethinking the 'Weight' of Imprisonment* in *British Journal of Sociology*, 65(3): 387-410.
7. Mann, R., Fitzalan Howard, F. and Tew, J. (2018) *What is a rehabilitative prison culture?* In *Prison Service Journal* No. 235, p.3-9.



development of a rehabilitative culture within segregation and CSC/MCB units which empowers, involves and supports both prisoners and staff. Developing cultures which create hope and better support change and progression is of critical importance for men within CSC and segregation units. All CSC units are working towards obtaining Enabling Environments (EE) status with the Royal College of Psychiatrists,<sup>8</sup> with the first assessments taking place at the end of August — we await the outcome.

We have introduced the Ashworth Hospital model for reducing long term seclusion: Ashworth Secure Hospital, Mersey Care NHS Trust, use a model called the HOPE(S) recovery based approach to reducing long term segregation which is based on research and clinical practice. The HOPE(S) approach aims to:

- ❑ Harness the system and engage the person
- ❑ Provide Opportunity for positive, structured activity in an enabling environment
- ❑ Looks at Preventative and protective factors
- ❑ Enhances and maintains individual coping skills
- ❑ Within the context of management of the wider System throughout

This approach consists of a checklist (the Barriers to Change Checklist or BCC) to assess barriers to progression from seclusion, a model to guide interventions, and practical strategies to use to work with staff and individuals in segregation. The model offers practical ways to affect the progress out of segregation. The HOPE(S) training package, revised to fit into prison segregation unit practices and issues, was delivered in July 2016 to 30 staff in HSE segregation and CSC units. This was followed by a supervised/supported plan for implementing the programme from Ashworth Hospital within the three segregation unit pilot sites (at HMP Long Lartin, Belmarsh and Wakefield and the inspiring work on the First Unit at Full Sutton). A number of men in the three pilot sites, and at Full Sutton, have now been managed in segregation in line with this approach as part of the pilot phase. The HOPE(S) manual has also been adapted for use with relevant CSC prisoners and has been incorporated into their care and management planning accordingly. Further HOPE(S) training has been delivered by in-house trainers in July 2017.

## Developing cultures which create hope and better support change and progression is of critical importance for men within CSC and segregation units.

A big part of the HOPE(S) approach is changing culture in prisons and segregation units regarding the use of segregation. Some of the initiatives introduced as part of the HOPE(S) approach into pilot sites includes:

- ❑ Use of a pre-segregation risk assessment to divert from segregation where possible.
- ❑ Low stimulation areas.
- ❑ In-cell activities.
- ❑ Protected personal officer time.
- ❑ All-in-one segregation unit rounds to release staff for constructive engagement.
- ❑ Risk assessed group exercise and meals.
- ❑ Individualised care and management plans based on BCC.
- ❑ Escorted engagement in programmes and education.
- ❑ Positive staff briefings.
- ❑ Post-incident debriefs.
- ❑ Exit interviews with prisoners to learn from their experience of segregation.
- ❑ Off unit adjudications — wing based.

One of the experiences drawn from the pilot is that, paradoxically, efforts to progress men too quickly from long term seclusion can be counter-productive and result in their remaining in segregation for longer. To overcome this, one of the pilot sites has formally introduced the concept of the 'Progressive Segregation

Pathway' for identified prisoners, for whom it has been agreed that a slow and supported reintegration plan is going to be more effective at retaining a successful, safe move to normal location in the longer term.

The Motivation and Engagement (MandE) component of the *Chromis* programme (an intervention for violent psychopathic men currently delivered in the Westgate Unit at HMP Frankland) has been introduced into segregation pilot sites and four CSC sites, to try to provide men with a formal opportunity to review their choices and decisions related to their present circumstances and to consider a more progressive future. It is early days for segregation units, but a number of men in CSC have now successfully completed MandE and have progressed onwards within the CSC system — in some cases these are men who have historically not engaged for a number of years.

A significant element of the work we are doing is better equipping staff working in segregation and CSC

8. Royal College of Psychiatrists (2013) *Enabling environment standards* London: Royal College of Psychiatrists. Available at <http://www.rcpsych.ac.uk/pdf/EE%20LS%20Standards%20Document%202015%202.pdf>. Accessed on 29 June 2016.

with the knowledge and skills to work with the array of complex needs presented by the men residing there. To achieve this, we have:

Delivered Autism Awareness training to staff in all units in collaboration with a fantastic initiative being delivered at HMP Wakefield, a prison which is acutely aware of the complex and vulnerable needs presented by men on the autistic spectrum and/or with intellectual disability. Unfortunately, these men often struggle to adjust to, cope with or even understand life in prison. Their consequent behaviour and ways of dealing with confusion, overload and often distress can present as disruptive, difficult to manage or even violent — these difficulties will in my view make these men more vulnerable to a one-size-fits-all approach to managing 'strange' or disruptive behaviour: relocation to segregation. But do we really understand their complex needs to help us both prevent this happening in the first place, and support progression from segregation where this has not been possible? To help with this, Operational Autism Champions have been identified in each segregation and CSC unit. Autism Awareness Training has been delivered to them for expansion in situ.

Staff across all segregation and CSC/MCB units within the LTHSE attended 'Becoming Trauma Informed' training in June 2017, delivered by *One Small Thing*,<sup>9</sup> who have already done a lot of work in the Women's Estate. The goal of this was to increase understanding of the impact of trauma upon prisoners, particularly those with complex needs in segregation and CSC/MCB units, how to identify/support and understand this, and to try to consider how restrictive practices can impact upon men with trauma histories, further linking with both custodial violence and distress. This was an initial awareness event, following which the service will be developed further in early 2018, taking into consideration close links with Rehabilitative Culture developments. This will incorporate a more comprehensive, bespoke awareness package for staff which can subsequently be rolled out across each prison accordingly, the development of a toolkit for making units trauma informed and the ultimate delivery of interventions for men with trauma histories. I think that appreciating the

impact of trauma upon male prisoners, and its links with their behaviour in custody, is something which has traditionally not been given the attention it deserves. We hope to change this.

A 12 month contract with the *Disabilities Trust*<sup>10</sup> has been developed, which will introduce an acquired brain injury assessment and rehabilitation service (this will include staff training and support) into two CSC sites. Due to commence once the appointed Linkworker and Clinical and Neuropsychologists have been security cleared, it is anticipated that this service will be expanded to provide an outreach service into identified segregation units as well as the two CSC units. This will hopefully better equip us to understand and support men in segregation who have a brain injury which might impact upon their custodial behaviour and reason for segregation in the first place.

The CSC system employs an Offender Personality Disorder Pathway Strategy<sup>11</sup> funded Progression Support Officer (a Band 3 Prison Officer) who is trained to train staff in the Knowledge and Understanding Framework (KUF). This is a nationally approved training course to encourage participants to both understand more about personality disorder and develop skills when working with personality disordered individuals. This training will be offered biannually to CSC and

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segregation unit staff.

To support staff the first part of *Working with Challenging Behaviour Training* (WCB) (a mandatory training package for staff working in LTHSE discrete units) has been rewritten to ensure that it is more rehabilitative, progressive and strengths-based, whilst simultaneously ensuring that staff working in LTHSE small units have a better understanding of prisoners' complex needs — including mental health needs — in addition to risk. A bespoke one day training package has been developed specifically for segregation unit staff which has been added to this. This package provides segregation unit staff with a better understanding of the reasons for and impact of long term segregation upon prisoners, stimulates debate about the purpose and desired ethos of segregation, and what can be done to make segregation units more progressive. This has been piloted with representation

9. <http://www.onesmallthing.org.uk/about/>

10. <https://www.thedtgroup.org/>

11. <http://personalitydisorder.org.uk/the-offender-personality-disorder-pathway/>

from all LTHSE sites and will be incorporated into the WCB training programme from now on.

As I mentioned earlier, the CSC system has undergone a number of significant changes in the past two-three years to develop more progressive, psychologically informed units. A CSC Clinical Review was completed in 2015 in conjunction with the implementation of a new joint Clinical/Operational management model for the CSC system. This made a series of recommendations based on psychologically informed principles of working with complex, high risk personality disordered individuals in restricted environments. As a consequence, a number of changes have been made to multidisciplinary services within CSC and MCB to ensure that men are offered bespoke, multi-modal psychological interventions in the context of richer psychologically informed, progressive and enabling surroundings and regimes.

All CSC units have developed richer and more collaborative regimes in line with the Conditions of Success and Strategy of Choices, and the EE standards, which has increased prisoners' autonomy and involvement in decisions relating to their environment and regimes. Two CSC units are designed to provide a full regime with full association, risk permitting, and do so for the majority of the time. Two further units are equipped to provide greater association levels than previously with formalised arrangements for men to go onto association up to four times daily. We have introduced a variety of means of increasing prisoners' ability to be heard, including community meetings and prisoner EE representatives. In-cell activities and options for engaging purposely with staff for those men who are not able to associate with other prisoners due to risk have improved. Facilities in the more restrictive CSC units have improved, and include the development of games and hobby rooms so men can leave their cells and engage in activities in a brighter, different environment and interact more with staff.

We have trained Psychologists working in CSC in a variety of new treatment and assessment techniques so we are better able to be responsive to the broad array of presenting needs.

We have enhanced involvement and engagement with prisoners' families and support networks, including family days at HMP Full Sutton and increased

involvement of families and support networks in Care and Management planning, the cornerstone of CSC progression.

Closer links between quality of life, regime and progression have been formalised in the new Operating Manual and Care and Management planning arrangements. These are linked to the EE standards and the Good Lives Model.<sup>12</sup>

It is important to develop these initiatives within both CSC and segregation units within the context of prison-wide practices, an appropriate and supportive establishment ethos, and general staff/prisoner relationships which are more rehabilitative and progressive. This will hopefully provide a better level of support and engagement with the population as a whole, thereby both making prisons better equipped to

engage and progress men irrespective of their needs, whilst also ensuring we are more successful at diverting men from extreme custody in the first place, and before the cycle of problem behaviour/impact of restrictive practice can embed in individual cases. We want to remove the 'out of sight, out of mind' ethos which can sometimes happen in prisons once a complex individual has been relocated to segregation.

What has been the outcome of these developments?

### **Segregation:**

As we have reduced the number of men we have reduced capacity not increased it.

We have undertaken evaluation of the work in our segregation units. I have only the initial findings and there is more to do but I wanted to share these, with the caveats applied.

Overall the pilot period seems to have moved the pilot site segregation units in a positive direction. We have some issues with missing data and small sample sizes causing methodological issues. However:

The overall numbers of men in long term segregation (held for six weeks and over) across the three pilot sites seem to have reduced. We had a number of months where data for one or more of the sites was missing, so September 2016 was taken as a pre-pilot 'snap shot'. Post pilot we had complete figures across the three sites in February, March and April 2017 to act as comparisons.

Based on the September 2016 figures, the following was found:

We want to remove the 'out of sight, out of mind' ethos which can sometimes happen in prisons once a complex individual has been relocated to segregation.

12. <https://www.goodlivesmodel.com/>

❑ In February 2017 there was a 35.7 per cent drop in the total number of offenders held in long term segregation (overall segregation figures reduced by 18.4 per cent).

❑ In March 2017, when compared to September 2016, there was a 28.6 per cent reduction (overall segregation figures reduced by 10.2 per cent).

❑ In April 2017 there was 17.9 per cent drop compared to September 2016 (overall segregation figures reduced by 12.2 per cent).

Again, the small sample size is an issue, but overall the long term segregation figures seem to have reduced at greater rates than overall segregation numbers when compared to available pre-pilot data.

The quality of the OTO30s,<sup>13</sup> the form authorising segregation beyond 42 days, pre-and post-pilot phase was formally evaluated, and showed that this has improved: Plans for returning individuals to normal location are becoming more apparent, and include the application of BCCs / HOPE(s) model more frequently.

Staff are reporting more positive relationships with prisoners, increased feelings of motivation and willingness to undertake new ways of working. Members of staff interviewed for the evaluation also talked about the changes being initially positive, but also mentioned ways to maintain the changes which have been made during the pilot. For example:

*There is a feeling that relationships between staff and prisoners have improved, and are of a good quality within the unit*

*There is a feeling that the staff in the unit are a really good team.... This is not felt to be specifically linked to the pilot although the knowledge of the pilot and the direction the management wanted the segregation unit to head in, is felt to have informed the selection and development of the staff group.*

*Morale has been raised and there is more motivation to work.*

*There have been noticeable changes in how staff talk about prisoners.*

*Staff are moving away from an austere approach... more willing to give things a go, willing to try things out than before.*

### Case study

*Mr. A was segregated for both GOoD and own interest reasons. Mr. A had been in segregation for many years, and was caught in a cycle of poor, disruptive and sometimes violent behaviour, which in turn was managed by ever-increasing punitive measures — effectively closing his world down in order to control and minimise the opportunity for problem behaviour, and frequently transferring him between segregation units for staff respite.*

*Mr. A was in one of the HSE progressive segregation units during the pilot phase, and was an ideal person to work with using the HOPE(s) approach. It was important for the approach to work that the prison accepted that any progress or change was going to take a long time, and for staff to have a positive and relentless approach to instil hope and opportunity for this prisoner and others in their care.*

*We have seen some small but very significant results with Mr. A. Firstly, spending more time engaging with him meant that we found his 'hook', which was his religion. We worked with Chaplaincy and Psychology to establish how we could incorporate this interest into a progression plan. We gradually and regularly increased his exposure to people outside of the segregation unit, which increased over time until Mr. A became a paid worker in the Chaplaincy, and takes part in small groups.*

*This man was adamant that he would never leave segregation and mix with other prisoners for many years. It wasn't easy: there were a number of setbacks along the way, periods of non-engagement and non-compliance. However, the constant positivity and persistence of the staff resulted in huge progress for this man. Our ultimate goal is to move him out of segregation entirely. This will take time but we now think this is achievable.*

There have however been some reported frustrations with the physical environments within the segregation units not being suitable for working in more therapeutic ways, and these frustrations have been perpetuated by the amendments and changes which were planned as part of the pilot period (such as gym equipment being placed in exercise yards) not being authorised or completed. This is something that we will continue to work on.

13. OTO30 is the form mandated by PSO 1700 that requires Governors to secure deputy director/prison group director authorisation for continuous segregation beyond 42 days under Prison Rule 45 / YOI Rule 49. The document outlines the reasons for the initial segregation decision and asks for an explanation of the arguments in favour of a return to normal location and the efforts made to do so, as well as to outline the case for continued segregation and plans to support an eventual return to normal location in due course. The prisoner is involved in the process through the ability to make representations in advance of the deputy director/prison group director decision, which can be authorisation for a further duration of up to 42 days or a decision not to approve a further period of segregation.



## Close Supervision Centres:

CSC deselection levels have increased significantly. We have not increased capacity since 2014, despite operational pressures.

