Neutral Citation Number: [2025] EWHC 230 (Admin)

Case No: AC-2022-LON-001883

IN THE HIGH COURT OF JUSTICE
KING'S BENCH DIVISION
ADMINISTRATIVE COURT

Royal Courts of Justice
Strand, London, WC2A 2LL

Date: 05 February 2025

Before :

MRS JUSTICE McGOWAN DBE

- -

Between :

Kevan Thakrar

Claimant

- and -

The Secretary of State for Justice

Defendant

- -
- -

Nick Armstrong KC and Aidan Wills (instructed by **Reece Thomas Watson Solicitors**) for the **Claimant**
Sam Grodzinski KC and Myles Grandison (instructed by **Government Legal Department**) for the **Defendant**

Hearing dates: 25 and 26 April 2023

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Approved Judgment

This judgment was handed down remotely at 10.30am on 5 February 2025 by circulation to the parties or their representatives by e-mail and by release to the National Archives.

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Mrs Justice McGowan DBE:

1. Mr Kevan Thakrar, the Claimant, brings a claim for judicial review with the permission of Ritchie J on six grounds. He also renews his application for permission to bring a claim on a seventh ground. He brings the claim against the Secretary of State for Justice, **("SSJ"),** as the Minister responsible for His Majesty's Prison and Probation Service, **("HMPPS").**

2. The Claimant is represented by Mr Nick Armstrong KC and Mr Aidan Wills instructed by Mr Dean Kingham of Reece Thomas Watson Solicitors.

3. The Defendant is represented by Mr Sam Grodzinski KC and Mr Myles Grandison instructed by Miss Carolyn Toh of the Government Legal Department.

4. I am very grateful to all involved in the case for their detailed and helpful oral and written submissions, particularly to Mr Armstrong for his very helpful verbatim speaking note.

Preamble

5. The hearing of this claim for review was held on 25 and 26 April 2023. On 30 May 2023 the Claimant was moved by the Defendant to HMP Manchester. He had been informed on 24 January 2023 that the move was likely. I requested the parties to provide updates to the court. They were provided in September and October 2023.

6. The Claimant's update says that although Mr Thakrar had not wished to be moved to Manchester, as he feared conflict with racist persons there, the move appears to have gone well. He has been allowed to associate with a couple of other prisoners within the Close Supervision Centre, **("CSC")**.

7. The Claimant asserts that the prison authorities still require that any meetings with a psychologist should not take place on a one-to-one basis but that another person be present for security reasons.

8. In response the Defendant asserts that as a result of the Multi-Disciplinary Team, **("MDT"),** being able to monitor the Claimant and carry out a number of checks, the requirement that a third person be present at any psychology sessions was removed on 28 September 2023 at a Dynamic Risk Assessment Meeting, **("DRAM"),** and that the Claimant was informed of its removal. Notwithstanding the removal of that requirement the Claimant is still unwilling to engage in any psychology sessions or treatment. The Claimant's wishes are "being respected" whilst he is still encouraged to begin engagement with the team. He continues to have limited engagement with other staff, who "may be able" to consider his health and well-being.

9. They also point out that his fears about coming into contact with racist prisoners have not materialised and he has not made any complaints under the procedure for reporting incidents of discrimination.

10. Whilst he remains in a CSC under Prison Rule 46, **("PR46"),** he in no longer held in a Designated Cell, **("DC").**

11. Judgment in the case of ***R (Awale) v SSJ EWHC [2024] 2322 (Admin)*** was handed down on 9 September 2024. Both junior counsel in this case had appeared in that hearing in July 2023. The

case has similarities with the issues in this review. It raised questions about the authorisation of a removal from association with other prisoners which may have a bearing on the two aspects of a decision made to apply PR46**.** Further, that court also dealt with the provision of reasons for segregation under PR46,

12. I was asked to allow counsel to re-open their submissions limited to the extent of considering this new authority. I granted that and received submissions in September and October 2024. I have re-visited the relevant parts of this judgment in the light of that decision. I have been told, when the judgment went out to counsel in draft, that the Claimant was moved again in May 2024, to HMP Whitemoor and was returned to segregation.

Introduction

13. The Claimant challenges the ongoing lawfulness of the decision taken by the Defendant, through the HMPPS, to segregate him from other prisoners in the Long Term High Security Estate, **("LTHSE"),** by moving him to a DC**.** The Defendant applied PR46**,** which empowers him to stop a prisoner associating with other prisoners within a CSC**,** for the maintenance of good order or discipline or to ensure the safety of officers, prisoners or other any other person". He does not challenge the lawfulness of that original decision to place him in the CSC, in these proceedings. The Claimant argues that this course is in breach of his rights under Articles 3 and 8 under the European Convention on Human Rights, **("the Convention").** He further argues that the reasons given for his segregation are inadequate.

14. The Claimant uses the term "solitary confinement" to describe his separation from other prisoners. The Defendant does not accept the use of that term and uses "segregation" to describe the separation from other prisoners whilst having continued contact with prison staff, health care staff, faith leaders, legal teams and family and others.

15. There is no general definition of the term "solitary confinement" in domestic law. The term solitary confinement does appear in some of the authorities but the term "removal from association" is used in the rules and the decision making process. The Defendant relies on ***R (AB) v SSJ [2021] UKSC 28, [2022] AC 487*** to submit that this, and all cases, should proceed on an *"evaluation of the circumstances of the individual case".* Whatever term is used, it is a serious measure and should only be used, as a last resort when necessary and proportionate and its use must be fully justified. I do not think it necessary or helpful to attempt to provide a definition of the term "solitary confinement". Whatever it means it encompasses the segregation of one prisoner from other prisoners. I will use the term "segregation" as that is the word used in the decision making process at the core of this review.

16. The Claimant does not challenge the lawfulness of the original decision to apply PR 46, he intends to pursue that claim in separate proceedings. He argues that the Defendant has acted unlawfully in continuing to not allow him to associate with other prisoners, also held under PR46, in a CSC. I must therefore proceed on the basis that that original decision is not unlawful.

17. He seeks a mandatory order transferring him out of segregation and into circumstances where he is allowed to associate with other prisoners. (He was moved in May 2023 and was having contact

with a small number of other prisoners but has sine been moved again). He seeks a declaration that his placement in a DC is in breach of his rights under Articles 3 and 8 of the Convention and that the Defendant has breached common law requirements of procedural fairness and failed to follow her own policy in respect of (re)authorising the Claimant's segregation.. The breaches are said to be as a result of insufficient reasoning, which is also poorly and inadequately expressed. It is submitted that the decisions taken cannot be justified by the Claimant's unwillingness or inability to engage. Further, he seeks to establish that the policy as set out in the Operating Manual 2017 is unlawful because it justifies segregation, in general terms on the basis of a "passive refusal".

18. The management of the prison estate and the safe detention of prisoners is a complex exercise. Not only must they be kept safe and secure as individuals but the combination of prisoners is required to be monitored constantly to protect those individuals and staff. Responsibility for carrying out that function is delegated to HMPPS staff of sufficient rank who have experience and expertise in such matters.

19. The Defendant must have a mechanism whereby prisoners who are dangerous and or disruptive can be managed, sometimes by removal from the general prison population. The CSC's were established to achieve that aim. At the time of the hearing there were 68 places for prisoners held outside the general population under PR46, 56 of those places are in CSC's around the prison estate and 12 are in DC's within the segregation units of various prisons.

20. Spaces in DC's are used to accommodate prisoners when it is necessary to remove them from the CSC's. In April 2017 the **Close Supervision Centres, Long Term and High Security Estate Operating Manual** was issued. It describes the aims of the creation of the system of CSC's, (emphasis added),

> **Aims of the CSC system**
>
> The overall aim of the CSC system is to remove **the most significantly disruptive, challenging, and dangerous prisoners** from ordinary location, and manage them within small and highly supervised units; **to enable an assessment** of individual risks to be carried out, **followed by individual and/or group work** to try to reduce the risk of harm to others, thus enabling a return to normal or a more appropriate location as risk reduces. Referrals will be submitted subject to criteria which includes following a single serious incident, on-going or escalating serious violence, or when prisoners have not responded to attempts to manage them using existing processes, such as under the Managing Challenging Behaviour Strategy (MCBS) (Long Term and High Security Estate only).

21. The scheme is intended to manage, at a local level, those "selected" for movement into a CSC and to work towards "deselection" or removal from a CSC.

> **Local Management**
>
> Each of the CSC units will have a designated Operational Manager, who will work closely with the Unit's lead Forensic Psychologist,

and alongside a multi-disciplinary staff team. The Manager will be responsible for the management of the CSC unit, and/or designated cells, and all related work and procedures required, and will act as CSC contact for the establishment's senior management team. The Operational Manager from each establishment must attend the monthly CSC Management Committee (CSCMC) meeting and be given sufficient authority to act on behalf of their Governor to enable them to make and agree decisions at the meeting.

22. The role of the Lead Psychologist is integral to the system. They attend Central Management Group **("CMG"),** monthly meetings.

> CMG alongside local MDTs liaise directly with the prison based Personality Disorder treatment units to aid decision making in respect of prisoners referred to the CSC or CMG, or where CSC or centrally managed MCBS *(managing challenging behaviour strategy),* cases are transferred for treatment to ensure a handover of both behavioural and clinical information, and in particular current medication regimes, to ensure a safe and informed transfer.

23. The CSC Management Committee, **("CSCMC"),** meets monthly. Its decisions, reasoning and action points are minuted, they are to be read in conjunction with reports submitted. The purpose of the meetings includes reaching decisions on whether a referred prisoner meets the criteria for assessment for the CSC; whether, following assessment, a prisoner requires placement within a CSC; reviews and determines the location of prisoners within the CSC and movement within locations as necessary; considers options for the future management of prisoners with in the CSC as informed by the local MDT and make decisions regarding commissioning assessments for the de-selection of prisoners, and if such a de-selection is appropriate.

