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

Monitoring the use of segregation

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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 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.