Since July 2014:

- ❑ Two prisoners have progressed to a 'psychologically informed planned environment' (PIPE) with one further prisoner deselected and currently undergoing a phased/supported move to a PIPE
- ❑ Five prisoners have progressed to a personality disorder treatment unit
- ❑ Seven prisoners have progressed onto normal location or to a small unit under central MCB
- ❑ Three prisoners have progressed to normal location under local MCB or to a small discrete unit
- ❑ Eight prisoners have moved to hospital

We have made use of ex-CSC prisoner testimonials (all obtained in 2016 and 2017) to instil hope in men that change and progression from CSC is entirely achievable. Historically, a misconception — of prisoners *and* staff — that men never get out of CSC has impacted upon hopelessness, distress and a belief that a prisoner has nothing to lose, which can further impact upon risk to self and others. It is important to change this. These testimonials include:

*When I first arrived on CSC I thought my life was finished. I used to hate staff and never speak to them. But then I realised that staff are there to help and support me.....I would advise any CSC prisoner to give [staff] a chance to help you change. I received the help I needed and progressed onto the Fens Unit.*

*The most beneficial thing I've found is that engaging fully and honestly with the process is helpful and encouraging and it does work, meaning to engage fully it is very possible to come off CSC and take a lot away from it.*

*It's not easy trying to change a lifetime of beliefs and habitual thinking but that's what I've done. I managed to pull myself back from the brink of self-destruction. It took years, but I had years to work on myself. I progressed*

*through the CSC from Wakefield to Woodhill and then Whitemoor where I was deselected.*

*If there was one thing I would want to say to somebody on the CSC it would be ALWAYS KEEP HOPE... my personal advice would be don't waste your time, use it to better yourself, and always believe you can improve your circumstances.*

## The Future

I strongly believe that we can and must create a new norm. We can through developing our practice and establishing new pathways for men, both address the factors that lead to segregation or quickly address the reasons why a man may dwell in segregation for an extended period of time. We have described this work as 'Pathways to Progression' and I think that we are at the start of an exciting journey which will lead to much less use of segregation.

The goal of 'Pathways to Progression' is to find an alternative way of managing the complex minority group of prisoners within LTHSE who present as refractory, violent, difficult to engage or simply stagnating in their sentence — men who frequently end up in segregation or even CSC. The focus is twofold: firstly, to create other opportunities and methods with which these men can be supported to divert them from either extreme forms of custody, and/or a life in prison characterised by conflict, lack of engagement and stagnation, by providing specialist services equipped to support and address their unique needs more effectively; and secondly, to provide more constructive means with which those for whom this has not been achieved (for example, men already in segregation or CSC) are progressed from these conditions into suitable onward services.

In addition to the developments already in existence that I have already outlined, I will conclude by setting out how it is proposed that the aims of 'Pathways to Progression' will be achieved.

The development of existing discrete units within LTHSE to form LTHSE-wide specialist progressive pathways for complex cases. This will both ensure that all the units work together to progress identified men accordingly, that resources are effectively used to do

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this (i.e. that each unit has a specific function and work is not replicated where the need does not arise) and that the group of specialist units meet the range of identified complex prisoner needs as a collective. To do this a scoping study is underway to identify the correct range of small units across LTHSE, what they aim to achieve and how, what the admittance (and de-selection) criteria are and what multidisciplinary resources are allocated to each.

Completion of a comprehensive analysis of the needs of this complex minority group of prisoners in question within LTHSE. As I mentioned previously, these needs are often unknown or misunderstood. How can we meet them until we know what they are?

Both of these pieces of work will inform subsequent decisions about (a) whether existing units meet the array of complex prisoner needs and if not, how this can be developed, making best use of resources, and (b) how the proposed series of specialist units can evolve to form a holistic progressive pathway for complex men (including links with segregation and CSC units, and — importantly — with mainstream residential units, to try to overcome a frequently cited perceived lack of connection between men in discrete units and the wider prison community).

Other areas of work include the development of calm down areas where post incident or outburst we can intervene — not by just holding someone securely behind a cell door and hoping they will calm down, but by taking the experience of CSC and applying a multi-disciplinary approach to identify the issues and risks and set a plan in place to work together to address the issues if the prisoner chooses to engage with us.

Indeed, if we are to truly reduce the over reliance on segregation we need to get upstream of the problem. The typical use of segregation by staff and

often prisoners is either in response to an act of violence or indeed avoidance of such an act. Can we do more to tackle violence? Can we learn from the excellent work that has been done with ACCT and managing those at risk to themselves with an approach to those that are a risk to others? Can we develop a similar ACCT approach for violence? Can we develop day care and outreach to support and engage those at such a risk? Can we provide therapeutic environments for those at acute risk of harm to others with escalating behaviour warranting time out on the wing or in a dedicated residential setting, which provides close supervision and support, and not the approach of locking the man away and hoping he will get better and comply.

Should we aspire to a future where our response to a violent outburst or identified risk sees immediate intervention, focused on assessing the risk and the right response to that person and the given circumstances? A complex problem requiring a bespoke set of actions to resolve it. Can we create and use alternate locations on a wing and smaller units in a prison where services can be accessed to address the issue? A change of physical location or some increased time locked away may be appropriate for some but it is not seen as healthy or effective to rely upon this as the sole means of de-escalation and intervention. Can our keyworkers be trained and supported to actively engage with men to address potential violent risk or maladaptive behaviours before the issue arises, signposting services and offering choices and advice to allow the man to progress safely and effectively?

Can we aspire to a future that concentrates not on punishment and compliance but integration based on meaning, purpose and hope?

## Perrie Lectures 2018

Wednesday 6th June

Newbold Revel

*Sex Offender – Ex-Offender – Citizen: A Safer Future?*

# Is there a GOoD justification for the segregation of young people?

*Jack Merritt is the Course Convenor for the Butler Law Course, a new educational partnership between the University of Cambridge and HMP Warren Hill that is part of the Learning Together project. This position is based in the Institute of Criminology at the University of Cambridge.*

**Young Offender Institutions (YOIs) in the United Kingdom cannot use solitary confinement as punishment for bad behaviour. Children and young people can, however, be held in solitary confinement in segregation units for the maintenance of good order or discipline (GOoD). As Rule 49(1) of The Young Offender Institution Rules 2000 states, prison governors may authorise a young person's 'removal from association' where it is desirable for 'the maintenance of good order or discipline, or in his own interests'.<sup>1</sup>**

On 4 July 2017, Justice Ouseley of the High Court ruled that aspects of the 'prolonged solitary confinement' of a sixteen year old boy housed at Feltham Young Offender Institution under rule 49(1) amounted to a breach of the boy's human rights. Justice Ouseley found that the institution's failure to follow the relevant prison rules and provide the boy, known as AB, with sufficient educational provision or association with others breached his right to private and family life under Article 8 of the European Convention on Human Rights. The Court found that there was a period where AB spent over 22 hours a day in his cell, for more than 15 days at a time, and that at many points he was only allowed to leave his cell for half an hour a day. Despite these circumstances, the Court stopped short of finding that AB's treatment amounted to torture or was inhumane within Article 3 of the European Convention on Human Rights.<sup>2</sup>

The AB case has shone a light on the use of 'solitary confinement', as a tool to tackle the challenging behaviour of children in Young Offender Institutions in the United Kingdom. Growing evidence demonstrates that solitary confinement has an adverse impact on mental health, particularly for those with pre-existing conditions.<sup>3</sup> This was the case for AB who is described in the judgement as 'challenging', with a history of violent

conduct toward staff and other prisoners, and as having diagnoses of post-traumatic stress disorder, conduct disorder and attention deficit hyperactivity disorder.<sup>4</sup>

The Howard League has argued that 'the UK is out of step with a growing international consensus that children should never be placed in solitary confinement.'<sup>5</sup> Pointing to recent legal challenges, including AB's case, they argue that the judiciary has fallen short of bringing the United Kingdom in line with the growing international consensus that the segregation of children is an unconscionable practice. This paper first assesses the current use of segregation of young people in the UK, analysing the policy arguments in favour of segregation. It then focuses on the practice of segregation and the consequential risks to the mental health of young people that are posed by the practice, analysing the effectiveness of the safeguards available to segregated young people. The final section of this paper considers how effective legal recourse is as a final safeguard against misuse of solitary confinement and the extent to which the law can be considered an effective means by which to challenge its use.

## Young People and Solitary Confinement: Current Policy and Practice

*I remember nodding approvingly when I was told as a Governor that all seg prisoners had had their 'regime' for the day. What that actually meant was a shower, 20 minutes walking round a yard (if it wasn't raining), walking 10 yards to collect two meals, and making a phone call if they had any phone credit left (not likely when they had no means to earn it)' — Peter Dawson, Prison Reform Trust.<sup>6</sup>*

1. The Young Offender Institution Rules. (2000). Rule 49(1)

2. R (AB) v Secretary of State for Justice [2017] EWHC 1694.

3. Shalev, S. (2008). A sourcebook on solitary confinement. London: Mannheim Centre for Criminology, London School of Economics and Political Science.

4. Ibid, pg. 1 para 3.

5. The Howard League. (2017). Feltham Solitary Confinement High Court Judgement. Retrieved from [HowardLeague.org/news/felthamsolitaryconfinementhighcourtjudgement](http://HowardLeague.org/news/felthamsolitaryconfinementhighcourtjudgement).

6. Peter Dawson. (2015). Solitary Confinement and Avoidable Harm. Retrieved from <https://www.opendemocracy.net/shinealight/peter-dawson/solitary-confinement-and-avoidable-harm>.



This section addresses the policy arguments in favour of segregation and illustrates what segregation for young people looks, and feels, like in practice.

The practice of solitary confinement was originally based in Quaker ideology and was intended as a reflecting experience where prisoners were left in isolation with a copy of the Bible for the purpose of reflecting upon their crimes and repenting.<sup>7</sup> As Jeffreys explains, historians have long documented that solitary confinement caused psychological problems and ‘turn[ed] inmates mad’. The resurgence of the practice during the punitive turn of the 1970s, Jeffreys claims, has resulted in psychologists and psychiatrists re-learning what was learned by our ancestors through hard experience.<sup>8</sup> Although solitary confinement, segregation and removal from association are distinct terms there is a degree of overlap in their definitions. In the youth estate the practice is referred to as ‘removal from association’, however this can amount to both segregation and solitary confinement

Young offenders can be removed from association for ‘maintenance of good order or discipline’ (GOoD) or ‘in their own interests’ under Young Offender Institution Rule 49(1), for which detailed guidance is published in Prison Service Order 1700. Segregation for GOoD is discussed later, as it has the capacity to be used as punishment by proxy, despite the PSO (Prison Service Order) stating that it should only be used ‘when there are reasonable grounds for believing that a prisoner’s behaviour is likely to be so disruptive or cause disruption that keeping the prisoner on ordinary location is unsafe’. AB’s case provides valuable insight into the contemporary segregation regime as it was and has been experienced within HMYOI Feltham. Justice Ouseley gives a detailed description of AB’s removal from association in his judgement. In the case, noting that while there were some variations in the regime during AB’s time in Feltham, AB was at times spending only a half an hour out of his cell each day. This practice lasted for a period of longer than 15 days, due to AB being on single unlock (meaning that he was not allowed out when other prisoners were out of their cells) and on three officer unlock (meaning that three

officers were required to be present for him to be out of his room.)

Whether this experience is typical for those under similar regimes in other YOIs is not easy to determine. Justice Ouseley refused to comment on the assertion of AB’s counsel, Dan Squires QC, that the position the claimant found himself in is not uncommon. In its 2015-2016 report, Her Majesty’s Inspectorate of Prisons described finding that 38 per cent of prisoners in YOIs spent less than two hours out of their cell each day.<sup>9</sup> Reduction in prison and other public service budgets may go some way to explaining the prevalence of prisoners being confined to their cell for long periods. The same Inspectorate report described that HMP Bullingdon had been operating a restricted regime for the previous 12 months, owing to staff shortages.<sup>10</sup> In September 2017, The Children’s Commissioner published a report in which it was accepted that staff-child ratio was a determining factor in the use of isolation as a means to maintain order or control. The report also raised concerns about the conditions in many YOIs for children in segregation. These concerns included deficient access to education and exercise, cells that were too small with limited access to light, lack of facilities for maintaining personal hygiene, and lack of professional support for mental welfare issues.<sup>11</sup> Had AB been given the

fifteen hours a week education to which he was entitled then, on the basis of the judgement, his solitary confinement would not have been found to violate Article 8 of the European Convention on Human Rights. The real question that the AB judgement raises therefore, is when and how it is (and ought to be) considered appropriate and acceptable to keep children in conditions of solitary confinement.

### **Mental Health and the Cycle of Segregation**

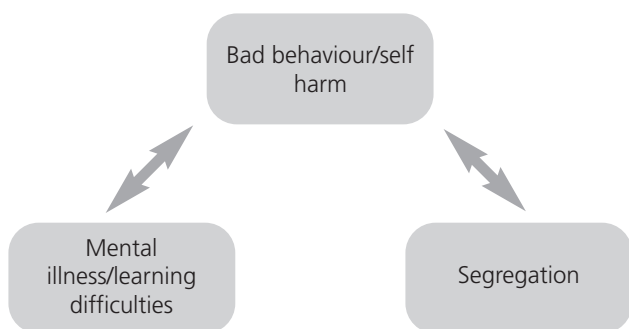
This section questions whether segregation of young people within the current regulatory framework can be considered an effective tool for managing the difficulties that young people face in custody. Although segregation for punishment is not authorized in the

As Jeffreys explains, historians have long documented that solitary confinement caused psychological problems and ‘turn[ed] inmates mad’.

7. Lee, J. (2016). *Lonely Too Long – Redefining and Reforming Juvenile Solitary Confinement*. *Fordham Law Review*, 85(2), pp.845–876.
8. Jeffreys, D. (2016). *Segregation and Supermax Confinement, an Ethical Evaluation*. In Y. Jewkes, B. Crewe, & J. Bennett, 2 eds. *Handbook on Prisons*.
9. HM Chief Inspectorate of Prisons, (2016). *HM Chief Inspector of Prisons for England and Wales Annual Report 2015-16*, London.pg.41.
10. *Ibid*.
11. Children’s Commissioner. (2015). *Isolation and Solitary Confinement of Children in the English Youth Justice Secure Estate*, Sheffield.

youth estate, the difference between segregation for punishment and segregation for Good Order or Discipline (GOoD) often appears immaterial in practice.<sup>12</sup>

A 2015 report by the Children's Commissioner's estimated that one third of children in the youth justice estate are isolated at some point during their sentence, and that once they have been isolated they are likely to be isolated at least once more. The evidence shows that solitary confinement increases the likelihood of young people developing mental health problems. In addition, young people suffering from mental health problems, including those that are more difficult to manage as a result, are more likely to be segregated. These mental health problems, made worse by, or developed during the experience of solitary confinement, can then cause problems such as poor behaviour, self-harm, aggression toward staff, or dirty protest. There is a sense in which following the current rules (segregation for GOoD) can perpetuate behaviour that manifests distress and the cycle of segregation.



A review of the evidence of the mental health effects of segregation makes for troubling reading. The effects of segregation are arguably amplified for young people because their brains are still developing, Lee claims that studies have shown the developmental process to continue up until the age of twenty five.<sup>13</sup> Shalev argues that there is 'unequivocal evidence that solitary confinement has a profound impact on health and wellbeing, particularly for those with pre-existing mental health disorders, and that it may also actively cause mental illness.'<sup>14</sup> This analysis is supported by Scharff-Smith who conducted a review of the evidence, finding that different studies have found that between one third and over 90 per cent of people in prison experience negative effects of solitary confinement, and that a significant amount of these effects caused or

worsened by solitary confinement. Scharff-Smith also notes that the reduction of meaningful social contact in prison is its central harmful and damaging feature.<sup>15</sup> Even outside of a prison environment, isolation has been shown to lead to significant problems. In 2015 Holt-Lunstad et al. published a paper which found that from 70 independent studies, with 3,407,134 participants, for non-prisoners the increased likelihood of death due to social isolation was 29 per cent, making the heightened risk of mortality from lack of social relationships greater than that of obesity. The acknowledgement of the risk of psychological harm posed by segregation is not limited to academic literature, the Istanbul Statement recognises that: 'the central harmful feature... is that it reduces meaningful social contact to a level of social and psychological stimulus that many will experience as insufficient to sustain health and well-being.'<sup>16</sup> If we accept the premise that segregation has a considerable propensity to worsen and potentially cause mental illness, the relevant policy, procedures and safeguards for its use must be examined further.