The History

24. The Claimant was convicted of murdering three people and attempting to murder two others. He is serving a sentence of life imprisonment.

25. The aims and purposes of imprisonment have often been re-stated but are now set out in statute in section 57(2) of the **Sentencing Act 2020**,

> *The court must have regard to the following purposes of sentencing—*
>
> *(a) the punishment of offenders,*
>
> *(b) the reduction of crime (including its reduction by deterrence),*
>
> *(c) the reform and rehabilitation of offenders,*
>
> *(d) the protection of the public, and*
>
> *(e) the making of reparation by offenders to persons affected by their offences.*

26. The punishment is to be achieved by the imposition of the sentence. It should be the fact of deprivation of liberty that punishes. The conditions of detention should not be intended to be punitive for the original offending, of themselves. An offender

may be deprived of their liberty but not their dignity to any extent that is more than proportionate and necessary. No restrictions or conditions can be lawfully applied unless they are proportionate and necessary. They must be justified by sufficient and proper reasons. ***Hirst v UK (2006) 42 EHRR 41*** *at [69 et seq],* ***Van der Ven v Netherlands (2004) 38 EHRR 46***

27. **Article 3** of the Convention provides that, *"No one shall be subjected to torture or to inhuman or degrading treatment or punishment".* It is an absolute right.

28. If rehabilitation is possible, to whatever extent, it should be attempted. For the type of offending in this case, the protection of the public, the offender and others with whom he comes into contact is always an essential consideration for the authorities.

29. The conditions of detention, any prospect of rehabilitation and the means of achieving it, have all to be based on a full and continuing assessment of risk. Risk in its broadest sense includes risk to the public, to all other prisoners, to all staff and to the prisoner himself. The risk presented by a prisoner requires continuing and informed assessment. That assessment will largely dictate levels of control and restraint. A prisoner who presents a danger to others throughout their sentence will remain in detention under conditions of restraint. Whilst risk requires continuing assessment, so too does the level of restraint to be applied. Such restraint must always be proportionate, necessary and justified.

30. It is the duty of a prison governor to maintain order and security, keeping prisoners secure and safe. They are required to protect the public by preventing escape; to protect prisoners and all staff from violence and abuse.

31. The Defendant, through her departments and agencies are experts in the management of prisoners, including the assessment of risk. As was said in ***R (Gilbert) v SSJ [2015] EWCA Civ 802***, the statutory regime recognises and supports this.

Prison Regime

32. **Prison Act s.12** requires the prison authorities to hold prisoners on remand awaiting trial and serving sentences at a prison directed by the Defendant.

33. **Prison Rule 47** authorises the Defendant to make rules for the management of prisoners ……..and *"for the classification, treatment, employment, discipline and control of persons required to be detained therein"*

34. **Prison Rule 45**

> **Removal from association**
>
> **45.**—(1) Where it appears desirable, for the maintenance of good order or discipline or in his own interests, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the governor may arrange for the prisoner's removal from association **[**for up to 72 hours**]**.
>
> (2) Removal for more than 72 hours may be authorised by the governor in writing who may authorise a further period of removal of up to 14 days.
>
> (2A) Such authority may be renewed for subsequent periods of up to 14 days.

(2B) But the governor must obtain leave from the Secretary of State in writing to authorise removal under paragraph (2A) where the period in total amounts to more than 42 days starting with the date the prisoner was removed under paragraph (1).

(2C) The Secretary of State may only grant leave for a maximum period of 42 days, but such leave may be renewed for subsequent periods of up to 42 days by the Secretary of State.

(3) The governor may arrange at his discretion for a prisoner removed under this rule to resume association with other prisoners at any time

(3A) In giving authority under paragraphs (2) and (2A) and in exercising the discretion under paragraph (3), the governor must fully consider any recommendation that the prisoner resumes association on medical grounds made by a registered medical practitioner or registered nurse working within the prison.

(4) This **rule shall not apply** to a prisoner the subject of a direction given under rule 46(1).

35. **Prison Rule 46**

Close supervision centres

46.—(1) Where it appears desirable, for the maintenance of good order or discipline or to ensure the safety of officers, prisoners or any other person, that a prisoner should not associate with other prisoners, either generally or for particular purposes, the Secretary of State may direct the prisoner's removal from association accordingly and his placement in a close supervision centre of a prison.

(2) A direction given under paragraph (1) shall be for a period not exceeding one month [or, during a coronavirus period, three months], but may be renewed from time to time for a like period [and shall continue to apply notwithstanding any transfer of a prisoner from one prison to another].

(3) The Secretary of State may direct that such a prisoner as aforesaid shall resume association with other prisoners, either within a close supervision centre or elsewhere.

(4) In exercising any discretion under this rule, the Secretary of State shall take account of any relevant medical considerations which are known to him.

(5) A close supervision centre is any cell or other part of a prison designated by the Secretary of State for holding prisoners who are subject to a direction given under paragraph (1).

36. The prison authorities had to adapt to the limitations and restrictions caused by the response required to the Covid pandemic. Those restrictions have had some considerable effect on the conditions of detention for a significant part of the recent history of this case.

37. The Defendant has a duty to maintain good order in prisons, it is therefore necessary to separate prisoners or move them, on occasion, out of the general prison population. If necessary there is the power to segregate one prisoner from other prisoners. That is a serious step with significant consequences and should only be done when it is necessary and proportionate. There is no doubt that segregation can have a severe effect on an already vulnerable person's state of mind, that is recognised in the **Prison Service Order 1700, (2001 amended 2022).**

Close Supervision Centre Referral Manual (PSI 42-2012)

38. All prisoners, but especially those held in the LTHSE**,** may be moved to a CSC,

> Desired Outcome
>
> 1.2 The aim of the referral process is to identify those prisoners who pose a significant risk of harm to others and fully document the risks to enable a decision to be made whether selection into the CSC system for assessment is necessary to prevent others from serious harm. It is vital the referral documents are completed in full and that reports are accurate, evidenced, use appropriate language, and reflect the current and/or potential risk that an individual presents.

39. The paragraph setting out the "desired outcome" makes it clear that movement into a CSC is for assessment in the prevention of serious harm to others. The assessment of risk is at the core of the process. A referral should only take place once "all options" have been exhausted or are inappropriate, as set out in the referral criteria. Prison staff are also required to consider whether a prisoner suffers from a mental illness or disorder.

Evidence and disputes of fact

40. The Defendant observes that there has been no application by the Claimant to cross-examine his witnesses, in particular Alex Worsman, who sets out the history of the risk assessment by the Defendant. Following Underhill LJ in ***Singh v SSHD [2018] Civ EWCA 2861,*** in the absence of testing by cross-examination I am bound to follow uncontradicted evidence unless *"it cannot be correct".*

41. In a claim for judicial review it is highly unusual to have witnesses called to be cross-examined. In the majority of cases there is no, or so little factual dispute that it has any bearing on the proceedings. This is a case in which there are very many areas of factual dispute. The Claimant challenges the veracity of most, if not all, of the reasoning and records kept during the period covered by this claim. Mr Armstrong submits that I should follow the approach taken by Linden J in ***R (NB & others) v SSHD [2021] 4 WLR 92 at [23]-[37]***

> *"37……..essentially it requires a common-sense approach to the evaluation of the evidence as a whole, applying the burden of proof and taking into account the fact that there has been no "live" evidence or cross examination. In my view, as part of this exercise it is permissible to take into account the quality of the evidence on a given point, and whether that evidence is within the knowledge of the deponent and, if not, the source of their information. In the case of exhibits, it is permissible to consider such evidence as the deponent provides to*

explain its contents and as to the source and reliability of the information which it contains."

42. I am bound to determine the factual disputes only on the written material. I accept that, in the absence of cross-examination I can reach conclusions on the areas of dispute, which have to be resolved, applying a common sense approach and always bearing in mind where the burden of proof lies.

43. I bear in mind that most of the records have generally been compiled contemporaneously or within a relatively short period of time. They are documents kept under the general scheme for recording reasoning and decision making. They should be viewed as being accurately kept in the course of the proper management of the prison service, unless that is shown not to be the case. They are often in the form of notes of meetings which are subsequently circulated for approval and or correction.

44. There are on some occasions other pieces of evidence that support a particular account upon which it is sensible and "common sense" to rely. A particular example is the conflict between accounts given about the movement of the Claimant to HMP Belmarsh in August 2021, dealt with below.

45. Unsurprisingly, given the time frame, the selection of documents in the bundles amounts to almost 3,000 pages of evidence. I was taken through all the relevant material carefully by counsel during the hearing and I have read that and the balance of the material again with care. I have not attempted to summarise or refer to all the documentation which has been considered.

History of offending

46. On 2 October 2008 the Claimant was sentenced to life imprisonment. The minimum term he must serve before being eligible to apply for parole was set at 35 years. He had been convicted by a jury in the Crown Court sitting at St Albans, of three counts of murder, two counts of attempted murder and one count of the possession of a firearm with intent to endanger life. His brother was convicted of the same offences. Three men had been shot dead. Two women, present in the house, were stabbed, with an intention to kill, and seriously injured.

47. The incident took place in a house in Bishop's Stortford, the Claimant and his brother had gone to the house in a dispute arising out of drug dealing and together carried out the attack. Both the brothers had gone to the scene with a Mach 10 firearm and a large quantity of ammunition. They carried out the attack, which was described by the Court of Appeal Criminal Division as a "massacre" and "ruthless and brutal". The Claimant's brother actually carried and used the gun.

