# Prison Segregation
# The Limits of Law and Legal Reform

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# Abstract

This thesis explores the experiences and perspectives of men imprisoned in the segregation unit at HMP Whitemoor in 2019, specifically with a view to understanding how the law functioned in this unit. HMP Whitemoor opened in 1992 and is one of eight prisons in the long-term high security estate ('LTHSE') in England. It is able to accommodate 458 men[1] convicted of the most serious crimes (such as murder, rape and terrorism offences). The segregation unit has a variable capacity. It has 30 individual cells, the population of which fluctuated on a daily basis during this research (between 25 and 30 men).[2]

Segregating individuals away from the general prison population has existed in the English prison system at least since the 1700s. I was able to trace the usage of segregation back to the Penitentiary Act 1779 which called for the use of solitary imprisonment, accompanied by labour and religious instruction (London Metropolitan Archives, 2018). Although a long-standing tradition of the English penal system, very little research explores segregation in English prisons. In fact, this study is the first of its kind, in which a researcher has spent an extended period of time undertaking an in-depth ethnographic study in a typically impenetrable part of the English prison system. It is also the first time that segregation has been considered in the context of legal mechanisms and the influence of law.

The main fieldwork was conducted over a four-month period at HMP Whitemoor. It draws on semi-structured interviews with 25 prisoners and 17 staff, as well as rich and extended periods of observation of life in the segregation unit. I focus on three areas which were of interest from the start of my PhD but the nuances of which developed during the fieldwork. Firstly, I explore how segregation is and should be used, and how law sets the parameters of such usage (in theory at least). Secondly, I investigate the complex web of laws and rules, as currently applies to segregation, and their relationship with the actors responsible for their

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[1] The population fluctuated on a daily basis as prisoners were transferred in and out of the prison. E.g. on the 31 May 2019 HMP Whitemoor held 453 prisoners against an operational capacity of 458 (Independent Monitoring Board (2018); (2019)). On 31 May 2019, 133 were Category A prisoners and 3 were High Risk Category A. The remainder were Category B prisoners and a small number of Category C prisoners (IMB, 2019, p. 7).

[2] The capacity of the segregation unit was changeable and reflected the operational challenges faced in the unit. Some cells were out of use because they were damaged by prisoners, some had to be closed to be cleaned after a dirty protest or suicide attempt.

implementation. Thirdly, I examine the context within which the laws and rules are implemented, to make the argument that laws and rules are not only capable of being undermined by the *culture of people* but also the *culture of context*; whereby the application of, and accessibility to, law is limited by the prison environment.

Segregation units are characterised by substantial power imbalances, more so than elsewhere in the prison. They also hold some of the most difficult, vulnerable and marginalised individuals in our prison system. Accordingly, the segregation unit is a place where legal safeguards should be robust and able to uphold human rights standards. However, I suggest that the laws and rules are not always robust, and do not always give effect to important 'rule of law' principles. I argue that whilst there are opportunities for law and policy reform, alone, they will not be sufficient for changing or improving the practices, standards and culture of the segregation unit. For example, law and policy change may not mitigate the chaotic, violent and turbulent wings; the high rates of mental illness; lack of opportunities for progression; and capacity issues found elsewhere in the prison estate. Many of the problems of segregation originate elsewhere: not just in the wider prison, but also in the social, political and economic environment in which prisons function. Thus, law reform directed solely at the segregation unit may not address the broader issues which necessitate the use of segregation. Instead, segregation reform should be considered as part of broader prison reform efforts, ones which cultivate respect, dignity, faith and compassion. Importantly, until there is greater acceptance that segregation is innately harmful and dehumanising, the law may be of limited consequence: the law cannot be expected to 'remedy injustices legally before they are recognised as injustices socially' (Hudson, 2006, p. 30).

# Declarations

This thesis is the result of my own work and includes nothing which is the outcome of work done in collaboration except as declared in the Acknowledgements and specified in the text.

It is not substantially the same as any work that has already been submitted before, for any degree or other qualification, except as declared in the preface and specified in the text.

It does not exceed the prescribed word limit for the Faculty of Law Degree Committee.