Whilst safeguards to limit the use of segregation exist, they are arguably of limited effectiveness. One safeguard against segregation is the requirement of oversight by trained health professionals under rule 28 of the Young Offender Institution Rules 2000. Prison Service Order 1700 explains that the outcome of health assessments is to 'ensure that there is no reason why prisoners should be removed from segregation on either physical or mental health grounds'.<sup>17</sup> There is a question as to whether the oversight of health professionals is adequate in light of the interplay between segregation and mental health. Shalev and Edgar's 2015 study 'Deep Custody' found that many healthcare professionals conducted screens in a 'tick-box' fashion, and misconstrued their role, understanding themselves as there to pass people as 'fit' for segregation.<sup>18</sup> Shalev and Edgar also found ethical issues that complicated the ability of health professionals to provide adequate oversight when assessing young persons in segregation because of the duty of loyalty that they owe to residents which means that they must act in their best interests at all times.<sup>19</sup> The wording of PSO 1700, such as the requirement 'to ensure that there is **no** reason why prisoners should be removed from segregation' (emphasis added), seems to subordinate the duties of health professionals in favour of the prison's power to

12. R (On the Application of SP) v Secretary of State for the Home Department, [2004] EWCA Civ 750.

13. Lee, J. (2016). Lonely Too Long – Redefining and Reforming Juvenile Solitary Confinement. *Fordham Law Review*, 85(2), pp.845–876.

14. Shalev, S. (2008). *Sourcebook on Solitary confinement*, London: Mannheim Centre for Criminology. Pg. 10.

15. Scharff-Smith, P. (2006). The Effects of Solitary Confinement on Prison Inmates: A Brief History and Review of the Literature. *Crime and Justice*, 34(1), pp.441–528. Retrieved from: <http://www.journals.uchicago.edu/doi/10.1086/500626>.

16. International Psychological Trauma Symposium. (2007). The Istanbul statement on the use and effects of solitary confinement.

17. HM Prison and Probation Service. (2009). Prison Service Order 1700.

18. Shalev, S. & Edgar, K. (2015). *Deep Custody: Segregation Units and Close Supervision Centres in England and Wales*, Prison Reform Trust.

19. Shalev, S. (2008). *Sourcebook on Solitary confinement*, London: Mannheim Centre for Criminology.

segregate, which Shalev argues is inconsistent with international standards of medical ethics which she says clearly state that health professionals should never certify someone as ‘fit for punishment’.<sup>20</sup> The fact that health professionals in prisons rarely oppose segregation of young people, despite unequivocal evidence that prolonged segregation can have significant permanent effects on mental health might suggest they do not feel empowered to do so.

Another procedural safeguard which exists in order to provide a check on the segregation of young people requires staff to maintain ongoing assessments of prisoners, in order to apply the lowest level of control necessary. There is a danger of YOIs ‘warehousing’ the most troublesome individuals away from general population as a long-term tool to maintain order, as was argued in AB’s case. Shalev and Edgar (2015) claim that adherence to this requirement was not always evident.<sup>21</sup> The danger of failing to reduce the security level of prisoners when appropriate was raised by the judge in the SP case, another legal challenge to segregation, when he claimed that ‘if you don’t reduce the unlock level when you have the opportunity you’ll miss it and create a monster. It’s a narrow window of opportunity — you shouldn’t miss it’.<sup>22</sup> The irony being, that if the prison misses the opportunity and a ‘monster’ is created, then the GOoD guidance suggests it is defensible to continue to segregate that

‘monster’ for the benefit of maintaining good order and discipline. This was the fate of AB. The assaults on staff were described by the judge as a ‘pattern of behaviour when faced with a confrontational situation’. However, earlier in the judgement it is accepted that AB had previously been abused by officers and that his history of physically and verbally aggressive behaviour indicated a child who was likely to have experienced significant harm. AB’s history suggests the cyclical nature of the lives of many of those segregated in the youth estate. This cycle reduces young people to ‘problems’ and ‘operational concerns’, which in turn risks robbing them of their dignity, agency, and capacity to change. So, if

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children can be segregated in ways that are legally compliant, but still harmful, are there effective mechanisms to challenge the use of segregation?

### Resistance or last resort: challenging segregation in court

This section discusses the role of law in challenging the use of segregation. It also considers whether there are aspects of the use of segregation for young people that the legal safeguards available are unable to address. The lack of cases where young people have challenged the use of segregation in the courts may be indicative of incomplete legal protection, or, it could indicate insufficient provision of legal aid for young people in custody coupled with a lack of understanding of avenues for recourse among a vulnerable population with minimal contact with the outside world.

The first significant legal challenge to the segregation of young people was the case of *R (Howard League for Penal Reform) v Secretary of State for the Home Department in 2002*.<sup>23</sup> This case saw The Children’s Act extended to young people being held in prisons and young offender institutions, whereas previously it was generally believed that children’s rights stopped at the prison gates. It was also held in this case that children’s rights to both ordinary and physical education should be protected. The

procedural rules breached in the AB case also concerned the provision of education. Justice Ouseley made it clear that these rules could not be breached for reasons of discipline or order, children have a right to education and it is the prison’s duty to ensure this despite trying circumstances and limited resources.<sup>24</sup> It seems where the use of segregation is in direct challenge to the fundamental right to education, the courts may provide an effective safeguard, but it is arguable whether this is a safeguard against segregation or a protection for education.

Another case which acknowledged the special importance of safeguarding children in prison from segregation was *R (on the application of SP) v Secretary of State for the Home Department [2004]*<sup>25</sup> where the

20. Ibid.

21. Shalev, S. & Edgar, K. (2015). Deep Custody: Segregation Units and Close Supervision Centres in England and Wales, Prison Reform Trust.

22. *R (On the Application of SP) v Secretary of State for the Home Department*, [2004] EWCA Civ 750.

23. [2002] EWHC 2497.

24. The judgement in AB’s case contains reference to cuts to staffing levels in the youth justice estate, it may be possible that government cuts have left prisons needing to make difficult decisions about where they focus their resources, and increased use of segregation as a result.

25. EWCA Civ 750.

judge ruled that children facing segregation for reasons of good order or discipline must be given the opportunity to make representations on the tentative reasons for their segregation. The judge made it clear in this instance that part of the justification for finding in their favour was that once the decision to segregate had been taken it was particularly difficult to reverse, which highlights the importance of providing adequate safeguards. This case creates no precedent for inmates to challenge their segregation itself, but simply to challenge the charge for which they have been segregated. In addition, this judgement simply provides an opportunity for representation and not a direct right of recourse against the use of segregation, if it is used as a tool to control challenging behaviour that threatens GOoD.

The courts have yet to find an instance where the segregation of children has breached Article 3 of the European Convention of Human Rights, the freedom from torture, inhuman or degrading treatment. In the case of *R (on the Application of Munjaz) v Mersey NHS Care Trust*<sup>26</sup> the judge stated that such a circumstance would have to be extreme, but the vulnerability of a prisoner will be relevant as to whether there will be a breach. This is an important decision particularly when taking into account the prevalence of vulnerable children in the prison system. The statistics on the vulnerability of young people in custody suggest that a significant proportion of cases are likely to concern vulnerable children. The Barrow Cadbury trust estimate that 40-49 per cent of young men in custody between 18 and 21 have been in care, 25 per cent have suffered violence at home, and young adults account for 20 per cent of people in prison who self-harm which is disproportionate to their percentage of the overall prison population.<sup>27</sup> In addition, being placed in custody, and particularly solitary confinement, may risk contributing to a child's vulnerability irrespective of their previous circumstances.

In the case of *R (Bourgass and Another)* the judge again emphasised the need for an 'extremely fact sensitive inquiry' in assessing whether the minimum level of severity is reached to engage a child's Article 3 rights under the convention. It seems that despite the declarations in *R (Bourgass and Another)* and *R (on the application of Munjaz)*, the courts take a very narrow

approach that is inadequate for challenging the practice of segregation. AB had suffered a difficult childhood, experienced abuse, witnessed domestic violence, seen his father take an overdose, seen an uncle die from a drug overdose, been on the child protection register, and been in care. The case recorded that he suffered from post-traumatic stress disorder, conduct disorder, and attention deficit hyperactivity disorder, had been abused by officers in detention and had been restrained by staff on a number of occasions. He also had considerable learning difficulties, was in his GCSE year and was effectively removed from association, unlawfully, for five months during which time it had not been possible to comply with the educational requirement for children in custody (fifteen hours a week). These individual factors, in a fact sensitive inquiry,

would contribute to a classification of AB as extremely vulnerable. In spite of this, the court believed that the treatment described was not sufficient to reach the minimum standard of severity to engage article 3. It seems, therefore, that the courts are an insufficient avenue to challenge the use of segregation more broadly on the basis of the pains that it causes to vulnerable young people.

The court found that AB was unlawfully removed from association between December 2016 and April 2017. The proceedings were brought before

the court in February 2017. Although procedural safeguards are in place to challenge segregation, the fact that an individual can be unlawfully segregated for so long indicates that the safeguards are inadequate to prevent the pains that long-term segregation of children and young people can cause. The judge presiding in (*R on the application of SP*) accepted that 'it is often the case in any decision of an authority that once a decision has been made, it is difficult to change it', and 'inevitably the decision maker will be reluctant to conclude that the decision was wrong.'<sup>28</sup> The Howard League, who are involved in many of the cases involving solitary confinement of children, are the only frontline national legal team specialising in the legal rights of children in custody. In an underfunded prison system, accompanied by a skeleton legal aid system (and one in which aid has been withdrawn from convicted offenders), there are few avenues for children to challenge their segregation.

... being placed in custody, and particularly solitary confinement, may risk contributing to a child's vulnerability irrespective of their previous circumstances.

26. [2005] UKHL 58.

27. Barrow Cadbury Trust. (2005). *Lost in Translation: A report of the Barrow Cadbury Commission on Young Adults in the Criminal Justice System*, London.

28. *R (On the Application of SP) v Secretary of State for the Home Department*, [2004] EWCA Civ 750.



Where these challenges have been made, the court appears reluctant to enter a dialogue about the risk of abject harm to vulnerable young people inherent in the use of solitary confinement. This disregard for the welfare of the most vulnerable children and young people in society should not only be out of step with the 'international consensus' but with our shared values as a society.

### Conclusion

YOIs are permitted to segregate young people to maintain Good Order or Discipline, but this article has argued that even when used for these purposes, segregation is unlikely to be GOoD. The pressures currently facing our prison system are widespread and well publicised; problems of order, safety, cleanliness and staffing are frequently discussed in the news.<sup>29</sup> A recent report by Her Majesty's Inspectorate of Prisons was claimed by Peter Dawson of the Prison Reform Trust to describe 'a stain on our national reputation,'<sup>30</sup> and the same report cited time unlocked and out of cell as 'perhaps the biggest influence on how prisoners view the time they spend in it.'<sup>31</sup> It is important that these issues are understood away from their political implications and academic perspectives and considered in light of the lived experiences for the individuals living within these institutions. This article has considered the lived experience of young people in segregation alongside policy arguments for the practice, and presented a counter argument based on the substantial consequences to the mental health of young people of removing them from human contact for up to 23.5 hours of the day during crucial stages in their development. It has also discussed the available safeguards, procedural and legal, and highlighted their inadequacies. Segregating 'difficult to manage' young people as a result of their challenging behaviour, which is often caused by vulnerability as a result of histories of abuse coupled with mental health problems and learning difficulties, only serves to exacerbate these issues and perpetuate a cycle of segregation. It is also troubling that the system allows for the use of segregation for GOoD as a response to the staffing pressures that some prisons find themselves subject. Prisons have the potential to be

places of rehabilitation, however, supporting a practice which removes our most vulnerable prisons access to transformative activities such as education and training and into an environment shown to further intensify their existing vulnerabilities is unlikely to contribute to making prisons sites of rehabilitation. The practice is especially troubling precisely because it happens in isolation and there are inadequate safeguards and largely inaccessible avenues for legal recourse.

In the United States a man called Kalief Browder has become a household name. Kalief was arrested at the age of fifteen for stealing a backpack. He was subsequently imprisoned on Rikers Island. Due to the violence he was subjected to as a result of not surrendering his belongings to the older inmates in the jail he was placed in solitary confinement for hundreds of days, where he continued to be subject to violence at the hands of the guards. Kalief was left on Rikers Island for years in the hope that he would accept a plea bargain, in the face of which he maintained his innocence. Kalief was later released without charge. Upon returning home he began to display symptoms of post-traumatic stress disorder and found it difficult to adjust back to life in the Bronx. Kalief committed suicide in his home at the age of 22.<sup>32</sup> Kalief's story has become a catalyst for reform in the US with the former president Barack Obama vowing to reform the law on segregation of minors, a six part documentary was also made about his ordeal.<sup>33</sup> In the United Kingdom 25 per cent of people in our YOI's are on remand awaiting trial.

The damaging effects of segregation on people in prison, especially young people, are well known and widely documented. This begs the question why the United Kingdom continues the practice of segregating children, and why the courts have been reluctant to find a violation of Article 3 of the European Convention regarding this practice. The risks of self-harm and suicide whilst in segregation are well known. One hopes that it does not take a repeat of the tragic fate of Kalief Browder in the United Kingdom for those in authority, the public, and the courts to finally condemn the practice of putting vulnerable children as deep as possible behind bars without meaningful contact for all but an hour of the day, and in so doing risking them turning into even more vulnerable adults.

29. See: <https://www.theguardian.com/society/2016/nov/12/staff-shortages-british-prisons-bedford-pentonville-truss>

30. <http://www.prisonreformtrust.org.uk/PressPolicy/News/vw/1/ItemID/479>

31. HM Inspectorate of Prisons. (2017). Life in Prison: Living Conditions. A findings Paper by Her Majesty's Inspectorate of Prisons.

32. Lee, J. (2016). Lonely Too Long – Redefining and Reforming Juvenile Solitary Confinement. *Fordham Law Review*, 85(2), pp.845–876.

33. Obama, B. (2016). Barack Obama: Why we must rethink solitary confinement. *The Washington Post*.

# Reducing the need for segregation

*Russ Trent is Governor of HMP Berwyn.*

**In this article, I will argue that a whole-prison approach to rehabilitation, through creating a culture that supports and challenges people to change, not only reduces the need to use segregation as way of behaviour management, but is actively incompatible with the use of segregation.**

HMP Berwyn opened in February 2017. At the time of writing it is in its eighth month of operation. We currently have a population of about 600 men, making us equivalent to a small to medium sized category C prison. At full capacity, over 2000 men will be resident in Berwyn.

Berwyn opened with a vision of taking a whole-prison approach to rehabilitation. In fact, this was more than a vision: We had spent almost two years planning how a rehabilitative culture would look and how it would be created. Our approach to segregation was an important part of this planning. In this article I will describe the rehabilitative elements we have worked to achieve and how I believe this culture will reduce the need for segregation. I believe, as others have also all argued today, that segregation is bad for people's mental health, wellbeing, behaviour, and futures, and I wish to see us as a service reducing or even eliminating our heavy reliance on this way of managing men and women. I recognise that setting out in a new prison offers some advantages, in that a certain culture can be established from the outset. Hence, based on my experiences working in and governing other prisons, particularly HMP and YOI Brinsford, I will also set out what I have found to be effective first steps in reducing the use of segregation for prisons that wish to do this.

## Rehabilitative Culture

Our vision of Berwyn's rehabilitative culture included many elements, some of which are shown in Fig 1.

One of our first actions was to define the values we wanted our staff and the men to live by. The values would simultaneously offer a rehabilitative focus for the men, and provide job purpose and satisfaction for the staff. We identified six values, as shown in Fig 2:

We have taken considerable effort at Berwyn to find ways for these values to become more than just words on the boardroom wall but to be behavioural habits for the people who live and work there. We have adopted the approach of '31 practices' to turn values into habits.<sup>1</sup>

I will discuss Procedural justice, the second component of Berwyn's rehabilitative culture, in more detail later in this article.