48. The Claimant had denied the offences and had relied on the defence of alibi. He claimed to have been elsewhere at the house of a friend. He had been arrested attempting to leave the country. His appeal against conviction was unsuccessful, there does not seem to have been an application for leave to appeal against the sentence imposed. He has told Dr Craisatti recently that he still disputes his guilt.

49. Following conviction the claimant was assessed as Category A, he has remained at that categorisation throughout his detention. Category A prisoners are those whose *"escape would be highly dangerous to the public……"*.

History of conduct whilst in custody

50. On 13 March 2010 the Claimant caused serious injury to three members of the prison staff with a weapon made from a broken glass bottle. He says that the bottle was deliberately "planted" in his cell to implicate him and that he broke it, in order to have it available as a weapon of defence, if, as he expected, he was attacked by the prison officers. The incident occurred whilst he was being held as a Category A prisoner at HMP Frankland.

51. He was tried and acquitted on charges of attempted murder and assault. His case at trial was that he acted, in lawful self-defence, to pre-empt an attack on him by the prison officers which he believed was about to happen. The relevance of his acquittal is important in the continuing history of his status in detention.

Status of convictions and acquittals

52. It is a central plank of the Claimant's submissions that the verdicts of not guilty prove that he did not act in a way that was unlawfully violent and that the prison authorities should not have any regard to that incident in its planning and management of his detention.

53. Section 74 of Police and Criminal Evidence Act 1984, provides that a conviction is proof of guilt. An acquittal is not conclusive evidence of innocence ***R v Terry [2004] EWCA Crim 3252*** per Auld LJ at [43]

> *"An acquittal is not conclusive evidence of innocence unless by that word it is meant not guilty in law of the alleged offence to which it relates. Nor does it mean that all relevant issues have been resolved in favour of a defendant. In Hay, for example, positive innocence of the arson was not logically an inevitable conclusion to draw from the acquittal. It could have simply been that the jury had been unsure of his guilt in view of the alibi evidence. And, if evidence is relevant and admissible, we can see no reason for distinguishing between different types of evidence for this purpose."*

54. Mr Thakrar was found not guilty of all the offences on the indictment he faced. The acquittal on those charges is not conclusive proof of his innocence. They prove that the jury was not sure that the prosecution had discharged the evidential burden of disproving his claim of reasonable self-defence. In any event, a jury verdict is not reasoned, there is no basis for the submission that an acquittal proves that the jury was sure that he suffered from Post Traumatic Stress Disorder, **(" PTSD")** or that he does indeed suffer from PTSD.

55. The question of the acquittals was raised in a referral by the Claimant to the Prisons and Probation Ombudsman, the Claimant contested that the incident should not be relied upon for any purpose by HMPPS in determining the level of risk that he presented. The Prisons and Probation Ombudsman's view is set out as follows,

> *"Mr Thakrar was acquitted at Court of assaulting the three members of staff.*
> *However, that does not mean that he did not inflict (serious) injuries on them,*
> *whether or not he was guilty in law of assault. If, as was suggested, his actions*
> *amounted to pre-emptive self-defence, there is no reason to suppose that the*

same situation might not arise again. I am aware from dealing with other complaints, that Mr Thakrar says he suffers from Post-Traumatic Stress Disorder. That being the case, it must be assumed that his reactions are always
likely to be unpredictable. Notwithstanding the finding of the Court, I cannot
find the inclusion of the alert of risk to staff unreasonable. Furthermore, I do
not consider that the passage of time without a similar incident since that time
affords any reassurance, given that Mr Thakrar has been very closely managed
in the interim."

56. Mr Armstrong has sought to argue that the jury's verdicts of not guilty are the final word on the incident but I cannot accept that submission. The Claimant was acquitted and is therefore entitled to make the point that the case against him was not proved. However that does not mean that HMPPS are not entitled, and bound to, consider the incident in terms of risk assessment. That is particularly so in the light of the observations by the Ombudsman about the risk of unmanageable and unpredictable reactive behaviour by the Claimant.

Movement after acquittal

57. On 26 March 2010 he was transferred to the CSC at HMP Woodhill for assessment following the incident at HMP Frankland. The following month, April, he was selected for movement into a CSC. The CSCMC making that selection did not make any findings of fact about the incident at HMP Frankland. Such decisions are made for management and security purposes, (as are decisions about PR45), they are not hearings to determine the facts of an incident or any allegation arising from it, see ***R (Bourgass) v SSJ [2015] UKSC 54 at [92],***

"92. It is important to be clear at the outset as to the nature of the decision-making in question. Decisions under rule 45(2) do not involve the determination of a charge against the prisoner or the imposition of a punishment, either in form or in substance. As counsel for the Secretary of State emphasised, segregation decisions are not based on a determination of fact as to whether a particular event has occurred, but involve a judgment as to the risk posed to the good order and discipline of the prison, and whether the particular situation could be equally or better addressed by other measures, such as transfer to another wing, closer supervision on normal location or transfer to another establishment. Allegations may be made against a prisoner, but the subject matter of the Secretary of State's decision is not whether the prisoner behaved as alleged: these are not disciplinary proceedings."

58. In July 2011 he was moved to HMP Durham, and in the same month he was moved to the Healthcare Unit at HMP Full Sutton and then back to HMP Woodhill. He stayed at HMP Woodhill until he was moved to HMP Manchester in June 2013, from there he was moved to HMP Whitemoor in December 2013 and back to HMP

Woodhill in August 2014. In January 2015 he went back to HMP Full Sutton until March 2015 when he was moved to HMP Wakefield, he stayed there for two years and was moved back to HMP Woodhill in March 2017. From there he went to HMP Long Lartin in March 2018 and on to HMP Whitemoor in July 2018.

59. The Claimant was moved to the CSC at HMP Full Sutton in September 2019. At that stage he was held on **"mixed unlock".** This meant that he was able to mix with some other prisoners being held in the CSC.

60. On 7 April 2021 he was moved to a DC, at HMP Full Sutton, described by the claimant as solitary confinement. It means he is segregated from other prisoners. He was informed of the move and the reasons given in the **Initial Reasons Letter** dated 9 April 2021. He complains that the reasons given are insufficient and inaccurate, although I repeat that this decision is not the subject of challenge in this case,

> *"Dear Mr Thakrar*
>
> *This letter is to notify you that following discussion held with the Central Management Group (CMG), you are to be moved to a designated cell (DC) within HMP Full Sutton. Further discussions by the CMG will take place in due course regarding your future location within the CSC system.*
>
> *This decision has been taken due to your continued non engagement with the multi-disciplinary team at Full Sutton. Despite consistent efforts by our team to promote an open channel of verbal communication, you continue to ignore the team other than to make general applications or meet your basic needs. Since your transfer to the unit at Full Sutton your levels of engagement with a range of professionals has declined, including the Chaplaincy and Gymnasium staff.*
>
> *It is also of concern that you continue to choose not to engage with the current clinical team in order to address your risks and to progress through the CSC system. You have refused to attend regular review meetings in order to discuss your levels of engagement, CMP targets and any issues you may have had for a number of months, despite COVID safe measures being in place.*
>
> *What is concerning, is a documented incident where you made an indirect threat towards your Prison Offender Manager (POM) on the telephone systems where you stated; "you can only be a certain level of stupid before you need to have someone put your fist in their face, he will not learn any other way." This comment related to the recent OASys report your POM wrote for which you received a written warning.*
>
> *It is evident that you do not currently fit the criteria for the CSC unit at Full Sutton, despite the efforts, encouragement and support provided by the team. Your behaviour has not only been challenging for staff but has affected the progression of the other men on the unit.*
>
> *In terms of the DC you will have access to psychology services and will be able to apply for Purple Visits, I understand this is something you have wanted to access for some time now but the CSC building does not have the infrastructure to support this, I'm pleased to say the segregation unit at Full Sutton does have the infrastructure in place.*

In terms of future progression we are more than happy to welcome you back to the unit at Full Sutton in the future when you improve your levels of engagement with the local MDT and the CSC process as a whole, where we will be waiting to engage with you to aid in your progression through the CSC system.

Yours sincerely

Governor—Head of Small Units"

61. As can be seen from the terms of the letter, the Defendant's explanation arises, substantially, from the Claimant's continuing refusal to engage with the MDT at HMP Full Sutton and the clinical team, in addition to the threat to assault a member of staff.

62. The Claimant says that the move on 7 April was a *"so called emergency transfer"* which meant that the CSCMC had not given prior approval. The letter sets out that the decision was taken by the CMG. The Claimant complains that he could have been placed under "restricted unlock" within the CSC Unit and that that step was never considered. He states that a white, racist prisoner, who posed a greater risk, was moved out of the CSC to make way for him, in what he describes as a straight swap".

63. He relies upon this "swap" and other similar instances as further evidence of a deliberate and illegitimate campaign to cause him psychological harm.

64. Additionally, the decision in the letter of 9 April was based upon an indirect threat made to assault his Prison Offender Manager, **("POM").** The threat was noted, there was no adjudication. The Claimant's solicitor suggests that the fact of there being no adjudication means that the threat was never regarded as a "serious concern".

65. The Claimant speaks of a "false allegation", but the evidence shows that the threat was recorded. It was stated to a third party in the course of a recorded telephone conversation. It was submitted, on his behalf, that it was an indirect threat and that it would not have caused serious harm. Viewed objectively, it is a threat to assault a prison officer by striking him in the face.

66. The threat was an important, but additional, contribution to the decision taken. A thread of concerns about the Claimant posing a risk of violence to others runs through the entire history. Whether it was necessary or desirable to have held an adjudication hearing when the comment was recorded does not need to be resolved in this case but it does not follow that the failure to pursue the matter to adjudication does not mean that it was not treated as a serious concern.