Word count: 99,792 (including footnotes, appendices but excluding abstract, declarations, contents, acknowledgment, preface and bibliography).

# Contents

# Acknowledgments

The last twelve months have been an unusual and difficult time to finish a PhD. The global pandemic brought complications and distractions, along with closures of libraries, which made writing up rather challenging. However, the past year has been all the more difficult because of the tragic events at Fishmongers' Hall, on the 29th November 2019, at which I was present. Jack Merritt was a dear friend, Saskia Jones was one of my students, and Usman Khan was one of my participants (albeit, an 'informal' one). On that day, I lost my friends but I also lost some faith. I began to question my involvement with the prison education charity, Learning Together, along with the value of my PhD. My previous optimism, hope and faith in my work, but also in others, was replaced by concern, self-doubt and distrust. My previous belief – that we all have capacity to do great good yet all have capacity to inflict great harm – began to disintegrate. I wished that 'good' and 'bad' could be binary: it would make it far easier to untangle my thoughts on the Fishmongers' incident and the actions of Usman Khan.

Shortly after the Fishmongers' incident, I sat in Nicky Padfield's kitchen and expressed total grief, loss and bewilderment at how I was ever going to carry on. This is why I feel especially grateful to all the people in my life over the past few years. They have not been easy years: researching and writing this PhD has been very hard at times. There were several occasions during which I thought this final draft would never be possible. Words will never do justice to the amount of thanks and gratitude I feel towards those individuals. This work is the sum of all their help, shared wisdom, encouraging advice and friendship.

I would like to thank Alison Liebling for sharing her advice and invaluable prison expertise. I would also like to thank Nicky Padfield for sharing her legal knowledge and prison law insights. Together they made a formidable supervisory team: they challenged my perceptions, my understandings and helped shape and develop much of this PhD.

I am grateful to all the staff at HMP Whitemoor, for opening their doors to me and for making this research possible. Particular thanks go to Will Styles, Martin Butler, Gary Payne and all the staff in the segregation unit. I am also grateful to all the men held in HMP Whitemoor, who gave me their time, shared their personal stories, who made me laugh and sometimes made me cry. I feel privileged to have met you and I hope I can make you proud.

inspirational and made me believe that anything could be possible. They provided hope, in times of true despair. It is no exaggeration to say that I would not be here without them either. And, lastly, I give my thanks to Jack Merritt, for being a dear friend; for supporting me through Cambridge; for introducing me to a few too many Cambridge pubs; for having faith in me, particularly when my own was lacking; and for inspiring so much good in others. You are loved and dearly missed.

# Defined Terms and Abbreviations

| | |
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| **ACCT** | Assessment, Care in Custody and Teamwork. |
| **Centre Office** | Main office in the Unit. |
| **CC** | Cellular Confinement. |
| **CPT** | European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment. |
| **CRC** | Control Review Committee. |
| **CSC** | Close Supervision Centre. |
| **DDC** | Deputy Director of Custody. |
| **ECHR** | European Convention on Human Rights. |
| **HMCIP** | Her Majesty's Chief Inspector of Prisons. |
| **HMP** | Her Majesty's Prison. |
| **HMPPS** | Her Majesty's Prison and Probation Service. |
| **IEP** | Incentives and Earned Privilege(s). |
| **IMB** | Independent Monitoring Board. |
| **LASPO** | Legal Aid, Sentencing and Punishment of Offenders Act 2012. |
| **LAT** | Legal Aid Transformation. |
| **Local Site Rules** | HMP Whitemoor: Information Booklet and Segregation Unit Expectations, dated January 2019. |
| **LTHSE** | Long Term High Security Estate. |
| **MHT** | Mental Health Team. |
| **OMT** | Offender Management Team. |
| **PPE** | Personal Protective Equipment. |
| **PR 1999** | The Prison Rules 1999. |
| **PSIs** | Prison Service Instruments. |
| **PSO 1700** | Prison Service Order 1700 – Segregation. |
| **PSOs** | Prison Service Orders. |
| **SMT** | Senior Management Team. |
| **SO** | Supervising Officer. |
| **SRB** | Segregation Review Board. |
| **SSU** | Special Security Unit. |
| **The Mandela Rules** | United Nations Standard Minimum Rules for the Treatment of Prisoners (as amended on 5 November 2015 by the General Assembly). |
| **Unit** | HMP Whitemoor segregation unit. |