At Berwyn, we have adopted the strategy of using reward to change behaviour because we recognise that punishment does not lead to change. When I was young and had misbehaved, my parents might have given me a light slap across the backs of the legs. However, when my father was young, it was normal and accepted to be caned in front of the class. Norms change and we now recognise as a society that punishing a child is not effective and not acceptable. I believe the same is true of people in prison. In support of this, in her article in this issue of the PSJ, Flora Fitzalan Howard explains why punishment does not work to change behaviour. We have thought carefully about how to use reward to promote and increase 'good' behaviour, and to encourage men on their journey to be the best they can be. There is huge scope for greater use of reward, in the

**Fig 1: Elements of the rehabilitative culture at HMP Berwyn**



1. Williams, A. & Whybrow, A. (2013). The 31 Practices: Release the power of your organization's values every day. LID Publishing.

**Fig 2: Berwyn values**

Value each other and celebrate achievement.	This value is linked to behaviours that communicate both reward and respect.
Act with integrity and always speak the truth.	The importance of truthfulness is demonstrated through a learning culture, when people speak the truth and own up to their mistakes. At the time of writing, this weekend Berwyn was staffed by 90 per cent of officers in their first year of service. Mistakes are inevitable. If staff can acknowledge their own vulnerability to making mistakes, they can more easily understand that the men make mistakes as well.
Look to the future with ambition and hope.	This value is reflected in behaviours that involve planning for the future and aiming for a better life. People who have hope don't take their own lives. We use the words 'hope' and 'future' as often as we can when talking with our men.
Uphold fairness and justice in all that we do.	The research into the importance of procedural justice shows how important it is that all our actions towards both staff and men are perceived as fair. This affects both prison safety and outcomes for the men after release.
Embrace Welsh culture and language.	Berwyn, the biggest prison in Europe, has been parked on the front lawn of North Wales. We want Berwyn to be a positive community partner, seen as an asset and not a liability. We also want to use the considerable rehabilitative potential in the beauty of Welsh landscape and culture, which can be seen throughout Berwyn in artwork and signage.
Stick at it.	This is the value of persistence and resilience: Persisting to achieve what you believe to be right, when things are difficult.

sense of recognition of achievement rather than monetary reward, in prisons.

One of our most important strategies is the Five Minute Intervention (FMI) approach. FMI is a training course which trains staff in rehabilitative skills to use in ordinary brief conversations. The idea is that every contact can be turned into a rehabilitative opportunity if staff can see the opportunity and have the skills to build trust, listen, encourage problem solving, turn a negative to a positive, and roll with resistance rather than oppose it. Pilots of FMI showed that both officers and the men they talked to using FMI skills recognised the differences in their conversations<sup>2</sup> and formed stronger, more trusting relationships. All the Berwyn staff and managers have been trained in FMI and know how to listen to the men and help them find positive outcomes.

Rehabilitative Leadership is a new concept for the prison service and one we have been exploring with interest. One thing we have focused on so far is the importance of creating a learning culture, where leaders do not 'investigate' or blame but give people space to manage, even if this means sometimes mistakes are made.

We have a strong philosophy of reducing reliance on medication, both illicit and prescribed.

With Berwyn being so big, we have had to think hard about how to make sure that people within it still

feel like individuals who are cared for. We have divided the prison into 24 communities of 88 people each. Each community has its own manager and many have an identifying theme, such as our Shaun Stocker community for veterans, our community for people on indeterminate sentences, the Menai community for people needing support in daily life, and the Improving Families' Futures community for people who are particularly focused on strengthening their family relationships.

We have embraced the principle of normality — the idea (as described in the Nelson Mandela Rules)<sup>3</sup> that prison should be as close to normal life as possible, in order to respect human decency and reduce the sense of shock and difference that a person would feel on release. We have already heard today that segregation is described as the 'deepest' form of custody — that is, the part of custody that is furthest removed from normal life. Hence, we believe in minimal use of care and separation. We also aim for normality in language — calling people 'men' rather than 'offenders' or 'prisoners', showing that we don't define people by the worst thing they have done and avoiding the danger of labelling them by the thing we don't want them to be.

Lastly we have paid attention to our physical environment. We have taken advice from carceral geography experts<sup>4</sup> and worked to achieve an environment that makes good use of light, colour,

- Kenny, T. & Webster, S. (2015). Experiences of prison officers delivering Five Minute Interventions at HMP/YOI Portland. National Offender Management Service Analytical Summary. [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/448854/portland-fmi.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/448854/portland-fmi.pdf)
- <https://www.penalreform.org/priorities/prison-conditions/standard-minimum-rules>
- Moran, D. (2015). *Carceral Geography: Spaces and practices of incarceration*. Ashgate Publishing.



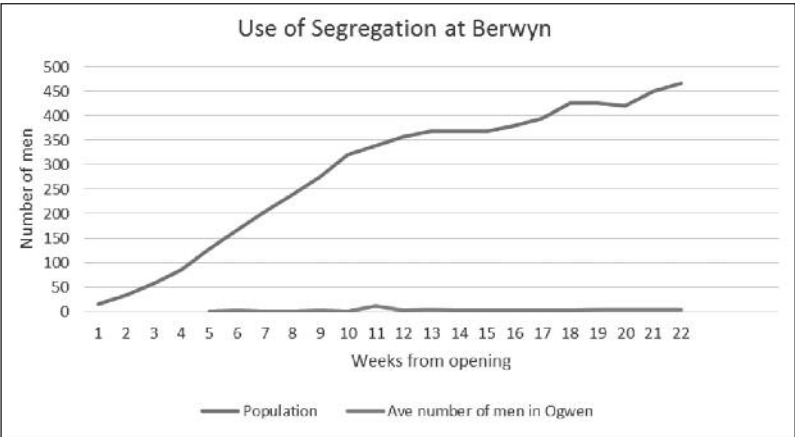
outdoor space and landscape views. We recognise that these features promote wellbeing and positive, respectful, behaviours.

Our hypothesis, in relation to segregation, is that if these components of a culture are indeed rehabilitative and meaningful to the men in our care, then their behaviour should be such that we do not need to make use of segregation to control and manage them.

**Use of segregation at Berwyn**

Figure 3 shows the extent of segregation use at Berwyn, plotted against our population since opening.

**Fig 3**



This graph suggests that so far our hypothesis is correct: A prison with a rehabilitative culture has less reason to use segregation as a punishment or control mechanism. The average weekly number of men in Ogwen (our Care and Separation Unit) has been two. Only four men have stayed in Ogwen for more than seven days, and the longest stay has been for 22 days. We have not used cellular confinement once, nor have we used protective equipment. We have not used force within Ogwen on any occasion. We have also had no complaints from the men about Ogwen.

**Fig 4: Ogwen unit, HMP Berwyn**



I will now turn to discussing why segregation is thought to be appropriate in our service, and will consider whether these reasons are acceptable.

**Why segregate?**

There are three reasons why segregation is such a popular strategy for managing problem behaviour in prison. The first of these is punishment. As Flora Fitzalan Howard explains elsewhere in this issue, human beings do love to punish each other. However, punishment does not work to change behaviour. It only brings solace to the punisher or the victim who sees the punishment — not unimportant, but not to be confused with having a positive outcome on the person being punished. In a rehabilitative prison, we should make little use of any strategy which does not help someone change their behaviour.

The second reason for using segregation is respite. Putting a man whose behaviour is problematic in a segregation unit gives a staff and other prisoners a break from his behaviour and its effects on them. This may sometimes be necessary. But again, it is important to emphasise that respite is purely a holiday. It does not change behaviour.

The third reason for using segregation is to provide someone with protection if they feel unsafe in the main part of the prison. Sometimes men and women in prison ask to be segregated for this reason, or they act out in order that they can get segregated. And sometimes, unfortunately, it is true that segregation is the safest place for someone to be. But again, placing someone in segregation does not address the underlying problem. It does not make the prison safer, nor does it make the person a better cop. In fact, I would argue, it enables us to ignore the underlying problem and pretend that it has gone away.

So, because none of the reasons we use segregation make our prisons safer or their inhabitants into better copers, it is my view that we should avoid using segregation and instead focus on the root causes of poor behaviour in prison.

**Avoiding segregation**

While I believe that a whole prison approach to rehabilitative culture, as set out above, should reduce the demand for segregation to a negligible level, I suggest that two main strategies in particular are essential to enable a prison to be controlled without using segregation.

The first is procedural justice. There are four aspects to procedural justice: giving people a voice, treating them

with respect, showing them you are impartial (and that you believe they have the power to change) and building trust. As a prison officer, the first thing I was told was, 'if you say you're going to do something, you do it'. There is good research evidence to show that when people in prison experience procedural justice in the way they are treated, they show better adjustment during their sentences as well as better outcomes after release.

The second strategy is to focus on rewarding good behaviour, rather than on punishing bad behaviour. We have to work hard to catch people being good, and to make them feel great about something they have done well so that they want to do it again. It's hard to get all the staff doing this consistently, especially if they are socialised into a culture of punishment. We have to take the mature line, in offering people a position of trust, even if this is just cleaning the floor to start with, and then recognising their achievements and allowing progression until release on temporary licence. What's important is that we recognise we have to be the one to give the trust first.

### **Managing problem behaviour without segregation**

The actions above will reduce the demand for segregation, but it is still the case that however good the regime, some people in prison are so distressed or damaged that they will act out in ways that destabilise the order and harmony of the community. I have found that two strategies enable us to manage most problem behaviours when they occur without having to resort to segregation.

First, some people in prison need support in coping day to day. A number of years ago, I was greatly impressed with an approach taken at HMP Bullingdon in the creation there of a supported living unit. I consequently opened a unit like this in Brinsford and have done so now again in Berwyn. A supported living unit helps men in need, whether because of learning difficulties or self-harm or poor communication skills, cope better with the everyday pressures of life in prison. In a supported living community, men in need live alongside men who are designated as supporters, there to coach them in better coping; and men who are stabilisers, basically doing their own thing and not interested in pressurising others. A supported living unit is a less pressured environment than the general prison environment, but it is not a segregation or separation

unit. The people who live on a supported living unit enjoy full access to the prison regime and activities. At Berwyn, the supported living unit (called the Menai unit) was one of the first communities we opened. It has of course had some kinks and problems but overall has been a major success.

Second, I advocate taking a rehabilitative approach to adjudications.<sup>5</sup> Rehabilitative adjudications have the purpose of changing behaviour, not merely punishing it. To be rehabilitative, adjudications do not need to be held in an adversarial environment. They are better held away from the segregation unit, in a comfortable room. We should give people an advocate where needed, and adjudicators can employ FMI skills to turn the procedure into a rehabilitative conversation where learning and change can take place.

### **Looking after the few who do need segregation**

It may not be realistic to expect that no one will ever need to be segregated in a prison. For the few who do need segregation, for short periods of time, there are some important things we can put in place for them. By far the most important of these is getting the staff right. Staff should be specially selected to work with segregated people in prison. We need staff who are caring, who have initiative, who can take the perspective of others, who can reframe difficult behaviour as

distressed behaviour, who have FMI skills.

In addition, segregation unit regimes should be normalised as much as possible. We should enable dining out, physical activity, interactions, work and exercise. All these things protect a person against the harms of segregation.

### **Conclusions: Reducing the need for segregation**

One quick win to reduce segregation use is to cease use of cellular confinement as a punishment. It is clear that this is ineffective and in all probability damaging. For those who do need segregation, then segregation for good order and discipline is a better option because it comes with a multi-disciplinary governance package, so health, mental health and safer custody can be properly considered and monitored during the period of segregation. I have not awarded cellular confinement for years and I can say with confidence that withdrawing it

We have to work  
hard to catch people  
being good, and to  
make them feel  
great about  
something they have  
done well so that  
they want to do  
it again.

5. Fitzalan Howard, F. (2017). Disciplinary adjudications as potential rehabilitative opportunities. *Prison Service Journal*, March 2017.

as an option has not impacted negatively on discipline or misbehaviour. To cease use of cellular confinement is an important first step in moving away from these use of segregation as a punishment. As soon as someone is placed in a segregation unit, for whatever reason, our first question should be 'how are we going to get them out?'

A second quick win is to cease use of special accommodation. A few years back, I stood in for the governor of one of our high security prisons for a short while and I learned that their special accommodation had not been used for over a year. If this is the case in one of

our high security prisons, I ask the question, do we need special accommodation anywhere? If we didn't have it, we might not be tempted to use it.

The most crucial factor in reducing our use of segregation is our staff. We need to believe in our staff group and their ability to work with men to change their behaviour for the better without using outdated and harmful punitive approaches. Segregation does not protect our staff or our communities. We will achieve these outcomes only when our processes are credible and our staff are incredible.



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# Segregated by Choice

*Dr Kimmitt Edgar<sup>1</sup> is Head of Research at the Prison Reform Trust.*

## **Jean Genet described life in French jails in his book, *The Miracle of the Rose*:**

*The windows are forbidden us. And sometimes we commit an offence so as to be sent to the hole where at night we can see through the skylight . . . a patch of starry sky and, even more rarely, a piece of moon.<sup>2</sup>*

Prisoners deliberately used the punishment block for their own ends, in this case to catch a glimpse of the moon. Perhaps the benefit was that seeing a distant object gave them a sense of freedom the walls denied them. But getting segregated is a strange choice, because segregation units are punitive, and because they are far more controlling than normal location.

Segregation regimes restrict the person's scope for decision-making to the bare minimum: yes or no to shower, phone call, and exercise. The risk of institutionalisation is amplified many times over by the degree to which the person is controlled. As Sharon Shalev wrote in her *Sourcebook on Solitary Confinement*:

*The 'totality of control' means that some prisoners become so reliant on the prison to organise their lives and daily routines that they lose the capacity to exercise personal autonomy.<sup>3</sup>*

*Deep Custody*, a study of segregation units and close supervision centres, was based on visits to 15 prisons and interviews with 67 segregated people (50 in segregation units; 17 in close supervision centres); 25 managers; and 49 officers.<sup>4</sup> Sharon Shalev and I found that 19 of the 50 of the prisoners we interviewed in segregation units (over a third) had deliberately done something to get themselves segregated. Further analysis of their situations will shed light on the reasons some people choose segregation.

Yvonne Jewkes wrote that:

*Even the most rigorous forms of discipline cannot dissipate human agency altogether.<sup>5</sup>*

Engineered segregation is an example worth exploring.

As segregation is harmful, doing everything possible to minimise stays in segregation necessarily includes finding better ways to respond to those who choose to be segregated.

## **Personal story**

Sam was serving a life sentence, so being segregated damaged his chances of progression. Yet he engineered his segregation by climbing onto the netting on the wing. So why did Sam risk his progress as a life sentence prisoner to get to the segregation unit? Sam's explanation was backed up by the staff we spoke to.

Having done well in a category C training prison he was offered a progressive move to an open prison. But he would have to spend a two-week stop-over in a local prison. He accepted the offer.

Two and a half years later, he was still in that local prison. He regularly put in applications for a transfer. He discussed a move with governors and officers. Although most were sympathetic, he remained in the local prison. He explained:

*When I went on the netting, I'd been pushed to my max. They keep giving me different answers. And every week I was seeing other prisoners get shipped out with worse behaviour than me.*

He was determined not to return to a wing on normal location.

*I'm prepared to be down here five or six months. I've done the route, 'go back to the wing'. Nothing has happened. When I dropped on the netting, all of a sudden, everyone asked*

1. Thanks to Tom Guiney, Ryan Harman, Ian O'Donnell, and Sharon Shalev for their input to this lecture.

2. Genet, Jean (1994) *Miracle of the Rose*, Grove Press.

3. Shalev, Sharon (2008) *A Sourcebook on Solitary Confinement*, London: LSE Mannheim Centre for Criminology.

4. Shalev, Sharon and Edgar, Kimmitt (2015) *Deep Custody: Segregation units and close supervision centres in England and Wales*, London: Prison Reform Trust.