67. In any event on 30 April 2021 the Defendant wrote to the Claimant's solicitors, making clear that it was not an emergency response, rather describing it as an "operational move", given the "increased risk" presented by the threat to the POM "**as well as** his continued non-engagement with the staff, Psychology team and the CSC process".

68. The recommendation made to the CSCMC dated 14 April 2021 concludes that the Claimant was "appropriately placed within the CSC system and Segregation DC here at Full Sutton".

69. The Claimant's concerns and reactions are noted in the document. It is said that he complained that he had not yet received a copy of the report to be submitted to the CSCMC on 20 April. He further asks that his representations, set out in his letter to the Independent Monitoring Board, **("IMB"),** be passed on to the CSCMC. He did not believe that the reasons given were a sufficient justification for the move. He stated that a segregation unit was not the best location for him, given that he had been diagnosed with PTSD. He requested a move to HMP Whitemoor and said that he would be content to wait for a few weeks in Belmarsh until a space became available at Whitemoor. The Claimant disputes that he responded in that way.

70. A further CSCMC meeting was held on 18 May 2021. The entry in the minutes relating to the Claimant is as follows,

> ***"Kevan Thakrar (DC) –*** *The local team have reported that Mr Thakrar has had a very poor month(s) in terms of both behaviour and engagement. Mr Thakrar is reported as being back on back wall unlock protocol due to threats made to staff and is back on an open ACCT document. His engagement with staff is reported as being minimal, only engaging when he required something and actively ignores the unit governor. It is noted that he has declined psychology sessions offered to him in the segregation unit and there has been discussion with him in regard to him actively influencing other prisoners in a negative manner.*
>
> *In order for Mr Thakrar to progress, he needs to engage with the local MDT and to take up on the offered psychology sessions, with a view to reducing the risk he currently presents, before overall risk reduction can be addressed in line with his CMP. He is appropriately placed in the CSC estate at this time."*

The Move to Belmarsh

71. On 31 August 2021 he was transferred to a DC at HMP Belmarsh. He complains about this move to HMP Belmarsh and his continued detention there. At the time of the move, he was involved in civil proceedings at Central London County Court. His solicitors had requested that he be available to attend court in those proceedings.

72. Those proceedings were blighted by the Defendant's disclosure failings. They were eventually resolved in the Claimant's favour. On 4 January 2022 the defence was struck out and on 17 August 2022 the Defendant's claim for relief from sanction was refused.

73. The Claimant did ask to be moved to HMP Belmarsh, and his solicitors did ask that he be able to attend court. He appears to deny making such a request. I have no doubt that his solicitors have acted diligently on his behalf throughout and that they quite properly made the request on his instructions and with his knowledge.

74. As an alternative he appears to maintain that even if such a request was made, that fact has been deliberately exploited by the Defendant to justify the time he has spent at HMP Belmarsh.

75. He says that the request that he be made available to attend court did not necessitate his being moved to Belmarsh at all. The letter from his solicitors is dated 4 August 2021. It did request that he be produced at court for the duration of the trial.

"[i]t is in the interests of justice that our client is able to attend the trial in person, as it is necessary that he be able to provide us with his confidential instructions on the evidence and issues that arise at the trial, and so that he can give evidence in person about the breaches of his human rights."

76. Given the Claimant's status in the prison regime, a move to London to attend court was bound to take him to HMP Belmarsh.

77. His solicitors were right to request that he be available to attend court. It was right that the request was granted. The Claimant would have been justifiably unhappy if he had not been able to attend the trial.

78. Having been placed in a DC at HMP Belmarsh, he was promoted back to Enhanced Incentives and Earned Privileges status **("IEP").** HMP Belmarsh does not have a CSC unit so he would have to stay in a DC until moved to another prison. He has since been moved to a CSC in HMP Manchester in May 2023.

79. His belief that his move to the segregation unit at HMP Belmarsh was "a straight swap" with a white, racist prisoner replicates what he says was the position when he was moved from the CSC to the segregation unit in HMP Whitemoor to allow preferential treatment to another, highly dangerous, white racist prisoner. Further, he adds that a similar move was attempted for another racist prisoner. He describes this as his "being bounced around to enable the CSCMC to do favours for racist prisoners".

80. The CSCMC monthly review dated September 2021 shows a record that he has "worked well with staff and has remained polite and well-mannered in all interactions". The document also notes that his transfer "was facilitated following a request from his solicitor for an impending court case and to engage with a fresh team". The Claimant has noted the word "False" alongside that entry on the document.

81. A conversation between the Claimant and a prison officer about his move to Belmarsh was recorded on a body worn camera on 1 September 2021. In that discussion he said that he had requested to come to Belmarsh as he had a case in the County Court, in which he was suing the prison service.

82. On 18 January 2023 the Claimant said he wished to remain at Belmarsh until his impending case was finished.

83. In the generality of his evidence, he describes the conditions under which he has been routinely held since 2010 as "amounting to solitary confinement". He sets out a history of a scheme which previously operated, the "Continuous Assessment Scheme **("CAS").** In dealing with that scheme he says, *"knowing the history only reinforces **the feelings of powerlessness to bring about change and** indicates to me the lack of care and compassion, by those managing the process".*

The Claimant's Evidence

84. The Claimant has made lengthy witness statements, which I have read and considered carefully. I highlight certain aspects but that must be understood to be highlights only, I have read the material and do not attempt to replicate it here.

85. He emphasises that he presents no risk to staff or other prisoners. He points out that there have been no adjudications resulting in punishment of confinement to his cell. He relies heavily on his acquittal following the incident at HMP Frankland. He maintains that his segregation has been brought about as part of a deliberate plan based on the bad faith of HMPPS to treat him unfairly and therefore unlawfully.

86. He maintains that he is only "refusing" to engage in assessments and/or therapy that would be detrimental to him. He submits that there is a sound evidential basis for his diagnosis of suffering from PTSD and that it is therefore not appropriate for the prison authorities to investigate that further. He argues that his condition means that it would be detrimental to him for any assessment or therapy sessions not to be conducted on his terms. He has set those terms out in a document, which specify how such sessions should be conducted and that no third person should be present.

87. He says, "I have always expressed a willingness to engage with specified interventions as long as they are offered under conditions which are therapeutic and conducive to my mental health".

88. A desire to bring about change in the system and his frustration at not being able to control events seems to underpin his account. He clearly feels powerless to control his own situation. Being in prison inevitably denies an individual control over their own situation. That is the punitive element of the deprivation of liberty.

89. He often feels that his detention in "segregation" is being arranged or maintained only to cause him "severe psychological harm".

90. He usually refers to the segregation system as "solitary confinement". It is not difficult to understand his profound dislike of the regime. However, on the authorities, the segregation regime applied in this case, does not amount to total solitary confinement, as per Singh LJ in ***R (Dennehy) v SSJ and Sodexo Ltd [2016] EWHC 1219 (Admin),***

> *"121. Applying the principles which can be derived from the authorities on Article 3 to the facts of the present case, it seems to me that the following features of this case are of particular importance.*
>
> *122. First, there is no suggestion that the Claimant has been kept in segregation with the intention of debasing or humiliating her; nor any suggestion that the measure was calculated to break her resistance or will. There has been no element of premeditation in the sense used by the European Court of Human Rights.*
>
> *123. Secondly, the segregation regime has not amounted to total solitary confinement and has been modified as conditions have permitted. For example, the Claimant has been permitted to communicate with some other people; has been able to do some work as an orderly and has had access to facilities such as a library and a gym.*
>
> *124. Thirdly, although the Claimant suffers from a mental disorder, the impact of segregation on her health has been monitored by professionals, including psychologists, and it has been certified that she can continue to be kept in that environment at all relevant times.*

125. Fourthly, the Claimant's segregation has at all material times had a legitimate aim and has not been imposed for arbitrary reasons. The reality is that the Claimant is in an almost unique position in the prisons of this country. She poses an exceptionally high risk to others, including other prisoners. This is not to say that the Claimant's segregation can be indefinite but that is not what the Second Defendant has sought to do. Rather the evidence before this Court makes it clear that reasonable efforts have been made to facilitate the Claimant's ability to move to another environment within the prison estate but only in a safe and structured way."

91. One of the difficulties faced by the prison authorities when allocating prisoners is to bear in mind security concerns borne out of existing animosities and tensions between inmates. There are a number of racist prisoners in the LTHSE, and care has to be taken to ensure that prisoners are not placed at risk by the combination of such persons in a unit. The Claimant acknowledges that there are some individuals with whom he should not be held but appears to suggest that this consideration is being used by HMPPS to work to his detriment.

92. He quotes a conversation between him and a member of staff when it was said that he complains a lot, he answers that he has "a lot to complain about". Amongst his complaints, are those to be expected from most prisoners about heating, food, transport, shaving, searching and all the daily routine. Additionally, however, he suggests that the guards deliberately failed to wear masks during the pandemic to increase the risk to the prisoners which ignores the fact of an increased risk to themselves. He also cites the fact that when the guards at Belmarsh distribute mosquito cream they hand over an amount of cream rather than passing the tube to him. It is understandable how frustrating restrictions of that kind might be, but those restrictions are neither unfair nor unlawful.

Alex Worsman's Evidence

93. Alex Worsman is the chair of the CSCMC and has oversight of the CSC. He has a detailed overview of the CSC estate and can deal specifically with the Claimant's position. He has provided lengthy and detailed evidence in his witness statement, again, it is not necessary or helpful to recite it in full.