5. Jewkes, Yvonne (2008) 'Structure/Agency ('Resistance') in Jewkes, Y and Bennett, J eds., *Dictionary of Prisons and Punishment*, Cullompton: Willan Publishing, pages 280-281.

*me what I wanted — Supervisory Officers, wing managers: . . . I had their full attention.*

Asked if he got any benefit to being in segregation, he replied, 'Only benefit is to get shipped out.'

### Why did these 19 people choose segregation?

Few of the 19 thought their segregation would be permanent; most intended to return to normal location eventually. Only five expected to serve out their sentence segregated, and two of these had an imminent release date.

The reasons people choose segregation are often to do with conditions on the main wings and in the system as a whole. Preventing segregation by choice cannot be achieved simply by changes in the segregation unit. Solutions must tackle the deliberate use of segregation at different levels, including: prison service structure, how conflicts are managed by governors and prisoners, and the individual level.

### Structural incentives to engineered segregation

Managers' options are limited by factors outside their direct control, such as overcrowding, a decline in safety, and reduced time out of cell.

A manager described the impact that delays in transfers had on the unit:

*I have five who have been in [segregation] over three months and four in over six months. I don't want prisoners down the seg that long, but trying to move them is difficult. Moving involves the whole estate and I don't have the authority.*

At a time when the system is hugely overcrowded, requests for transfers are one of the most common reasons people contact the Prison Reform Trust's advice and information service. Prisoners who want to go nearer home are prevented by the fact that those prisons are already overcrowded; and by delays in arranging for transport.

A manager explained:

*Some is down to population pressures. We had a lad here in segregation for several months. When you spoke to him he would say 'I'm a London lad, I want to go back to London'. He's been through a lot of prisons. He would misbehave, be placed in segregation, transferred and the same would happen over and over again.*

Overcrowding also tends to lower the quality of life on the wings as it increases demand for gym, freshly cooked food, the showers, and education. A prisoner told us, 'If you want to reduce people coming to seg in order to get a transfer, then provide them with what they're entitled to on normal location.'

### Safety

A second factor that creates incentives to seek segregation is the decline in social order on normal location. The Chief Inspector of Prisons' Annual Report stated that, 'we found prisoners at several prisons . . . self-isolating in fear for their safety.'<sup>6</sup>

One prisoner who chose segregation told us, 'I took myself away from the drugs, the fights...' A lack of order on the wings leaves many prisoners with reduced options for avoiding disputes and aggression. A third of the 19 gave reasons they would be at risk of assault on normal location, including debt, outside feuds, and behaviour that provoked threats from others.

### Time out of cell

Long periods of inactivity and bang-up reduce the difference between normal location and conditions in segregation. The Chief Inspector's Annual Report revealed that 18 of 37 male prisons were not sufficiently good or poor on purposeful activity.<sup>7</sup> Their survey found that 31 per cent of people in local prisons said they spent less than two hours out of cell per day. If those on main location are confined to cell for 22 hours a day, segregation is not such a deprivation. One said, 'If I had a tv I'd do my whole sentence in a seg.'

These structural factors also constrain the prisoner. The 'choice' of segregation was often forced on them by situations on normal location that (a) limited their options and (b) indicated a possible failure of the prison's duty of care.

A woman told us:

*I'm here through choice but they have to find a solution. This is the only place where I feel safe. . . . I don't want to spend all my time here.*

And a man who believed his segregation was not fair explained:

*Not what I had to do. I broke the rules, so I should have been placed on report. But they say they don't have a duty to keep us safe. They do.*

Segregation provides a very poor quality of life — 23 hours behind a door, a minimal choice of activities, and

6. HM Chief Inspector of Prisons for England and Wales (2017) *Annual Report, 2016-17*, London: HM Inspectorate of Prisons.

7. *Ibid.*



almost no social interaction. Given that, the fact that people choose segregation as a least worst option should alarm everyone. Segregation is not a place of safety, but perhaps the damage it causes is less visible than violence, robbery, exploitation or drug misuse on the wings.

### Engineered segregation viewed as a conflict

By occupying a segregation unit cell, a prisoner put pressure on managers to meet their interests. Despite the hardships, the negative health effects, and the implications of having segregation on their record, occupying a segregation cell could enable the person to win some concession from the management. Prisoners were well aware of this:

*When the seg's full, they come and start to make offers, because the power is in your hands.*

*If the prisoner has the ability to cope with seg, then management will have to give him what he wants.*

Six of the 19, like Sam, were occupying a segregation cell to force the prison to transfer them.

*I want to be here. The longer I'm here, the more they have to move me. They don't want people here for a long time... I should be in my local.*

*For me it's here [segregation unit] or be shipped out.*

Using segregation to force a transfer is complicated. For a start, being held in segregation does not look good on a transfer request. Three people were convinced that they had been sent to the wrong prison. But the prison assessed that the allocation was correct. For two others, the prison they wanted to go to appeared to reject the request, giving rise to negotiations between prisons about accepting them, and with the prisoner about which transfers he or she was willing to accept.

A few of the people who chose segregation used more confrontative tactics. Active resistance is a technique to cope with solitary confinement which Ian O'Donnell has analysed. He quoted a prisoner who saw his segregation as a conflict:<sup>8</sup>

By occupying a segregation unit cell, a prisoner put pressure on managers to meet their interests.

*I am stronger than the punishment. The only way to beat it, to rise above it, is to regard the punishment as a challenge and see my ability to endure it while others cannot as a victory.*

Examples include any illicit activity, litigation against the governor, and assault.<sup>9</sup> Our research found acts of resistance among a few of the people we interviewed, including some who self-segregated.

While Liam was segregated, he caused hundreds of pounds damage to cells, verbally threatened staff and managers, and conducted a number of dirty protests.

One officer told us, 'It was affecting our regime. We couldn't unlock anyone.'

Liam described his behaviour as a reaction to his treatment:

*I went on a dirty protest and pulled out the electrics, because I wanted a move and no one did anything — not the governors, the doctors, the IMB [Independent Monitoring Board]. So that is the frame of mind they've bullied me into. How you treat someone is the reaction you will get. They say, 'You control your behaviour.' I say, 'No. I'm your dog. You can't keep blaming the dog.' I went on a dirty protest to tell them, 'You're not going to keep taking me for a fool or it will cost you.*

Martin also used segregation as active resistance. He declined a radio on the basis that he didn't want anything the authorities could take from him. He criticised the way institutions under pressure responded to conflict:

*The ridiculous thing about the prison service is that it teaches me to be violent to get what I want. When a prisoner complies, he should be rewarded. But every time I do a dirty protest or press the alarm bell, I get everything I want. When I comply, I get fobbed off. They see polite as a form of weakness. If you use the correct channels you'll be fobbed off. If you're causing major problems, it creates paperwork, so they'll give you what you want. My violence is rewarded. Every time I go on a dirty protest, it is for their refusal to give me what I am entitled to. Every time, they bow to my demands.*

8. O'Donnell, Ian (2014) *Prisoners, Solitude and Time*, Oxford: Clarendon Studies in Criminology.

9. O'Donnell, Ian (2016) 'The Survival Secrets of Solitaries,' *The Psychologist*, March, 2016, pages 184-187.

Managing Martin's and Liam's conflicts about their treatment were examples of what is called a zero-sum game. Both the prisoner and managers turned the dispute into a win-or-lose confrontation. The only outcome they saw was that one side would get everything they wanted and the other side would lose everything. The prison recorded every time Liam or Martin broke a rule or said something in anger. The prisoner remembered every sign of disrespect, every callous response, every time the authorities attempted to bend the rules.

The ways governors managed negotiations over engineered segregation covered a continuum, from offering concessions to being coercive and punitive. We spent too little time in each unit to be able to determine whether either style of negotiation worked better. Most recognised that forcibly removing someone to normal location would be counter-productive. As one governor told us:

*Unless they agree to return, you're stuck with them. But it's chip away slowly. 'Why do you not want to go?' Maybe a structured phase. It's inter-personal: talk them into it.*

This governor's advice leads to the third arena for understanding engineered segregation: the individual.

### Individual factors

Jean Genet provided a profound clue about the reasons a person might choose segregation: in a world where the block was officially defined as a punishment, Genet found a personal meaning, which was at odds with the official purpose.

This reflects one of the techniques described by Ian O'Donnell: re-interpretation — finding a meaning to one's time in solitary that makes sense and carries personal value. The person might interpret segregation in terms of benefits it achieves for them, their capacity to absorb deprivations, levels of decency and fairness, or other meanings.

An individual's perspective on segregation is fundamental to segregation by choice. Our interviews with the 19 men and women who engineered their segregation revealed a bit of the individuality of their segregation experience.

Consider, for example, Daniel and Stuart. Daniel got into debt and chose segregation to gain time to repay the money. Stuart — in the neighbouring cell — thought he was about to be placed on basic and chose punishment in the unit as the better option. Stuart felt that segregation should be made far more austere so it could be a more

effective deterrent. Daniel felt that people in segregation should have access to television, education and work opportunities.

Khalil described segregation units as dehumanising and degrading for everyone, including staff. His sense of purpose came from enduring that atmosphere as a protest against what he called the fascist regime.

Nathan was awaiting a transfer, and he perceived his time in segregation as a kind of limbo. He commented: 'I am in no-man's-land — waiting.'

These quotes illustrate the fact that people define segregation and respond to it in unique ways. In contrast, segregation policy sets tightly defined categories and functions, such as Good Order, Cellular Confinement, Own Interest, or awaiting adjudication. As Stephen Pryor, a former prison governor, observed:

*We create massive mechanisms which allow us to label, stereotype, classify, and separate prisoners, and we design our prisons around them. We have security categories, and sub-categories within them, and whole prisons designed around a perception of what that type of prisoner needs.<sup>10</sup>*

For many, the segregation unit offered respite from pressures on normal location. People faced situations on normal location — conflict or chaos, debt, drugs and fights — which meant that the segregation unit was a sanctuary.

Eight told us they had mental health problems on normal location:

*'I needed quiet, because I was mentally beaten up on the wing.'*

*'Mentally [segregation] benefits me — haven't got weight of the world on my shoulders, can just be myself, don't have to worry about anything, no anxiety, nothing like that. [I] prefer being in seg to being in main prison.'*

Three of these said the unpredictable behaviour of others was bad for their mental state and two explicitly linked the chaos on normal location to 'spice'.

A few people, having chosen segregation, conceded that their mental wellbeing would suffer as a result.

*I've been in isolation for 4.5 years without a break. Was sent to Health Care to 'see how I get on with people'. Was overwhelmed — panic, anxiety, picking up on the nuances of people's behaviour...*

10. Pryor, Stephen (2001) *The Responsible Prisoner*, London: HMCIP.

*I try to keep it together — the more I'm here the more my behaviour will deteriorate.*

For some seeking respite, it was intended to be short term: Daniel only wanted to stay long enough to sort out his debts. For others, like Martin, it was long-term or indefinite. He chose to isolate himself for the duration of his sentence.

In *Deep Custody*, Sharon and I described the reception given to a man who was moved from one segregation unit to another. The sending prison had used five officers in full protective equipment to force him into the van. The officers who welcomed him to the new segregation unit spent time with him, reassuring him, listening to his anger and concerns, meeting his immediate needs, and ensuring he was promptly seen by a governor. He responded by discussing his situation calmly with the staff. From our point of view, these officers demonstrated humane practice by consistently looking for the unique person who had arrived in prison uniform.

### Conclusion

Structural crisis, conflict management and individual meanings help to suggest better ways to respond to engineered segregation. Solutions are not original — but then, good practice in reintegrating prisoners from segregation was very sporadic.

Six of the 19 engineered their segregation as a means of forcing a transfer. It is little consolation for a governor to be told that a third of the problem of engineered segregation could be solved by a more humane and efficient system of transferring prisoners, especially since this is something the government must first tackle by reducing the population. However, the evidence suggests that as the estate becomes less able to take people's needs into account in allocation, the numbers on engineered segregation will increase.

Conflict management has greater potential to convince self-segregated prisoners to consider re-integration. As one segregation unit governor told us:

*A lot of seg units are still about containment; consequences for inappropriate behaviour. They haven't got it — segregation must be about so much more. ... Some seg units only provide discipline and managing risk — they don't do re-integration. You need conflict resolution.*

When someone deliberately chooses to be segregated, the solutions require the prison to develop ways of sharing responsibility. Governors need to work out in each individual case how to share decision-making with

the self-segregated person. The relationship should be modelled on doing things with the person, rather than to them, or for them.

Prisoners' sense of responsibility will be strengthened when:

- ☐ The person is fully informed of policies and practical options
- ☐ Opportunities are provided to make use of the person's strengths
- ☐ A range of options are offered to them to resolve the obstacles to reintegration
- ☐ Efforts are made to build up the person's self-confidence and
- ☐ When the person is considered in their wider web of relationships.

Two examples of practice that should be much more widely applied, especially in response to segregation by choice:

1. Wing staff maintaining responsibility for the segregated person. In the 1990s, in Wormwood Scrubs, the Senior Officer from the relevant wing visited each person prior to reintegration. The SO and the prisoner discussed how reintegration would work, what the wing would expect of him, and what support he could expect from staff on the wing. It demonstrated that prisoners who choose segregation are likely to have some legitimate expectations of prison staff which can be defined and agreed upon.

2. In HMP Oakwood, a group of respected prisoners visit the segregation unit to negotiate with each resident. They agree on what the person is willing to do to achieve a successful reintegration. This might mean some voluntary work, accepting some mentoring, or a personal apology. The approach shows that prisoners are accountable to each other for maintaining a decent and supportive community on the wings. It's possible that similar schemes involving dialogue with other prisoners could reduce the demand posed by engineered segregation.

Professionals working in prison can choose to create environments in which prisoners can find meaning. To do so, managers and officers need to respect the person's capacity to make decisions about their future lives. They need to be prepared to listen to the person, be open to criticisms, and — crucially — to explore with that person what their segregation means to them.

In certain situations, people decide that being segregated is an efficient way to meet their current needs. Therefore, encouraging them to return to normal location is made easier when those needs are tackled. Finding legitimate options to fulfil the functions segregation performs, unique to that individual, is perhaps the most effective response to engineered segregation.

# The isolation of children in prison

*Dr Laura Janes is Legal Director of the Howard League for Penal Reform.*

**On average, one in every three children in penal custody under the age of 18 is likely to spend time in isolation.<sup>1</sup> Isolation might involve a child being locked in their cell for short or prolonged periods when children would ordinarily be allowed out of their cells. Her Majesty's Inspectorate of Prisons (HMIP) has an expectation that children should be allowed out of their cells for ten hours each day.<sup>2</sup> Isolation could be for behavioural reasons or as a result of staff shortages. However, isolation will also include time spent in a segregation unit pending adjudication or for reasons of 'good order and discipline'.**

Isolation may also include solitary confinement, which is defined in the Istanbul Statement on the Use and Effects of Solitary Confinement, adopted on 9 December 2007, as 'the physical isolation of individuals who are confined to their cells for twenty-two to twenty-four hours a day... Meaningful contact with other people is typically reduced to a minimum'.<sup>3</sup> Prolonged solitary confinement is said to be solitary confinement for over 14 days. This definition is not restricted to adults. However the Mandela Rules,<sup>4</sup> another UN set of standards, envisages that solitary confinement should never be used for children.

As this article deals with children, the broader term, 'isolation' is used.

There are very stringent legal restrictions and safeguards surrounding the isolation of children in prison. Given the irreversible damage that isolation is considered to cause in fully grown adults, there is good reason for this.

Yet these restrictions do not appear to have the effect of curbing the use of isolation for children. Evidence gathered from independent reports and the experience of the Howard League for Penal Reform's specialist legal team for children in prison suggests that the prevalence of child isolation in penal custody in England and Wales requires urgent attention.