94. The CSC system provides "a multi-disciplinary risk management approach" to dealing with prisoners who have shown actual violence or disruptive behaviour or who have demonstrated a propensity to create such a risk.

95. Such prisoners are moved under PR 46 into the CSC and/or a DC. All DCs are located in the segregation units of high security prisons. A prisoner held under PR46 has no contact with "mainstream" prisoners. Only those assessed as suitable to be held in a CSC and/or in a DC can be placed there whilst awaiting or following assessment. In 2023 there was a capacity of 68 spaces, 56 in CSCs and 12 further spaces in DCs. Each unit has an operational manager who works closely with the lead Forensic Psychologist. The purpose is to *"safely and humanely manage individuals under PR46, whilst working to engage them in a progressive treatment and intervention plan that is tailored to their individual risk areas and personal needs".* It is clear that the role of the psychologist team is integral to the work of assessment and management of the individuals held on a unit. At the start of a placement all prisoners are subject to a regime which prevents association with

others. Any alteration in status follows assessment that the level of risk no longer requires such a restriction.

96. If a prisoner has to be moved out of a CSC unit, they can be held in a DC. There is no upper limit on the time of such a placement. The CMG and CSCMC meet monthly to review such placements, it is the aim to relocate a prisoner back into a CSC as soon as it is appropriate and operationally possible.

97. The CSCMC works to allocate prisoners back into a CSC, with access to psychological intervention, if there is a willingness to engage in "progressive work". This question of a "willingness to engage" is at the core of the Claimant's case. It has effectively led to stalemate.

98. The CSCMC has devolved authority from the Defendant. It is made up of senior officials from the HMPPS and representatives of the operational and clinical leads from the Directorate of Security. An independent person, a senior IMB representative, also sits on the committee. It is intended to provide a "multi-disciplinary approach to assessing an inmate's progress that is separate from the individual prison in which they are held".

99. The meetings concerning the Claimant's case were chaired by a Governor. However, that was not in compliance with the decision in ***Bourgass (supra).*** That has now changed and there is no longer a governor on the CSCMC.

100. Facilities vary from prison to prison and not all CSCs have the same amenities but all, including the DC's, have access to social and legal visits and telephone calls, exercise and access to gym facilities, work and education in cell, (if assessed as suitable) and pastoral support. All are visited by a representative of the IMB.

101. HMP Belmarsh also allows a daily visit to a gym on the segregation unit and one outdoor session per week with a PE instructor. Prisoners have access to primary health care, including mental health services, there are also regular appointments with a psychologist available to an inmate which can enable input into the reporting process. HMP Belmarsh has assessed the Claimant as suitable for educational work and he has been able to complete a maths course.

102. Although these prisoners are segregated from other prisoners, they have contact with officers, governors, nurses and other medical staff, clerics, IMB representatives in addition to their social and legal visits, that is not properly described as total solitary confinement, see ***Dennehy*** (supra). The Claimant had access to a telephone whilst at Belmarsh and his daily average time for social calls between September 2021 and February 2023 was about 150 minutes. That was in addition to legal calls which ranged from five up to 40 minutes a day on average.

103. Persons held in a CSC have a Care and Management Plan, **("CMP").** It is usually provided in the four weeks after their selection. The CMP identifies the work required to reduce and manage the risk that a prisoner poses. It is axiomatic that risk must be carefully assessed before it can be managed and reduced. The plan is reviewed quarterly to measure conduct and progress and, as appropriate, set new targets. Mr Worsman describes the CMP as the "core of the decision making", they require active input from the prisoner himself and from all members of the MDT.

104. Additionally, weekly reports are provided by a Personal Officer who should meet the prisoner to discuss conduct over the previous week. The weekly reports are

available to the prisoner on request, although they may be redacted. The weekly report is used to inform a monthly report which is submitted to the monthly CSCMC meeting.

105. The monthly report goes to the CSCMC meeting to enable the committee to review the decision about placement and possible movement, (de-selection). The report explains why de-selection might not be appropriate and his continued placement in the CSC should continue. It highlights areas of risk, progress, concerns and any other relevant factors.

106. The monthly reports should be disclosed to the prisoner and/or his legal representative. He is permitted to submit representations which the committee should consider. After the meeting the report is updated, and a copy is provided to the prisoner.

107. Further, an annual review is undertaken by the MDT to consider the management of the prisoner, which includes any referrals, any consideration of re-categorisation, charges, parole, treatment, any other changes and, in particular the long-term plans. A copy may be disclosed to the prisoner if requested.

108. The position of a prisoner held in a DC is also reviewed at the CMG monthly meeting. The appropriateness of their continued placement is discussed. The reason for the original placement is looked at against any change of circumstances with a view to whether there should be a recommendation to the CSCMC for a move.

109. Ultimately the CSCMC makes the decision, having considered the CMG's recommendation. It may raise the question of location of its own volition. Prisoners and their legal representatives may make representations to be considered by the CMG.

110. Progress, and movement out of the CSC system can be agreed, if the MDT assesses, and the CSCMC agrees, that the level of supervision and control is no longer necessary. These are decisions reached on an assessment of risk, and any progress made from the original assessment of level of risk.

111. Above these layers is another body, the CSC Independent Advisory Panel. That is made up of the CSCMC, CMG, Governing Governors and a number of independent experts, including from the Cambridge Institute of Criminology, Oxford University, an Emeritus Professor of Forensic Psychiatry, the Greater Manchester NHS trust, NHS Head of Health and Care partnerships, the Clinical Director of Mersey Care and Clinical Directors of high secure hospitals. Prisoners are allowed to write to this panel raising their concerns. Additionally, a prisoner has recourse to the Prisons and Probation Ombudsman.

112. Mr Worsman describes the Claimant's progress as poor since being placed on PR46. Whilst he can be polite and has engaged in educational, vocational and "intervention" work, he is on other occasions hostile, threatening and disruptive. The complaint is that he has targeted staff who challenge his behaviour and, when possible, incites other prisoners to disengage.

113. He refuses to cooperate with prison psychologists or to engage in assessments unless it is carried out on his terms. He has refused many offers of different arrangements for meeting with the psychologists. He insists that meetings should take place as he requires. He has written out those terms, he insists that they be on

a 1:1 basis, in certain locations and duration but in particular he insists that the psychologist must oppose any plan to move him to another CSC. That was considered to be an attempt at "conditioning and controlling behaviour".

114. The Claimant has privately commissioned a number of assessments, which HMPPS have allowed. The reports vary on the diagnosis of PTSD but the most recent commissioned by the Claimant and provided by Dr Craisatti in 2022 (see below) concludes that he probably does not present such a high level of risk and that after assessment he could quite possibly be re-categorised as Category B.

115. HMPPS have offered an alternative, an Emeritus Professor of Forensic Psychiatry which the Claimant has also declined. This expert was apparently consulted originally by the Claimant.

Issue of non-engagement

116. The issue of his "non-engagement" is at the core of this case. The Defendant says that the Claimant refuses to engage, he says that the Defendant refuses to allow him to engage on a proper basis. In reply the Defendant says that the manner in which he seeks to demonstrate his engagement, "on his own terms" is not true engagement and in any event is not viable given his status as a life prisoner. By way of illustration his "willingness", or otherwise, to work with a psychologist is relied upon by both sides to make their point. The Claimant says that he will work with Dr Craissati, The Defendant has facilitated such consultations but says he also has to work with the Medical team within the HMPPS. They have offered the opportunity to work with the Emeritus Professor, who was apparently previously requested by the Claimant. He now refuses that offer. A stalemate results.

117. The prison authorities have to manage a large number of prisoners detained at different categorisations and for very different lengths of sentence. For most long-term prisoners there should be scope to work on rehabilitation and re-integration. That can only be undertaken on the basis of full and proper risk assessment and a willingness to engage on both sides.

118. By way of an illustration. A refusal to accept findings of guilt of sexual offences, after conviction, is not uncommon amongst serving prisoners, (not here), that gives rise to difficulty in terms of sentence planning, in ***R (Potter) v SSHD [2001] EWHC Admin 1041.*** How does the system work to rehabilitate an offender who refuses to accept guilt? Sentence planning must be directed at "the individual circumstances" of an offender. A refusal to acknowledge guilt of a sexual offence could lead to a refusal to attend a Sexual Offences Treatment Programme, **("SOTP")** which could lead to a refusal of an application for enhanced status. As Moses J said in ***Potter***, *"there is neither anything unfair or irrational in the schemes or in their application to these prisoners in refusing enhanced status on the ground of a refusal to Attend a SOTP in the face and by reason of their denial of their guilt."* The Claimant is not denying his guilt of the murder offences but his inability or unwillingness to engage means that sentence planning, in its broadest sense, cannot be carried out. The risk that he may, or may not, continue to present cannot be assessed and so stalemate is reached.

119. The Claimant does not accept that the comparison with sexual offenders is an appropriate parallel. It is not the same position, but it is similar and it raises the same questions as to how such a refusal to engage can be managed with the prison estate.

120. The statutory duties relating to safety of others means that the prison authorities cannot step back and accept his unwillingness to comply. That unwillingness has the same impact, even if passive. A passive refusal is still a deliberate refusal to engage.

Dr Craissati's report

121. Dr Craissati met the Claimant on three occasions, the first is described as a chat because he was not happy with the arrangements. The prison made new arrangements which allowed two further meetings to take place in conditions about which he was content. She has seen many previous medical reports, a number of CSCMC plans and monthly reviews for the CSCMC between September 2021 and April 2022.

122. Dr Craissati was confident that she had the Claimant's cooperation, and he appeared to be willing to discuss matters with her openly and courteously. He describes feelings of heightened anxiety at various times. He seems to have attributed his PTSD to an assault in 2008, saying that his symptoms appeared after the attack.