Since 2002 the Howard League has run the only legal service dedicated to children and young people in prison in England and Wales. We have worked with many children in isolation through our legal service. The legal work provides the Howard League with a unique perspective on the experience of children in the secure penal estate, what isolation and segregation mean in practice for children, and how the application of isolation to children should be perceived differently from its application to adults.

This article aims to put these issues into context through a brief survey of the characteristics of children in prison, evidence as to the prevalence and impact of isolation in prison, an analysis of the applicable law, lessons from our legal work and some reflections to inform future thinking.

## Children in prison today — lonely and unsafe

As of July 2017, there were 924 children in the penal system.

Child arrests have reduced by 64 per cent since 2010 to just over 85,000 in 2016.<sup>5</sup> The child prison population has reduced by two-thirds in ten years. While it is positive that the number of children in prison has reduced, the reduction has not been equally advantageous to all children. Black and Minority Ethnic (BAME) children make up almost half of all children in prison. Looked-after children are also over-represented in prison.

Fifteen years on from the Howard League's landmark case on the application of the Children's Act for children in custody, Mr. Justice Munby's analysis of the characteristics of children in prison remains sadly relevant:

*[Children in custody] are, on any view, vulnerable and needy children. Disproportionately they come from chaotic*

1. Office of the Children's Commissioner (2015) 'Isolation and Solitary Confinement of Children in the English Youth Justice Secure Estate' pp. 1-68. Available at: [http://solitaryconfinement.org/uploads/Unlocking\\_Potential\\_-\\_supporting\\_research\\_1.pdf](http://solitaryconfinement.org/uploads/Unlocking_Potential_-_supporting_research_1.pdf)
2. HMIP (2017) Annual Report 2016-17, pp.1-114. Available at: [http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/07/HMIP-AR\\_2016-17\\_CONTENT\\_11-07-17-WEB.pdf](http://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/07/HMIP-AR_2016-17_CONTENT_11-07-17-WEB.pdf)
3. Istanbul Statement On The Use And Effects Of Solitary Confinement (2007), pp. 1-5 Available at: [http://solitaryconfinement.org/uploads/Istanbul\\_expert\\_statement\\_on\\_sc.pdf](http://solitaryconfinement.org/uploads/Istanbul_expert_statement_on_sc.pdf) p.1
4. 'Mandela Rules' (2015) UN Resolution 70/175 70/175. United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) / Available at: <https://cdn.penalreform.org/wp-content/uploads/1957/06/ENG.pdf>
5. Howard League (2017) Child arrests in England and Wales fall by 64 per cent in six years. Available at: <http://howardleague.org/news/childarrests2016/>

*backgrounds. Many have suffered abuse or neglect. The view of the Howard League is that they need help, protection and support if future offending is to be prevented.*

*Statistics gathered by the Howard League from a variety of governmental and non-governmental sources in the period 1997-2000 paint a deeply disturbing picture of the YOI population. Over half of the children in YOIs have been in care. Significant percentages report having suffered or experienced abuse of a violent, sexual or emotional nature. A very large percentage have run away from home at some time or another. Very significant percentages were not living with either parent prior to coming into custody and were either homeless or living in insecure accommodation. Over half were not attending school, either because they had been permanently excluded or because of long-term non-attendance. Over three-quarters had no educational qualifications. Two-thirds of those who could be employed were in fact unemployed. Many reported problems relating to drug or alcohol use. Many had a history of treatment for mental health problems. Disturbingly high percentages had considered or even attempted suicide.<sup>6</sup>*

According to recently published data by the Ministry of Justice,<sup>7</sup> in 2015/2016 on average there were:

- ❑ **19 assaults** per 100 young people in custody per month. An increase of **95 per cent** from 2010/11
- ❑ **28 incidents of Restrictive Physical Intervention (RPI)** per 100 young people in custody per month. An increase of **36 per cent** from 2010/11
- ❑ **9 incidents of self harm** per 100 young people in custody per month. An increase of **120 per cent** from 2010/11

The prevalence of isolation is not captured by these statistics.

### **Prevalence of isolation in the children's secure estate**

As late as November 2016, the Ministry of Justice refused to answer a Parliamentary Question as to how many times children have been placed in segregation units in each month since January 2015 on the grounds that the information requested could only be obtained at disproportionate cost.<sup>8</sup>

Whilst the lack of centrally-held data on isolation means that it is impossible to quantify the extent to which children are held in segregation, let alone isolation more generally, HMIP's annual report highlighted that 38 per cent of boys reported spending a night in a care and separation (segregation) unit.<sup>9</sup>

HMIP also reports large discrepancies in the uses of segregation across the country HMYO's.<sup>10</sup> Segregation was rare for boys at Keppel, a specialist unit within HM YOI Wetherby, and the lack of a dedicated segregation unit meant use of segregation at Parc was commendably low. But segregation had increased at Cookham Wood and was unchanged at Wetherby; both units were inadequate.<sup>11</sup> HMIP also expressed concern that during roll checks, inspectors 'found around a third of children locked in their cells on each inspection. Parc was the only YOI to meet our expectation of providing 10 hours a day out of cell'.<sup>12</sup>

The prevalence of isolation at Feltham was particularly striking according to a 2017 inspection during which 'more than a quarter of the population were being managed on units on a restricted regime which excluded activities and meant that they were unlocked from their cells for less than an hour every day'.<sup>13</sup>

A report by the Committee for the Prevention of Torture, published in 2017, painted a vivid picture of the reality of isolation for children in prison at Cookham Wood:

*The delegation interviewed one juvenile who spent 23.5 hours a day lying on his bed, under*

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6. The Queen (on the Application of the Howard League) v Secretary of State for the Home Department and the Department of Health [2003] 1 FLR 484.
  7. Ministry of Justice (2017) Key Characteristics of Admissions to Youth Custody April 2014 to March 2016, pp.1-49. Available at: [https://www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf](https://www.gov.uk/government/uploads/system/uploads/attachment_data/file/585991/key-characteristics-of-admissions-april-2014-to-march-2016.pdf)
  8. Hansard (2016) Written Parliamentary Questions and Answer 53548, Available at: <http://www.parliament.uk/business/publications/written-questions-answers-statements/written-question/Commons/2016-11-17/53548/>
  9. HMIP (2017) see n.2 p.63.
  10. Ibid (p.63).
  11. Ibid (p.63).
  12. Ibid (p.65).
  13. HMIP (2017) Report of an unannounced inspection of HMYOI Feltham (Feltham A – children and young people), pp. 1-114. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/06/Feltham-A-Web-2017.pdf> p.27.



*his covers, blankly looking at a TV screen, talking and meeting no one. It also met a 15-year-old who had been held in these conditions for several weeks and he had no information about how much longer he would be held under such a restricted regime. They were effectively being held in conditions of solitary confinement. In the CPT's view, holding juvenile inmates in such conditions amounts to inhuman and degrading treatment.*<sup>14</sup>

The Office of the Children's Commissioner has noted that, 'isolation is typically not a one-off event. Once a child has been in isolation once, they are likely to be isolated at least once more before leaving the establishment'.<sup>15</sup> BAME children are further disproportionately represented amongst those held in isolation. Compared to White British/White Other children, children of Black/Mixed ethnicity were three times (300 per cent) more likely to find themselves in isolation and looked after children were 63 per cent more likely to be isolated than other children.<sup>16</sup>

#### **The consequences of isolation: education, regime and mental health**

Regardless of the prevalence of isolation within the estate as a whole, the evidence suggests that the impact on any given child can be severe, ranging from exposing children to unsuitable environments, preventing access to education and other aspects of the regime, to psychological and even psychiatric damage.

A report on Feltham in 2017 stated 'boys were still being held in segregation on the young adult site. The environment remained unsuitable for children'.<sup>17</sup> In the case of Cookham Wood, the 2015-16 IMB report criticized the physical environment in which people are held in isolation, stating '[t]he physical environment for

young people in the Phoenix (segregation) unit is very poor — narrow corridors, little natural light, a cramped, box-like exercise yard, and no in-cell telephone or showers'.<sup>18</sup>

Whilst recent inspections at Werrington have found some improvement in practice as concerns isolation and segregation, the capacity of the segregation unit and the amount of time young people spent in segregation were nonetheless raised as points of concern. The IMB reported that '[t]he Care and Support unit is often full, and occasionally overflowing with YPs having to remain in their own cell'.<sup>19</sup> The same report praised a preventive approach to self-segregation at Werrington: 'It was rare for boys to choose to self-isolate on residential units for

a significant time. Procedures were in place to identify boys who did not engage in their scheduled regime for more than an hour. Residential staff spoke to the boy to identify any immediate concerns. If self-isolation extended beyond 14 hours, senior managers were informed and an enhanced separation log was opened...The positive ethos in the segregation unit had led to the development of an action plan to achieve enabling environment accreditation'.<sup>20</sup>

Robust mechanisms to respond to the use of self-imposed isolation chime with the growing body of international and domestic evidence on the

potentially damaging effects of solitary confinement. In *R (on the application of Borgass) v Secretary of State for Justice* [2015] UKSC 54, the Court recognised that 'prolonged' solitary confinement in excess of 15 consecutive days can have an 'extremely damaging effect on ... mental, somatic and social health', and 'some of the harmful psychological effects of isolation can become irreversible' and can prevent a prisoner from 'successfully readjusting to life within the broader prison population and severely impair their capacity to reintegrate into society when released from prison'.<sup>21</sup>

...isolation is typically not a one-off event. Once a child has been in isolation once, they are likely to be isolated at least once more before leaving the establishment.

14. Council of Europe (2017). Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 30 March to 12 April 2016, p.56.
15. Office of the Children's Commissioner (2015) see n.1 (p.14).
16. Ibid (p.23).
17. HMIP (2017) see n.13 (p.14).
18. IMB (2015-16), Annual report HM YOI Cookham Wood, pp. 1-22. Available at: <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2016/11/Cookham-Wood-2015-16.pdf>, p.15.
19. IMB (2015-16), Annual report HMYOI Werrington, pp.1-21. Available at: <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2016/10/Werrington-2015-16.pdf>, p.14.
20. HMIP (2017b) Report of an unannounced inspection of HMYOI Werrington, pp.1-116. Available at: <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2017/07/Werrington-Web-2017.pdf>, p.30.
21. Reference missing, paragraphs 37 & 39.

In respect of the impact on children, a recent judgment by a District Court Judge for New York accepted expert evidence that:

*solitary confinement perpetuates, worsens, or even in some cases precipitates mental health concerns that can lead to long-term and often permanent changes in adolescent brain development*<sup>22</sup>

VW and others v Eugene Conway, Onondaga County Sheriff [2017] WL 696808.

The use of isolation for children in detention settings in the UK is monitored by the National Preventive Mechanism (NPM). The NPM is made up of bodies that monitor detention facilities in the UK and is coordinated by HM Inspectorate of Prisons (England and Wales). In its sixth annual report, 'Monitoring Places of Detention', for 2014-5 the NPM concluded:

*As children have not fully developed cognitively, mentally or emotionally, the possibility that isolation or solitary confinement could cause lasting harm cannot be dismissed. This provides a rationale for rigorous scrutiny of practices that amount to isolation and solitary confinement by NPM members. Children should not be isolated as a punishment, and should never be held in conditions that amount to solitary confinement*'.<sup>23</sup>

The harmful long-term impact of isolation on children has also been affirmed by the Office of the Children's Commissioner, whose research concluded:

*The overall impact of isolation on a child is profound. Mental health issues are likely to be exacerbated and self-harm, although not extremely common, can happen during a prolonged isolation. Interviewed staff and children agree that isolation does not address the deep-rooted causes of a child's behaviour. Prolonged or frequent isolation can often serve to worsen these problems as the children fail to learn the important lessons of social order and interaction which they will need when they leave the establishment. In that sense, isolation can have a long-term negative impact on a vulnerable child and can contribute to the perpetual vicious cycle of release and re-offending*'.<sup>24</sup>

## Legal frameworks

Given the potential risks associated with isolation, it is only right that the practice should be subject to a robust legal framework. The relevant legal framework comprises of:

- ❑ YOI Rules;
- ❑ Prison service policy;
- ❑ Domestic law including child protection and human rights; and
- ❑ International norms/standards and children's rights.

Section 47 (1) of the Prisons Act 1952 permits the Secretary of State to make rules for the regulation and management of Young Offenders Institutions (YOIs). These rules take the form of the YOI Rules and as such, they must be followed. Rule 3 of the YOI Rules aims to help children prepare for their return to the outside community by:

- ❑ providing a programme of activities, including education, training and work designed to assist offenders to acquire or develop personal responsibility, self-discipline, physical fitness, interests and skills and to obtain suitable employment after release;
- ❑ fostering links between the child and the outside community; and
- ❑ co-operating with the services responsible for the child's supervision after release.

Additionally, Rule 41 requires that children must have at least two hours physical education a week and Rule 38 provides that children of school age must get at least 15 hours education a week. None of these things are possible if a child is isolated.

Further, if a child participates in 15 hours of education a week, plus two hours of physical education a week, maths dictates that the child will not be kept in his cell for over 22 hours a day of the week and solitary confinement will at least be avoided. It is therefore surprising that solitary confinement remains a live issue for so many children. The High Court has recently noted that the education requirements are strict. In *R (AB) v Secretary of State for Justice* [2017] EWHC 1694, Mr. Justice Ouseley made the following comments in respect of the requirements imposed by Rule 38 of the YOI Rules:

*It has not been possible to provide [education] because not enough thought, effort and resources have been put into it. I understand how doing so removes resources from elsewhere for someone who may not be thought deserving of so much attention. But*

22. VW and others v Eugene Conway, Onondaga County Sheriff [2017] WL 696808.

23. NPM (2014-15) Monitoring Places of Detention, pp.1-84. Available at: <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2015/12/NPM-Annual-Report-2014-15-web.pdf>, p.34.

24. Office of the Children's Commissioner (2015) see n.1 (p.65).

*that is not what the Rule permits, and there are obvious reasons why those who are troublesome in the way AB is and for the reasons he is, cannot be left merely to drift in their education, as if they were responsible adults making adult choices. He is in his GCSE year and has special educational needs.*<sup>25</sup>

Conversely, the ability of a governor to remove a child from association is only permitted under Rule 49 and only then when 'it appears desirable, for the maintenance of good order or discipline or in his own interests' and 'for up to 72 hours', although following the case of *R (on the application of SP) v Secretary of State for the Home Department* [2004] EWCA Civ 1750 brought by the Howard League in 2004, a child ought to have an opportunity to make representations before the decision to segregate is made. After 72 hours, a system of further checks and safeguards kick in. Following the Supreme Court judgment in *Bourgass* and in line with prison service policy, a governor must obtain leave from the Secretary of State in writing to authorise removal from association beyond 21 days in the case of a child. This is different from the requirements for adults where external authorization is only required after 42 days. However, both longstop periods fall beyond the 15-day mark recognised by international experts and accepted by the Supreme Court as the potential point at which irreversible damage sets in. Meaningful reasons must be given for segregation to continue.

In addition to the specific law affecting the segregation of children, it has been accepted that segregation falls within the ambit of Article 8 of the European Convention on Human Rights, which protects the right to personal development. It was also argued in *R (AB)* that isolation was inhuman and degrading, although the High Court did not find that.

Where children's human rights are engaged, the English courts have found that the provisions of the United Nations Convention on the Rights of the Child (UNCRC) can be 'properly be consulted insofar as they proclaim, reaffirm or elucidate' those rights.<sup>26</sup> In the case of a child who is isolated, the requirements under

the UNCRC to act in the best interests of the child (Article 3) and ensure the child is 'treated in a manner consistent with the promotion of the child's sense of dignity and worth' (Article 40) are particularly relevant. A highly critical report published on 12 July 2016 by the UNCRC found the UK Government to be failing to meet international standards on the treatment of children.<sup>27</sup> Their concerns included the use of solitary confinement for children.