123. She concluded that his risk of violence to prison officers is "moderate" and to civilian staff as "low". Overall, she assessed his risk as indicating that he should be re-categorised as Category B following six months of being "tested" within mainstream Category A conditions. On her risk assessment there does not need to be two practitioners present in the room during any session.

124. Dr Craissati envisages a possible plan which should contain the following,

> Agreement on the degree and nature of risk posed by Mr Thakrar
>
> Whether there is any outstanding work required before deselection to Category A
>
> What mental health support is appropriate to offer to meet his needs?
>
> Provisional agreement as to what needs to be achieved in Category A (main location)
>
> in order to be considered for recategorization to B

125. Unsurprisingly, she advocates consideration of the degree and nature of the risk posed before moving on.

GENERAL PRINCIPLES

126. The Claimant must prove to the required standard that his grounds are made out. The decisions under challenge have been made by individuals with experience and expertise and are made in the course of the exercise of their powers to conduct the business of detaining convicted persons in circumstances that, so far as possible, avoid unnecessary risk, and maintain safety and good order within the LTHSE.

127. In this review I am not required to consider what decision I would have reached if the original decision was under challenge. I am not required to decide whether I agree with the decisions under challenge. This is not an appeal against the decisions, rather it is a review in order to establish if the decisions taken are unlawful,

procedurally unfair or irrational, and if unlawful, that any error would have made a material difference to the decision under challenge.

GROUNDS OF CHALLENGE

128. There is a degree of overlap between the grounds of challenge, it is not easy to separate them clearly one from the other. That is perhaps inevitable in a challenge of this kind. However, it does mean a certain degree of overlap in the discussion on the separate grounds. Ground 1 is obviously the principal challenge, and some later arguments stand or fall with that ground.

129. **Ground 1:** the Defendant's ongoing segregation of the Claimant is in breach of his right to not be subject to inhuman and degrading treatment contrary to Article 3. Having regard to all the circumstances of the Claimant's segregation, has there been a breach of his rights under Article 3?

130. The question of the initial placement into segregation is not challenged as amounting to a breach of his Article 3 rights in this claim for review. Has the ongoing placement become a breach in all the circumstances. If the initial placement is not challenged, I must accept it as lawful. When does it become unlawful. Is the passage of time alone enough to change a lawful placement into an unlawful continuation of such a placement or must there be a change in the circumstances justifying the continuation of such a placement.

131. Further, if his 'conduct' justified the original placement, does that require a change in the Claimant's conduct before it is no longer justified? If the conduct arose, even in part, from the Claimant's mental health problems, must the Defendant have to be able to assess those problems before making any further decision?

132. It is for the Claimant to prove, beyond reasonable doubt, that there has been a breach of the prohibition against inhuman and degrading treatment. These are clearly fact specific questions and there can be no general rule as to the length of time of such a placement, save that it should never be for longer than is necessary.

133. Article 3, in this context, was considered in ***R (Bary) v SSJ & The Governor of HMP Long Lartin [2010] EWHC 587 (Admin)*** at [30] per Aikens LJ,

> *"……. The cases establish a number of general principles. First, Article 3 is absolute. It imposes a negative obligation upon states to refrain from inflicting serious harm, but also a positive obligation not to adopt practices which expose individuals to such ill-treatment as falls within Article 3. Secondly, it is for the applicant to establish a breach of the prohibition and the standard of proof for that is "beyond reasonable doubt". Thirdly, a breach will not be established unless the conditions and regime in which the prisoner or detainee was held attained a minimum standard of severity. Fourthly, the assessment of that minimum standard depends on the circumstances of each case, such as the duration of the treatment, its physical or mental effects and, in some cases the sex age and health of the victim."*

134. In ***Bary*** (supra) the Divisional Court considered "harsh" regimes and at [31- 32],

> *"31. Both counsel referred us to the ECtHR decision of* ***Van der***

Ven v Netherlands, and *submitted that it gave useful guidance. The case concerned intrusive strip searches. The ECtHR found that the detention and the general regime under which the applicant had been held were not in breach of Article 3.*

At paragraphs 48 – 51 the court confirmed the following additional points. First, in deciding whether Article 3 has been breached, the purpose of the treatment is important; in particular whether its purpose was to humiliate or debase the victim. Secondly, in order to decide whether a detention constitutes inhuman or degrading treatment, both the cumulative effect of the conditions and the specific allegations of the victim have to be considered. Thirdly, the fact of detention in a high security prison facility, either on remand or following conviction, cannot by itself be a breach of Article 3.

But the court does have to examine the effect of the regime on the person concerned. A state must:

> *"ensure that a person is detained in conditions which are compatible with respect for his human dignity, that the manner and method of the execution of the measure do not subject him to distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention and that, given the practical demands of imprisonment, his health and well-being are adequately secured"*

Lastly, the court stated that complete sensory isolation, coupled with total social isolation, can destroy the personality and constitutes a form of inhuman treatment which cannot be justified by the requirements of security or any other reason. But the removal from social association with other prisoners for (e.g.) security or protection reasons does not of itself amount to inhuman or degrading treatment. In order to decide whether such treatment breaches Article 3:

> *"...regard must be had to the particular conditions, the stringency of the measure, its duration, the objective pursued, and it effects on the person concerned".*

32. Even harsh regimes may not be in breach of Article 3, if the regime is justified by the particular risks presented by the prisoner. Thus, restrictive regimes have been upheld in the case of high security prisoners who pose serious security risks. So in the case of ***Ocalan v Turkey,*** *the applicant was the leader of the Kurdish separatist group known as the PKK. He was kept in solitary confinement on a remote island, where he had contact only with prison staff, although he had access to books, newspapers and a radio. He saw a doctor every day and lawyers and his family once a week. The Grand Chamber found that the general conditions in which he had been detained had not "thus far reached the minimum level of severity required" to come within Article 3."*

135. The Court went on to deal specifically with the obligation on prison authorities to "protect the mental health" of prisoners. Conditions capable of being justified for prisoners not suffering from mental illness may be, or become, inhuman or degrading treatment if a prisoner suffers from some types of mental illness. That is a question of degree to be determined on the facts of each case.

136. Notwithstanding that the court was satisfied that Mr Bary was vulnerable on account of his pre-existing mental health problems, it found that he had failed to prove to the necessary standard that the regime imposed upon him amounted to inhuman or degrading treatment such that his Article 3 rights had been breached. The court found that his mental health condition imposed a "duty to monitor" the effect of any change of regime upon him. They found that the change of regime had, in combination with other factors, brought about a change from "moderate" to "moderate to severe" in his condition.

137. At [36] the Court set out the general approach to be taken,

> *"There is, therefore, no test of universal application; it all depends on the facts of the individual case. We must examine, among other matters: the physical conditions in which the detainees are held; the regime to which they are subject; the extent to which they are segregated or isolated from other prisoners; the risk they present to staff within the prison; the risk of escape and the dangers which they would present to the public and to the public interest if they were to escape; the risks they present to themselves, by way of self-harm; the risk they present to other prisoners, not in this case so much by way of direct violence but by way of propagandising or 'radicalising' them; whether the risks which they present justify and/or are proportionate to the conditions and regime in place; whether the conditions or regime have been imposed for the purpose of humiliating, embarrassing or punishing them or for some other base or sinister motive; whether and in what respects the detainees are vulnerable, whether by reason of existing physical or mental condition or otherwise; the length of time to which they are subject to these conditions and to this regime; the contact which they have with their families; the medical and psychiatric services which were made available to them and the effect that the conditions and regime have had upon them and their physical and mental state of health. It is for the court to balance all these matters, before deciding whether the applicant has proved, beyond reasonable doubt, that there has been a breach of Article 3."*

138. To amount to a breach the conditions must attain a minimum level of severity, that minimum level is assessed from a starting point that detention inevitably causes suffering and humiliation. The loss of liberty and family life alone cause that.

139. Bad faith in the decision-making process would mean that the measure was not lawful as not being demonstrably necessary and proportionate, ***Ahmad v UK (2013) 56 EHRR 1 at [212],***

> *"Finally, in order to avoid any risk of arbitrariness resulting from a decision to place a prisoner in solitary confinement, the decision must be accompanied by procedural safeguards guaranteeing the prisoner's welfare and the proportionality of the measure. First, solitary confinement measures should be ordered only exceptionally and after every precaution has been taken, as specified in para.53.1 of the European Prison Rules. Secondly, the decision imposing solitary confinement must be based on genuine grounds both ab initio*

as well as when its duration is extended. Thirdly, the authorities' decisions should make it possible to establish that they have carried out an assessment of the situation that takes into account the prisoner's circumstances, situation and behaviour and must provide substantive reasons in their support. The statement of reasons should be increasingly detailed and compelling as time goes by. Fourthly, a system of regular monitoring of the prisoner's physical and mental condition should also be put in place in order to ensure that the solitary confinement measures remain appropriate in the circumstances. Lastly, it is essential that a prisoner should be able to have an independent judicial authority review the merits of and reasons for a prolonged measure of solitary confinement."

140. What amounts to a prolonged detention and whether it is an unnecessary prolongation is also entirely fact specific. It should not be longer than is necessary on the facts of a given case. Additionally, the nature of the segregation is also highly relevant. Social isolation is avoided or mitigated by contact with staff, medical teams, lawyers, independent monitors, family, clerics and others. Such daily contacts are part of the pattern within segregation, the quality and quantity of such contact cannot be isolated or separated from the question of the duration of segregation. It is all part of the picture to be assessed. The less contact with others, the greater the impact of segregation and the more the passage of time becomes a concern. The number of social and legal visits and calls also form part of the picture. The Claimant has a significant number of visits and telephone contact with others.

141. As is clear in, ***Ramirez Sanchez v France (2007) 45 EHRR 49 at [139],*** the decision to segregate and the continuing decisions to maintain segregation must be conducted with absolute procedural fairness. Such decisions must not be either arbitrary or made in bad faith.

"However, in order to avoid any risk of arbitrariness, substantive reasons must be given when a protracted period of solitary confinement is extended. The decision should thus make it possible to establish that the authorities have carried out a reassessment that takes into account any changes in the prisoner's circumstances, situation or behaviour. The statement of reasons will need to be increasingly detailed and compelling the more time goes by.

Furthermore, such measures, which are a form of "imprisonment within the prison", should be resorted to only exceptionally and after every precaution has been taken, as specified in para.53.1 of the Prison Rules adopted by the Committee of Ministers on January 11, 2006. A system of regular monitoring of the prisoner's physical and mental condition should also be set up in order to ensure its compatibility with continued solitary confinement."

142. ***Sanchez*** is a comparatively old case, and no measure of time can be imported from one case into another but more than 8 years did not meet the test for a breach of Article 3 in the facts of that case.

143. Mr Armstrong submits that contact with persons other than fellow prisoners does not mitigate the isolation. He describes that suggestion as 'misconceived'. That is

particularly so, in light of the Claimant's mental health problems, which he submits are largely being ignored. He submits that segregation is not justified, reasoned or properly explained and invites the court to find that this is being done in bad faith to "break the Claimant's will and/or resistance".

144. Clearly the court in ***Dennehy*** did not agree with the submission that contact with other persons, even if not other inmates, does not mitigate the impact of segregation. The Claimant has social visits and a significant amount of telephone contact with family and friends. Whilst from his perspective contact with his legal team, medical teams, civilian staff and pastoral visitors may not be of the same value as contact with other prisoners, it is nonetheless contact with others. It prevents or mitigates the sense of deprivation of human contact which is part of his argument. Although the Claimant does not accept that it has any value, there is additionally regular contact with prison staff.

145. Daily life on a CSC or even in a DC is far from what an individual, in this case Mr Thakrar would choose, but it cannot be said to reach the very high level of ill-treatment required to be classified as a breach of his Article 3 rights. I cannot find any evidential basis for the contention that his placement is being deliberately maintained in bad faith to break his will or resistance. In reality a minimal amount of engagement might well have brought about a relaxation in the strictness of the regime.

146. I have carried out a rigorous examination of the evidence presented by the parties. I cannot find an evidential basis that the continuation of the Claimant's removal from association reaches *"the minimum level of severity which is necessary for article 3 to apply"*, as described by Lord Reed in ***R(AB) v SSJ [2021] 3 WLR 494.***

147. In that case the duration of the 'treatment' was a relevant factor but was only one of a number of relevant factors to be considered. There are, as the Supreme Court observed, no 'precise rules and no limit or definition of time has been laid down. As, is always the case, each claim turns on its own facts. ***Sanchez*** provides nothing more than an example of how a very lengthy period of detention in segregation may still not amount to a breach of the detained person's Article 3 rights.

148. Mr Armstrong further argues that the Claimant's mental health is highly relevant and should weigh heavily in the balance. He is right to say that an individual's mental health can be a highly relevant factor, see ***R (AB),*** but it is a factor which has to be evaluated before it can be given its appropriate weight in the assessment. The Claimant has demonstrated that he is capable of undertaking an interview and assessment with a psychologist, but he insists on choosing which psychologist. Even when offered an individual he has previously selected he refuses. HMPPS should consider the report of Dr Craisatti as part of their assessment, but they must be permitted to have an assessment carried out by one of their own team of experts. A choice as to which doctor should treat a prisoner may well be one of those rights lost with incarceration, it is not a right available to most patients outside the prison system.

149. **Ground 2:** the Defendant's policy on the use of DC's, as set out in the **CSC Long Term and High Security Estate: Operating Manual (April 2017), ("the Operating Manual"),** is unlawful because it gives rise to a significant risk of breaches of prisoners' rights under Article 3 of the Convention.

150. Is the Defendant's policy in the Operating Manual unlawful on the basis that it gives rise to a significant risk of ill-treatment, of a level that would breach Article 3 because it lists among the circumstances in which a DC would be appropriate where a prisoner "refuses to comply with any regime or intervention offered to them including passive refusal"?

> *"Designated cells (DCs) are a resource available to the CSCMC and must only be used for CSC prisoners to ensure adequate Rule 46 cells are available across the High Security and Long Term Estate. Such locations are appropriate when it becomes necessary to temporarily remove prisoners from the main CSC units. These cells are termed Designated Cells as they are designated by the Director with the delegated authority of the Secretary of State for the purpose of holding Rule 46 prisoners only. The aim of the system is to accommodate CSC prisoners within the main units to carry out the work identified for them, however there are a range of circumstances for which a DC would be appropriate;*
>
> - *For prisoners within CSC units, either through disruptive, subversive, manipulative, or violent behaviour, who refuse to comply with any regime or intervention offered to them,* ***including passive refusal,*** *and/or is disrupting the regime to the detriment of other prisoners located on the unit;*
> - *For whom a move would be in the best interests of their, or another prisoner's physical and/or mental well-being;*
> - *For an adjudication hearing (although as a last resort, as Video link should be attempted first);*
> - *To facilitate an adjudication award;*
> - *For compassionate reasons;*
> - *To facilitate the reasonable management of prisoners within the system (see below)*;*
> - *To enable a period of accumulated or inter-prison visits;*
> - *As contingency accommodation in the event that a unit has to be decanted to facilitate maintenance work, or is evacuated following an incident.*
>
> **Facilitating the 'reasonable management' of prisoners may include the need to transfer a prisoner due to conflicts with individual prisoners, or to enable another prisoner to be brought into the CSC system for assessment, treatment, or progression, to address staff well-being, to enable cells to be allocated to another prisoner where a priority need is identified, pending allocation to a CSC unit, or to manage witness conflicts where an offence has been committed within the CSC."*

151. Mr Armstrong's submissions on this ground are based upon the Claimant's contention that the decision to continue his placement in a DC was reached because it punishes him and is intended to compel him to comply. That is not supported by the evidence. At the risk of repetition, the decision to place him originally is not

challenged. There are grounds for maintaining that placement and those grounds are regularly reviewed.

152. As Lord Reed made clear in ***Bourgass*** (supra) such placements do not involve a finding of fact and are not punitive measures. The Claimant's argument must therefore be that there is no lawful basis for the continued placement, and it is being imposed on him as an unlawful punishment. I cannot find any evidential basis to prove or support that assertion. It would require a large group of people internal and external to HMPPS to be working together to keep him in a DC for no good reason, and in particular for the bad reason of inflicting damaging and potentially dangerous punishment on him.

153. This ground further argues, that a common law duty to provide reasons, it is agreed that such a duty does exist, is not sufficient and that the policy risks a breach of Article 3 because it does not include a specific reference to such a duty. If a duty exists and is acknowledged by those whom it compels and is complied with in proper form, then the argument that it should also be written into the policy cannot be sustained. It might mean that every policy document would be required to include every common law duty. That would be unnecessary in general, and it is not required in the specific facts of this case.

154. **Ground 3:** in breach of common law requirements of procedural fairness, the Defendant has failed and continues to fail to give proper reasons for the Claimant's ongoing segregation. Has the Defendant so failed? The duty to provide sufficient reasons is a common law duty.

155. The Supreme Court in ***Bourgass*** makes it clear that a person in the Claimant's position is entitled to know "the substance" of what is being said in sufficient detail to enable him to respond. His right to know is only met if he is provided with sufficient detail. Mr Armstrong submits that the reasons given by HMPPS are insufficient. In this ground he comes back to the reasoning behind the move to HMP Belmarsh, he argues that the Defendant was wrong to suggest that the Claimant knew he had been moved to Belmarsh at the specific request of his solicitor to be available for the proceedings at the Central London County Court. The solicitor's letter does make that specific request, and I can find no basis to conclude that that was written otherwise than in compliance with the Claimant's instructions. He quite rightly wanted to be able to attend the hearing, the solicitors, quite rightly did what they could to relay that request. The Defendant facilitated his request to be available for the hearing by moving him to a London prison, HMP Belmarsh and he had known since January 2023 that they were planning to move him out of HMP Belmarsh, (as in fact happened in May 2023).

156. The reasoning behind the original placement is set out in full in the letter of 9 April 2021. The periodic reviews were provided to the Claimant and his legal representatives. He further received the weekly reviews, the monthly reports from the MDT and his quarterly CMP reviews. The Claimant has always made sure that he seeks information. He has always known, though not accepted, that his continuing placement was explained by his refusal to engage.

157. **Ground 4:** in breach of her own policy, as set out in the CSC Operating Manual, the CSCMC failed to review the Claimant's segregation at each monthly meeting. Has there been a failure by the Defendant to follow the guidance in the Operating Manual on the basis of a failure to conduct separate reviews of the Claimant's

segregation in a DC (ie separate from the reviews of his ongoing placement under PR 46?).

158. In ***R (Awale) v SSJ [2024] EWHC 2322 (Admin)*** Ellenbogen J considered submissions in a case involving a man whose progress had been assessed and who had been considered to have made sufficient progress to be able to be returned to association but was not provided with any other prisoner to associate with. The Defendant had argued, in that case, that because a direction under PR46(3) had been given, the CSCMC was only obliged to consider A's placement in the CSC estate and was not required to review his continuing removal from association. Ellenbogen J disagreed with that submission and found that the Defendant was bound to review both parts of the directions and give reasons, namely placement in the CSC and removal from association with other prisoners.