### **Learning from Howard League's legal work and reflections**

Over the years, the Howard League has worked with many children and young people who have been placed in conditions of isolation and solitary confinement. On several occasions the legal team has brought cases to challenge various aspects of this practice, helping to develop and shape the law in this area.

As a result of a number of cases brought by the Howard League legal team, it should now be clear that ad hoc systems that result in the isolation of children but fall outside the prison rules are simply unlawful. This has been reinforced by the High Court time and again in cases challenging shadow regimes in three children's prisons, including *R (AB)* which concerned the isolation of a 15 year old child at Feltham, who Mr. Justice Ouseley said was 'in his cell for over 22 hours a day for more than 15 days at a stretch'.<sup>28</sup>

Yet there are many cases that do not go to court but result in changes. For example, until recently there has been no central data on the proportion of children segregated who are BAME. However, in response to the threat of legal challenge the Ministry of Justice has now agreed to collect this data.<sup>29</sup>

It is also of concern that despite clear rulings from the Courts about the strict legal requirements governing isolation, children continue to experience unlawful isolation, routinely accompanied by exclusion from education. Prison staff need to be better supported to ensure this does not happen. A parent who failed to send their child to school but locked them in their room for hours on end would expect to be subject to a child protection investigation at the very least.

25. *R(AB) v Secretary of State for Justice* [2017] EWH 1694, para 31.

26. **Reference missing – (Howard League [2002] para 51).**

27. UN Convention on the Rights of the Child. (2016). Committee on the Rights of the Child: Concluding observations on the fifth periodic report of the United Kingdom of Great Britain and Northern Ireland. [online]. Available at: [http://tbinternet.ohchr.org/\\_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en](http://tbinternet.ohchr.org/_layouts/treatybodyexternal/Download.aspx?symbolno=CRC%2fC%2fGBR%2fCO%2f5&Lang=en)

28. See n.25 (para 133).

29. Crook, F. (2017). Monitoring isolation of children in prison. [Blog] Frances Crook's blog. Available at: <http://howardleague.org/blog/monitoring-isolation-of-children-in-prison/>

# Monitoring the use of segregation

*Alex Sutherland is Chairman of the Independent Monitoring Board at HMP Whitemoor and a Member of the IMB National Council.*

**A note of explanation first for those who are unfamiliar with the IMB. Members of the Independent Monitoring Board are unpaid volunteers appointed by the Secretary of State for Justice to a specific prison or immigration detention centre. Their role is to satisfy themselves as to the humane and just treatment of those held in custody, as well as to be satisfied about the range and adequacy of the programmes preparing prisoners for release. We can go where we want within an establishment, and we have right of access to all documents other than medical ones. Our role is to monitor procedures and prisoner outcomes. We are not charged with solving problems but rather monitoring that someone else is.**

## **A question of responsibility**

To turn to the question before us today, my broad response is that any good that might come from segregation is dwarfed by its corrosive impact. Segregation is a blight on the Prison Service.

The leitmotif of my thoughts on the subject derives from my mother-in-law, a doughty Edwardian lady who when faced with an insurmountable problem would demand to know who was in charge. That usually preceded the announcement that she now was.

As a young civil servant I was part of a Whitehall-wide exercise spearheaded by Michael Heseltine and very much with the full support of Prime Minister Margaret Thatcher. It was known as the Financial Management Initiative and sought to revolutionise the way Government Departments ran, creating cost centres, delegating authority as far down the line as possible and ensuring that there was a hierarchy of aims and objectives within which it all operated. The FMI was rolled out and worked, but bit by bit powers were clawed back to the centre and key components broke. Some of the philosophy is now back in vogue and the delegations in the air for Prison Governors are part of it. But I don't think that this time round the essential groundwork has been done.

The FMI postulated that overall systems had to be in place first, so that there was linkage: Departments could not just go off and do their own thing. Freedom

didn't mean detachment from shared objectives. Secondly, and fundamentally, the FMI's imperative was that accountability, responsibility and control sat together: you could not make someone responsible for what they couldn't control.

I believe that the Prison Service has fundamental problems in these areas and that segregation is a good example of that. Too much of what should be a national structure is instead fragmented. The Prison Service is not always good at joined-up systems. They move prisoners without losing them but they lose too much of their property in doing so. Supplies of essentials like cleaning materials and basic kit are too often spasmodic. One minute we're told that there's a national shortage of tracksuit bottoms; then it's pillows. When they look outside for help they enter into contracts such as the one with Carillion that fails to maintain the fabric of their establishments. Go to many meetings and much of the time is taken up discussing who was meant to do what but didn't. If my mother-in-law was there she would indeed be asking who was in charge.

Of course segregation is not the same. Far from it. You would expect to see more problems where the population is more volatile for other reasons, such as being at an earlier stage of their sentence; although Cat Cs with theoretically more stable residents are not immune. And I accept that there are segregation units in which a full and progressive regime is run. If I focus on the less satisfactory range of units it's because of the urgency with which action is needed; and because I know them best.

I am also leaving others to explore what might be presented as the potentially positive roles of some types of segregation. Maybe time away from normal location can be used to good effect. I am more concerned that in far too many cases segregated prisoners are being stored rather than progressed. In such cases the effects are not even neutral. Prisons don't set out to use segregation to break prisoners but in managing it badly they risk doing just that. I believe this happens because not only is there a lack of joined-up systems but staff are being put in charge of processes over which they have limited control; and people at the centre lack the capacity to offer the outlets and safety nets that are needed.

Take the basics of responsibility. A prisoner commits a simple offence — he refuses to return to his cell, perhaps jumps on the netting. The wing send him to the segregation. Once there he decides he's not going back. From a relatively simple incident responsibility has been swiftly shifted from wing to segregation. But it is the wing who know him and should be better able to consider the implications of segregation — especially if he's already at risk from self-harm, or has mental health problems. Instead, he has been thrown into the mix of the segregation unit, a location which in my experience sometimes descends to the depths of Bedlam — and I choose that metaphor carefully. Too often Segregation is an early, almost spur of the moment response, rather than a last resort. I know that that view is shared by some senior people in the Prison Service. Three Deputy Directors of Custody (DDC) have separately said at meetings I've attended that they are minded to close segregation units.

With a far more complex prisoner it might be judged impossible to hold him on normal location. That might be because he is at risk, but it's just as likely that he is a threat. After all, let's not pretend that all segregation residents are victims. If it's because he's deemed to be a serious threat to order, he might be referred to one of the central facilities — such as the Close Supervision Centre (CSC) system. At this point the prison might well encounter that forbidding phrase often heard in segregation circles: 'Does not meet the criteria'. And from then on, no one is effectively in charge of what happens to him. No one with sufficient clout outside of the host jail has — or is willing to use — the power to say that whilst he might not meet the criteria of the CSC he cannot stay where he is. No one is keen to intervene and direct where he goes, including — critically — to tell a specific prison that they must take him. Like heads of league-focused grammar schools, some Governors are being picky about whom they'll take.

### **The experience of prisoners**

#### *How do these scenarios look to the prisoner?*

I routinely attend segregation reviews at which the majority of prisoners cannot or will not return to main location. Two weeks ago the Supervising Officer and I looked at the 26 men held in the segregation at Whitemoor — a segregation unit staffed to hold 18. Of the 26, only 5 needed to be segregated at that moment. For almost all the rest the solution was a

transfer to another establishment. So, every fortnight the prisoner attends a review at which his segregation is discussed. As it's accepted that he can't or won't go back to main location, his Offender Manager is tasked with looking at transfer possibilities. Or he might be referred to see whether he has a personality disorder and is eligible for a specific unit (if he meets the criteria), or maybe he should go to the CSC (if he meets the criteria) or be controlled centrally under the Managing Challenging Behaviour Strategy (if ... you get the point).

He might well be asked for a list of prisons in which he will locate. He's probably been asked for that already, but since most of his requests are pipe dreams, who's counting? Or is he really sure that he can't locate on a normal wing? Meanwhile, he'll be segregated for another 14 days. And in another fortnight the whole pantomime might well be repeated — he was offered to such and such a prison but they turned him down or (just as likely) they haven't answered. Then there might be a rummage around to see if anyone did refer him for assessment for anything. Segregation Reviews throw up many questions but offer few answers. Behind the scenes we might have been told some of what's really going on — if anything — but to the prisoner it looks as if no one knows what's happening, or cares.

In such an environment, how can the prisoner do more than despair? The circle goes round.

His position might become clearer when he hits the 42 day mark and his continued segregation has to be authorised by the DDC. Typically the DDC will direct that something should happen; but that is no guarantee that it will.

A negotiated transfer at might take months rather than weeks, since the process often descends to crude bartering, where numbers matter more than individuals. It's a far from fair process. To put it bluntly, some prisons lie about the willingness of prisoners to locate after a move. Sometimes individual transfers don't work and Governors will agree a clutch of swaps. The process is all about movement; progression is not the issue, any more than is the location of a prisoner's family.

Good could come out of segregation if something is done to acknowledge that many prisoners who refuse to locate on normal wings are not just being awkward. It should be possible for a prisoner to live where he feels safe, able to get on with doing his sentence. He should not have to be categorised as old or vulnerable to live in an environment in which he is

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safe from being intimidated. Especially if he's starting a sentence of 20 or 30 years, he needs reason to hope.

### *The role of the Independent Monitoring Board*

What exactly is the role of the IMB in this? In prisons like the one to which I'm appointed one of us is in the segregation unit most days, quite often to monitor a planned removal, with staff in full protective kit, or to monitor another dirty protest, or to follow up specific questions. As I've explained, we also attend fortnightly segregation reviews to monitor that procedures are being followed.

As the system presently is, our role too often is thankless and pointless. Some — including prisoners — are quick to blame us. There is often a mistaken perception that the IMB 'authorise' segregation. We do no such thing. Prison Service Order 1700 explicitly says that the IMB are not to be involved in the management decision. We have to tick Yes or No to the questions of whether procedures have been followed, and whether the decision is reasonable. There is no box to say 'Well maybe but ...'

Usually the procedures have been followed but the range of real options is so limited that what they've done is often the best they can in the circumstances. What does 'reasonable' mean when the options are so thin and some are alarming? And it's quite usual for us to have been given information that can't be made known to the prisoner, so the decision might be right even if it's not perhaps fair that the prisoner is left in the dark.

Much is made by our critics of the fact that we do not discuss the issues at the review in front of the prisoner. That we don't do so does not mean that we have not asked questions and made known our views before and after he attended. PSO 1700 specifically says that the prisoner should not normally be present when we raise our objections. I am always willing to answer what questions I can from prisoners wanting to understand our role.

IMBs do indeed tick the 'No' box. In the case of the jail to which I'm attached we routinely do so one or two times a week. I know of more than a few other IMBs who do the same. In many cases it's because the paperwork from the DDC has gone astray — or sometimes there is an intentional delay — but we will frequently sign No because there is no clear exit strategy for the individual, or because his welfare is profoundly at risk. The responses we get from top managers are prompt and they are full. There is seldom

a profound difference of opinion about the wrongness of the situation. Usually they are doing all they can. They are candid about the reasons and will share sensitive information with us. Our objections are sometimes useful in reinforcing their views in discussions that they in turn are having with people at the centre. And we too are able to raise matters with those people, both at the time and in regular meetings with the DDC. With more profound individual problems there are times when we and other IMBs go direct to the Minister.

Despite attempts in the wake of the Supreme Court decision on the authorisation of segregation to generate dramatic change, things are reverting to how they were. Long stays in segregation are still normal, albeit that there are fewer of them. And cosmetically it is covered by shifting prisoners from segregation unit to

segregation unit, hoping that they will locate at the new establishment. Then there's there the game when a prisoner remains under segregation conditions, and might even be in the same unit, but his presence is redefined so that — it's claimed — he's not covered by PSO1700. We call that the 'secret segregation'. Or he might be redefined so as to hold him in Healthcare — the 'hidden segregation'. In at least one jail, own-protection prisoners are segregated on residential wings

under what is called 'Duty of Care' — there's a misnomer as they don't even have the protections afforded by PSO1700.

IMBs also routinely raise segregation matters in Annual Reports, in both general and detailed terms. Many of the comments are negative but there are some positive ones too. These reports go to the Minister and are available publicly.

So the problem is not that IMBs are complicit; it's rather that our objections have limited impact, and when we go public we have little support. That isn't to say that all IMBs are as alert as they might be on segregation. There are a few gaps between what is and isn't said by IMBs and what is said by the Inspectorate. I'm happy to discuss outside this meeting what is being done, and what can be done, to sharpen up our act. My point for the time being however is that under existing systems our impact will be modest, however well-informed it is.

For the last six years the IMB at Whitemoor have recorded in our Annual Report to the Minister our profound concerns about segregation, not least to underline our reservations in terms of very basic human

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rights. Our latest report was published on Friday. Both last year and this we have recorded our concern that segregated prisoners typically get only 30 minutes daily exercise, instead of the mandatory hour. Because of that and the lack of meaningful mental stimulation, we have specifically referred to prisoners on segregation at Whitemoor as being held in what under the UN Optional Protocol Against Torture (OPCAT) is defined as solitary confinement.

In his response to our 2016 report the Minister said that the UK Government subscribes to OPCAT, and he underlined how the Human Rights Act gives further effect to the European Convention on Human Rights. He sidestepped any questions, in effect denying that the criteria were being breached, let alone doing anything about it. We also raised this issue with the Chair of the National Preventive Mechanism, who oversees the UK bodies that monitor compliance with OPCAT, when he visited Whitemoor earlier this year.

So we have another example of the problem of who's in charge. In his formal response to us the Minister was acting as the spokesman for what was then the National Offender Management Service, trying to explain away the problem. But the Prison Service is an agency. The Minister should hold them to account, not defend them. I would rather that he had spoken on behalf of the Ministry of Justice and its obligations for enforcing national and international legislation and protocols. Instead of patting us on our heads, he should instruct that prisons will abide by OPCAT and provide at least the prescribed regime to which prisoners are entitled. That's what he would do if he was in charge.

If the IMB are ineffectual in this respect, so on this subject have been the Inspectorate. Their concerns about the impoverishment of the regime in segregation at Whitemoor in 2014 were echoed three years later. Very basic problems have persisted.

I said at the beginning that segregation was not a problem everywhere. And of course I acknowledge that some excellent work is under way. I'm sure Richard Vince will talk about some of it this afternoon. There are indeed a few IMBs that report reductions in the number of segregations — although in one case it has in part been achieved by exporting the problem to a segregation unit elsewhere. The problems are nonetheless so widespread that they are not simply anomalies. Systems and procedures are fundamentally flawed. Not only is segregation damaging the individuals who are being held, it is damaging the reputation and authority of everyone associated with it. And how can prisoners be expected to obey rules when the Prison Service fails to do so? Respect has to be mutual.

To conclude, good can only come out of segregation when proper systems are in place to allow a prisoner to be located appropriately. There must be a shared commitment that stretches across the custodial estate. Local control does not preclude a wider responsibility. And those up the line — all the way to the top — must intervene, so that someone is indeed in charge. A prisoner's needs can then be looked at individually, with a range of safety valves to cater for those who don't fit in. Segregation would be used for remedy and progression, not for storage.

# Reviews

Book Review

***Parole and Beyond —  
International Experiences of  
Life after Prison***

By Ruth Armstrong and Ioan  
Durnescu (eds.)

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(2016).