159. The Claimant argues that the decision in ***Awale*** has a direct bearing on this case and that 'separate' consideration should have been given to the question of placement in a CSC and segregation or removal from association. The Defendant argues that that did, in fact, happen in this case. Mr Grodzinski points out that the CSCMC have always considered the Claimant's placement in a DC separately from his continuing to be subject to PR46. Accordingly, he submits that the required reviews have, in fact, always taken place. He argues that consideration was consistently given to his continued placement in a DC 'in the context of' his PR46 detention. It is clear from the records of the CSCMC meetings that such consideration was given to the Claimant's ongoing placement.

160. **Ground 5:** the Defendant's ongoing segregation of the Claimant is in breach of his right to a private and family life under Article 8 of the Convention (taken with section 6(1) of the HRA).

161. **Article 8** of the Convention guarantees,

> ***1*** *Everyone has the right to respect for his private and family life, his home and his correspondence.*
>
> ***2*** *There shall be no interference by a public authority with the exercise of this right except such as is in accordance with the law and is necessary in a democratic society in the interests of national security, public safety or the economic well-being of the country, for the prevention of disorder or crime, for the protection of health or morals, or for the protection of the rights and freedoms of others.*

162. The Claimant argues that his rights under Art 8(1) are unlawfully breached by his continuing segregation,

i) The Defendant has conceded that this interference was not in accordance with the law because the CSCMC included acting prison governors, was/is the interference also not in accordance with the law on the basis of the court's findings on ground 3 and/or 4?

ii) Was/is the interference in pursuit of a legitimate aim?

iii) If so, was/is the interference proportionate?

163. The Claimant alleges that segregation is being used to compel him to undertake psychological assessments.

i) Has there been such a use?

ii) If so, does that constitute an interference with the Claimant's rights under Article 8(1)?

iii) If so, is it in accordance with the law?

iv) Is this in pursuit of a legitimate aim?

v) If so, is the interference proportionate?

164. The Defendant accepts that Article 8(1) is engaged in this case. Taking the second limb of ground 5 first, I have not found that the evidence in the case supports the contention that the Defendant is using segregation as means to compel the Claimant to undertake psychological assessment. The fact that if the Claimant consented to engage in psychological assessment that would be a step towards permitting an assessment of risk and therefore reducing the need for segregation is not to say that there is a plan to compel him to undergo assessment and segregation is a means of achieving that outcome. It is therefore not necessary to answer questions ii), iii), iv) and v). Any answer is likely to be determined by the facts of an individual case, and so, whilst it is not necessary it would also not be helpful.

165. The Claimant does succeed on this ground, in that the decisions were unlawful because they were not undertaken in accordance with proper procedure. It was thought that an 'acting governor' could fill the role of the Secretary of State in making decisions about PR46. ***Bourgass*** makes it clear that that should not have been the constitution of the committee making the decisions. The Defendant concedes that point. The Claimant is entitled to declaratory relief to that effect. That is just satisfaction for the breach. It is not argued that the committee, if comprised of representatives of the Secretary of State rather than acting governors would have reached a different decision.

166. **Ground 6**: the Defendant's policy on the use of DCs, as set out in the **Close Supervision Centres (CSC) Long Term and High Security Estate: Operating Manual (April 2017**), is unlawful because its application inevitably results in decisions which involve a disproportionate interference with the Article 8 rights of the prisoners to which it is applied.

167. Is the Defendant's policy as set out in the Operating Manual unlawful on the basis that it will inevitably result in some decisions that involve a disproportionate interference with the Article 8 rights of prisoners segregated in DC's because it lists among the circumstance in which a DC would be appropriate where a prisoner refuses to comply with any regime offered to them including "passive refusal"?

168. This ground is argued on the basis that a 'passive refusal' to engage in psychological assessment will be met by prolonged placement in segregation in order to compel compliance. As above, I do not find that that is the reason behind the continued placement in segregation in this case. In this context passive appears to mean without active response or resistance. Putting any question of a violent response to one side, I cannot see the distinction to be drawn between an active refusal, such as saying "I will not" or a moving away and a passive response in

which nothing is said or done but the proposed course is nonetheless refused. There is no question of a violent response in this case. If the law permits HMPPS to require an assessment to measure risk when considering the decision to segregate or return from segregation, then HMPPS are entitled to require such an assessment be carried out and a refusal means the risk assessment is not completed and the decision to return cannot be safely made. If there is a basis for a placement, as here, and if a refusal to engage prevents the completion of an assessment, then the interference is not disproportionate.

169. **Ground 7:** requires permission, and in any event, Mr Armstrong does not seek to argue that the review should succeed on this ground alone. He submits that the Defendant's ongoing segregation of the Claimant is in breach of his right not to be subject to discrimination in the enjoyment of his Convention rights under Article 14, taken with Articles 3 and 8 of the Convention. This is on the basis that the Claimant (and others in his position) are subject to unjustifiable differences in treatment, as compared to non-CSC prisoners who are segregated, in respect of the review/scrutiny of his segregation.

170. As to the Claimant's complaint under Article 14,

i) Does the Claimant's segregation fall within the ambit of Article 3 and/or Article 8?

ii) Are prisoners such as the Claimant, who are segregated under PR46 in a relevantly similar situation to prisoners segregated under PR 45?

iii) If so, has there been a relevant difference of treatment?

iv) If so, is that difference of treatment based on the Claimant's status within the meaning of Article 14?

v) If so, is that difference in treatment justified?

171. Article 14 of the Convention prohibits discrimination as follows,

"The enjoyment of the rights and freedoms set forth in this Convention shall be secured without discrimination on any ground such as sex, race, colour, language, religion, political or other opinion, national or social origin, association with a national minority, property, birth or other status".

172. This ground is predicated on the basis that prisoners held on PR 45 are in a relevantly similar situation to those held under PR46. Further, the Claimant seeks permission to argue that his "other status" is his being a CSC prisoner held under PR46.

173. PR45 allows a governor to remove a prisoner from association for up to 72 hours and to renew that for periods up to 14 days, any period of more than 42 days has to be authorised by the SSJ. PR46 allows removal from association followed by an assessment period of 4 months. The removal is assessed and reviewed by the CSCMC on a monthly basis. Whilst both rules authorise a removal from association, they are different both in their process and impact.

174. This ground is not properly arguable, even if it were not dependent on earlier findings of any breach of Article 3. Prisoners held under PR 45 or 46 are not in the

same or a similar position. The purpose and safeguards within the rules are not the same or sufficiently similar to engage Article 14.

CONCLUSIONS

175. Applying the burden and standard of proof I have not found that the continuing placement of the Claimant was in breach of his Article 3 rights against ill treatment or inhumane or degrading treatment. I do not prejudge the outcome of any challenge to the original placement and whether that will succeed. On the evidence in this review the Claimant has not achieved the high standard required to prove his challenge.

176. A number of the points raised in this case were foreshadowed in ***Bourgass*** by the Supreme Court at [122] on the general right to association and at [125] et seq on removal from association,

> *"……. a prisoner has no private law right to enjoy the company of other prisoners. Some degree of association is, of course, a normal feature of imprisonment; and rule 45 is based on that premise. Nevertheless, a prisoner does not possess any precisely defined entitlement to association as a matter of public law. The amount of time which he is permitted to spend outside his cell, and the degree of association which he is in consequence permitted to have with other prisoners, will depend on an assessment by the prison authorities of a variety of factors, such as the number and characteristics of the prisoners held in the prison, the number of staff on duty, security concerns, disturbances in the prison, and other contingencies such as industrial action by prison officers. The extent of association may therefore vary from one prison to another and from one day to the next. It is thus dependent on the exercise of judgment by those responsible for the administration of the prison. That conclusion is not inconsistent with that exercise of judgment being subject to review on public law grounds. There is however no analogy with the circumstances in which article 6.1 has been applied to disputes arising in public law."*
>
> [125] *" **The critical question is whether the prisoner's continued segregation is justified having regard to all the relevant circumstances.** Those will include the reasonableness of any apprehension that his continued association with other prisoners might lead to a breakdown in good order and discipline within the prison; the suitability of available alternatives; the potential consequences to the prisoner if authorisation is granted; and the potential consequences to others if it is not. The answer to the question requires the exercise of judgment, having regard to information and advice from a variety of sources, including the governor, health care professionals and the prisoner himself.*
>
> [126]*"**In proceedings for judicial review, the court has full jurisdiction to review evaluative judgments of that kind, considering their reasonableness in the light of the material before the decision-maker, whether the appropriate test has been applied, whether all relevant factors have been taken into account, and whether sufficient opportunity has been given to the prisoner to make representations.** This court has explained that the test of unreasonableness has to be applied with*

sensitivity to the context, including the nature of any interests engaged and the gravity of any adverse effects on those interests: see, for example, Pham v Secretary of State for the Home Department (Open Society Justice Initiative intervening) [2015] 1 WLR 1591. ***The potential consequences of prolonged segregation are so serious that a court will require a cogent justification before it is satisfied that the decision to authorise its continuation is reasonable****. It should also be noted that although judicial review does not usually require the resolution of disputes of fact, or cross-examination, that is not because they lie beyond the scope of the procedure. Judicial review is a sufficiently flexible form of procedure to enable the court to deal with the situation before it as required: see, for example, R (Wilkinson) v Broadmoor Special Hospital Authority [2002] 1WLR 419.*

177. Applying what Lord Reed described as the critical test of whether the continuing segregation is justified on all the relevant circumstances, I do not find that the Claimant has discharged the burden of establishing that it was not.

178. The Claimant has established the breach alleged in ground 5 and succeeds on that ground. He should have the declaratory relief that he seeks.