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With the rise of neoliberalism and actuarial logic, the nature and purpose of parole has shifted significantly over the past 40 years. As this book powerfully and persuasively argues, 'parole' no longer reflects its etymological source as a relationship of trust. With risk and resource management at the forefront of nearly all encounters between practitioners and parolees, it seems that trust is in short supply on both sides. Indeed, relationships are rendered largely superficial and adversarial in a system which tends to objectify and subjugate those in its charge. The overriding experience of parole according to this group of studies is one of punitive supervision (p. 65), rather than meaningful assistance. Invariably described as 'walking on ice' (p. 222), or 'a very precarious... decrepit rope bridge linking captivity to freedom' (p. 107), the contributors paint a bleak picture of what life on parole is really like for those struggling to navigate the uneasy transition from prison back into society. This

is a compelling, albeit damning, compilation of accounts that places the voices of former prisoners at the front and centre of discussion, and fires a burning flare for reform into the Weberian polar night.

Those seeking a guide to legislative and regulatory procedure need to look elsewhere. '*Parole and Beyond*' represents a body of qualitative research drawn from questionnaires, interviews, and observations across ten different jurisdictions. Ranging from nine months to two-and-a-half years in length, the empirical studies were conducted between late 2006 and September 2015, and cumulatively reflect the experiences of 291 parolees, 78 prisoners, and 762 questionnaire respondents. In an exercise of comparative criminal justice, a course is charted from more familiar territories such as England and Wales and the United States, to the relatively unexplored contexts of Africa and South America. In Sierra Leone we find a society where 'suffering is best conceived as a quality of life' (p. 244), community supervision is deemed unnecessary, and release for most prisoners comes as an unexpected and impromptu surprise. Meanwhile, in Chile — with the highest rate of imprisonment on the continent — parole is 'granted to less than 4 per cent of the prison population' (p. 196) and presided over by practitioners who lack basic training or assessment tools.

Whilst readers are cautioned against 'any easy claims of homology based on similar surface characteristics' (p. 260), it is striking how many common themes emerge from this medley of otherwise disparate societies and enforcement regimes. As the Editors note, 'living on the fringes can feel very similar in different jurisdictions' (p. 304). The fall of the 'Platonic Guardians'<sup>1</sup> for example, has become something of an international phenomenon as 'the formation of crime policy has moved from the experts into the hands of the politicians' (p. 50). This decisive, populist shift away from the rehabilitative ideal and towards law enforcement typecasts parolees as dispositionally criminals (p. 107) rather than as agents capable of ethical self-management. Whilst paradigmatic of a 'culture of control',<sup>2</sup> the irony of an increasingly repressive and risk-averse parole system is two-fold. It is counter-productive in terms of producing responsible citizens, because it limits the choices and capacities of parolees to pursue alternative life trajectories. Secondly, it actually fosters resistance and resentment towards state actors by further alienating already disengaged and marginalised members of society. In other words, it tends to produce or exacerbate the very risks it purports to reduce.

One of the perverse aspects of modern parole is the notion that the subject requires intense control and supervision for an artificially

1. Loader, Ian (2006) – 'Fall of the Platonic Guardians: Liberalism, Criminology and Political response to crime in England and Wales', *British Journal of Criminology*, 46(4): pp561 – 586.
2. Garland, David (2001) – 'The Culture of Control' (Oxford, Oxford University Press).

delimited period of time, only to miraculously emerge as an autonomous citizen capable of total self-governance on the hour their parole comes to an end. How this transformation is supposed to occur remains unanswered. In reality, the vanishing pumpkin carriage leaves parolees floundering and unprepared for the real world. A gradual transition would seem far more sensible than being thrown off the cliff-edge. Moreover, this kind of militant parole seems to be premised on the notion that prisons fail to responsabilise individuals whatsoever. Indeed, the same assumption holds true in wider society. For many prisoners, 'their punishment continued beyond the prison... [and] would continue beyond their parole, because they were seen as unchanged and as defined by their offence' (p. 231). This implies a serious lack of professional and public faith in our prison system to effectively transform people. Of course, there are good reasons why the public should be sceptical, but it might also help to explain why our parole system has metamorphosed into a post-carceral mechanism for incapacitation. Parole is being used to make up for the failings of our correctional institutions. This was never its intended purpose. In an ideal system, prisoners would be making any necessary personal transformation and addressing their resettlement needs whilst they were in prison, so that they might be ready for action the moment they are released — but this just isn't happening.

The book does well to explore examples of good as well as bad practice within probation regimes.

Often, the difference between success and failure boils down to having the 'right type' of parole officer (p.171). As one Australian parolee put it, 'for a lot of them, it seems like they're just waiting to pounce and fuck you up... They don't offer any help or solutions... Whereas with [my last parole officer] ... her first step isn't to breach you and send you back. She actually wants to help you' (p.182). Recent figures in England and Wales reveal that 21,559 parolees were recalled to prison in the 12 months ending December 2016.<sup>3</sup> According to a recent paper by the Centre for Social Justice:

*a rising number are recalled every year by Offender Managers for breaches. It is our contention that a not insignificant portion of these breaches are minor in nature, with up to 55 per cent solely due to non-compliance with licence conditions, such as failure to keep appointments on time with supervisors, and therefore not necessarily impacting on public safety.*<sup>4</sup>

The paper proposes that — unless charges have been brought — breach proceedings should be initiated by judges or magistrates, not Offender Managers, due to the lack of 'due process which this arbitrary exercise of power entails'.<sup>5</sup>

Those 'prepared to go beyond... [their] official remit as someone who should be compliance oriented' (p. 183) by

and large made a greater impact on the lives of respondents. Most parolees appreciated simply being taken an interest in, as human beings, perhaps for the first time in their lives, and were more receptive to guidance as a result. Parole may be inherently paternalistic, but these studies prove that it is possible to support people in ways that are genuinely helpful, rather than patronising or suffocating.

One of the challenges of parole for practitioners is how to go about defining 'success'. The definition has shifted somewhat in recent years to include the rather vague quotients of 'assisting re-entry and facilitating desistance' (p. 109). Measuring these factors in any meaningful way would seem futile, but fits in well with the 'new penology' agenda. As Garland observes, 'state agencies have reacted to criticism... by scaling down expectations, redefining their aims, and seeking to change the criteria by which failure and success are judged'.<sup>6</sup>

In the worst instances, the parole structure fails completely. Action plans are deemed 'useless' (p. 64), meetings are frequently rescheduled, and parole officers themselves are either unresponsive or actively hostile (p. 112). For some parolees the onerous licence conditions are so debilitating that they actively choose to return to prison rather than remain in the community (p. 175). One perhaps surprising omission in 'Parole and Beyond' is the ongoing crisis in England and Wales following the part-privatisation of its own parole services. As a whistle-blower at the National Probation Service recently revealed, 'everyone knows it's a

3. Table 5.1, Licence Recalls, Ministry of Justice [accessed via:

[www.gov.uk/government/uploads/system/uploads/attachment\\_data/file/610976/licence-recalls-q4-2016.xlsx](http://www.gov.uk/government/uploads/system/uploads/attachment_data/file/610976/licence-recalls-q4-2016.xlsx)]

4. Aitken, Jonathan and Samuels, John – 'What happened to the Rehabilitation Revolution?', (London, the Centre for Social Justice, September 2017), p2.

5. Ibid. p9.

6. Garland, David (1996), 'The limits of the sovereign state: strategies of crime control in contemporary society', *British Journal of Criminology*, 36(4): 445 – 471.

mess... last week... I spent no more than 2 hours in actual physical, face-to-face contact with the people I supervise... [five years ago] I think I'd have spent about... 15 hours a week'.<sup>7</sup> This is not an unfamiliar problem however, with similar resource challenges facing the United States. While the Department of Corrections — for example — spent 80 per cent of its total operating budget in 2012 on prisons, its parole services received less than 7 per cent (p. 153). Ironically, the very absence of penal interference, whilst unintended, may actually encourage parolees to become more independent — thereby achieving the very goal of responsibilisation that the system had hoped to achieve through extensive intervention.

One of the many interesting questions raised in this book surrounds reoffending. Perhaps in a subversive expression of individual autonomy, and in a bid to regain some semblance of control in their lives, some parolees rationalise and legitimise their own non-compliance. It is quite revealing that 'many participants stressed that being a good citizen... does not depend upon a complete absence of offending' (p. 159). Like an overused antibiotic, many of the respondents had developed carceral immunity, and had no fear of returning to prison (p. 224).

In many ways, this rationalisation process is reflective of a combination of factors affecting re-entry. Parolees will undoubtedly be disoriented by the impact of prisonisation (p. 203), but they will also struggle with concepts of identity as they make the transition from prison subculture into mainstream society (p. 284). For some, this can be a deeply isolating process: 'In prison I had a routine... here nobody

cares about you' (p. 290). If society fails to accept those returning from periods of forced banishment, then it is hardly surprising that those individuals begin — or indeed, continue — to experience the effects of anomie. In prison and on parole — subjects rally against governance through 'circuits of exclusion' (p. 162). Yet, this battle continues after release, as they seek recognition — in a Hegelian sense — within society. Living with multiple deprivations, several parolees 'did not know how they were going to provide for themselves (and some for their families) ... [and] were concerned about feeling 'forced' to commit new crimes to make ends meet' (p. 59). Many are 'referred to employment schemes which [do] not yield work' (p. 43), and find themselves heavily burdened with debt. In Denmark, for example, prisoners are expected to repay the state for the cost of their prosecution. As one parolee described it, 'I would actually make the same money [on welfare] by doing nothing as I would've working... it's definitely discouraging me from starting all over again as a law-abiding citizen' (p. 69). Across the board, be it in the housing market, employment, or insurance — former prisoners experience differential access to opportunity. The penal system fails to 'deal seriously... with the layers of complex personal, economic, and social issues facing prisoners in the post-release context' (p. 185).

In this vein, it would be interesting to see a study on the long-term impact of the life licence, a scheme unique to England and Wales, incorporated into a future edition of 'Parole and Beyond' — perhaps alongside a comparative analysis of lifers in other jurisdictions. The life licence effectively condemns life-sentenced prisoners to parole in

perpetuity upon their release, and arguably amounts to cruel and unusual punishment. Whilst this segment of the prison population is poorly represented in the current edition, this doesn't detract from the value of the book as a whole.

For many parolees, the good work they put in whilst in prison to improve their future prospects fails to bear fruit in the cold light of freedom. 'If you end up a computer genius or whatever, it's not going to do anything for you outside... you're blown right out of the water' (p. 229). In Scotland for example, unsuccessful job applications left respondents feeling despondent and stigmatised: 'I don't really know if I'm ever going to get the chance to move on' (p. 231). 'It feels like everything's just wasted, every bit of my sentence, every effort I've made after it just, pffff, been a waste o' time' (p. 232).

When one considers what factors contribute to desistance, the findings of these studies align very much with traditional control or strain theories. Employment in particular 'acts as an investment in the conventional world... [and] can assist identity change... [by serving] as a function of social and community belonging' (p. 207). Agency and identity are thus critical to 'imagining possible future trajectories of action' (p. 4), so long as these are nurtured by social and emotional 'hooks for change'. Amongst Roma communities for example, crime is perceived as a 'fact of life'. In a symbolic statement of reintegration, public celebrations are held for former prisoners, heralding their return as valued community members (p. 294). It would require a significant cultural and political shift for society as a whole to embrace such Durkheimian realism, but the benefits in terms of reduced

7. Foggo, Daniel (2017) – 'Out of jail, free to offend again?', BBC Panorama – 25 October 2017.



recidivism surely make this path more socially responsible than authoritarian populism.

'Parole and Beyond' represents an invaluable work of scholarship that does not hold its punches. It makes it abundantly clear that 'supervision risks demotivating the motivated in its hope of restricting the unmotivated' (p. 133), and the book offers practical and realistic

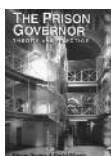
solutions for reform. This collection merits wide readership amongst policymakers, academics, and students alike. One thing that stands out above all else is that desistance is not a linear process, but 'a slow, faltering, precarious struggle, involving episodes of relapse and recovery' (p. 4) that requires a sympathetic and humanitarian response.

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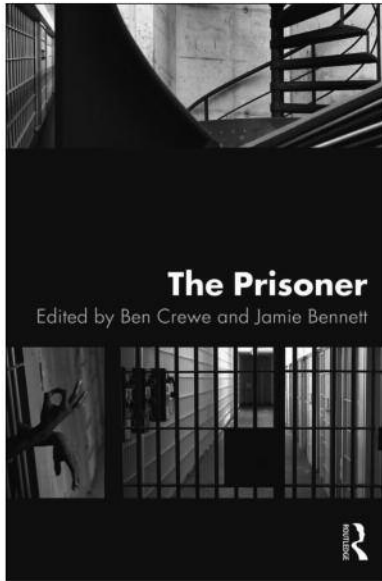
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## Purpose and editorial arrangements

The *Prison Service Journal* is a peer reviewed journal published by HM Prison Service of England and Wales. Its purpose is to promote discussion on issues related to the work of the Prison Service, the wider criminal justice system and associated fields. It aims to present reliable information and a range of views about these issues.

The editor is responsible for the style and content of each edition, and for managing production and the Journal's budget. The editor is supported by an editorial board — a body of volunteers all of whom have worked for the Prison Service in various capacities. The editorial board considers all articles submitted and decides the outline and composition of each edition, although the editor retains an over-riding discretion in deciding which articles are published and their precise length and language.

**From May 2011 each edition is available electronically from the website of the Centre for Crime and Justice Studies. This is available at <http://www.crimeandjustice.org.uk/psj.html>**

## Circulation of editions and submission of articles

Six editions of the Journal, printed at HMP Leyhill, are published each year with a circulation of approximately 6,500 per edition. The editor welcomes articles which should be up to c.4,000 words and submitted by email to [jamie.bennett@hmps.gsi.gov.uk](mailto:jamie.bennett@hmps.gsi.gov.uk) or as hard copy and on disk to *Prison Service Journal*, c/o Print Shop Manager, HMP Leyhill, Wotton-under-Edge, Gloucestershire, GL12 8HL. All other correspondence may also be sent to the Editor at this address or to [jamie.bennett@hmps.gsi.gov.uk](mailto:jamie.bennett@hmps.gsi.gov.uk).

Footnotes are preferred to endnotes, which must be kept to a minimum. All articles are subject to peer review and may be altered in accordance with house style. No payments are made for articles.

## Subscriptions

The Journal is distributed to every Prison Service establishment in England and Wales. Individual members of staff need not subscribe and can obtain free copies from their establishment. Subscriptions are invited from other individuals and bodies outside the Prison Service at the following rates, which include postage:

### United Kingdom

single copy	£7.00	
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### Overseas

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Orders for subscriptions (and back copies which are charged at the single copy rate) should be sent with a cheque made payable to 'HM Prison Service' to *Prison Service Journal*, c/o Print Shop Manager, HMP Leyhill, Wotton-under-Edge, Gloucestershire, GL12 8BT.

# PRISON SERVICE JOURNAL

## **Prison Service Journal Prize for Outstanding Article 2017**

The editorial board of the *Prison Service Journal* is proud to announce that Dr Laura Kelly, Lecturer in Criminology at the University of Central Lancashire, has won the *Prison Service Journal* Prize for Outstanding Article 2017.

Dr Kelly's article '*Suffering in Silence: The unmet needs of d/Deaf prisoners*' appeared in edition 234. The article is a sensitive and in depth study based upon interviews with d/Deaf prisoners in order to reveal their experiences and illuminate the often hidden harms they face. This research focusses on people who are often overlooked and whose needs are not clearly understood. By giving voice to d/Deaf people in prison, Dr Kelly does much to build understanding, identify practical steps that might be taken to ameliorate the pains of imprisonment, and challenge the causes of cultural and social marginalisation. This article is a significant and important contribution that deserves to be read by those who are involved in prisons.

Dr Kelly's article was part of a shortlist of six articles published in the *Prison Service Journal* during 2016 that best reflected the aim of the journal to inform theory and practice. The *Prison Service Journal* editorial board voted Dr Kelly's article the most outstanding article from this group.