**YOI**     Young Offender Institution.

**YOI Rules**    Young Offender Institution Rules 2000.

# Preface

Since March 2020, the world has faced a global pandemic from Covid-19. The virus had a significant impact on societies and economies. It also had a substantial impact on prisons. In the United Kingdom, for almost a year, prisons have – to varying degrees – been 'locked down': prison activities were curtailed and visits (from family members and the IMB) cancelled. Many prisoners were locked alone, in their cells, for 23 or more hours a day. The practice of segregation, which I describe and discuss in this thesis, was applied prison-wide and was no longer reserved primarily for the segregation unit.

In July and August 2020, HMCIP visited HMP Whitemoor for a 'scrutiny visit' (HMCIP, 2020). It found that prisoners were confined to their cells for at least 22 hours a day. Thus, the experiences and challenges I identified in the segregation unit, during my research, have since permeated across the rest of the prison. It means the project has taken on a broader relevance, in relation to the prison's response to Covid-19. Segregation was no longer predominantly localised to the segregation unit. I encourage you to read this thesis with this in mind. In recent months, the operations and regime at HMP Whitemoor, as a whole, have much more closely resembled the conditions and the regime of the segregation unit, discussed in this thesis.

In addition, HMCIP (2020) reported its key concern, at that time, was segregation. The pandemic had 'halted its work to reintegrate segregated prisoners...as a consequence, the number of prisoners in segregation had increased, and the average length of stay had nearly doubled to an excessive 95 days' (p. 6). More prisoners were being segregated than the segregation unit could accommodate, leading to prisoners being segregated in the 'inpatient unit' (p. 11). HMCIP reported:

> Formal systems for redress were in disarray; more than 200 complaints had gone unanswered, and the responses we saw did not always address the issue raised. The Independent Monitoring Board (IMB) had not yet resumed its visits to the prison, and limited telephone access prevented prisoners from using the IMB freephone number. (p. 11).

The segregation unit was, and continues to be, a concerning site of the prison.

# Chapter One – Introduction

While one may bear up against the monotonous hardships and relentless discipline of an English prison: endure with apathy the unceasing shame and the daily degradation: and grow callous even to that hideous grotesqueness of life that robs sorrow of all its dignity, and takes from pain its power of purification: still, the complete isolation from everything that is humane and humanising plunges one deeper and deeper into the very mire of madness, and the horrible silence, to which one is, as it were, eternally condemned, concentrates the mind on all that one longs to loathe, and creates those insane moods from which one desires to be free, creates them and makes them permanent…

But the solitary confinement, that breaks one's heart, shatters one's intellect too: and prison is but an ill physician: and the modern modes of punishment create what they should cure, and, when they have on their side time with its long light of dreary days, they desecrate and destroy whatever good, or desire even of good, there may be in a man (Wilde, 1896, pp. 667-668).

## 1. A brief history of segregation[3]

Many will be familiar with the words of Oscar Wilde. In 1895 he was sentenced to two years' imprisonment for the crime of gross indecency with other males. He served most of his time in solitary confinement at Pentonville, Wandsworth and Reading prisons (Housden, 2006). His words are a compelling example of the long-standing reliance on solitary punishment in English prisons, and the long-standing pains endured by those confined under such conditions. His words allude to the paradoxical nature of solitary punishment. It is intended to manage order, ensure discipline and invoke control. Yet it is also capable of producing, if not exacerbating, mental illness, anger, and frustration, and it does little to improve post-release outcomes (for a critique, see Haney, 2018; Scharff-Smith, 2006a, and see Part Three of this chapter). It is characterised by conflict: an entrenched part of our prison system that has commonly been the subject of severe criticism.[4]

The English prison system has a long established system of segregation, although it has evolved over the past two hundred years, transformed not only in name but also in substance.

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[3] For a history of segregation see Brown (2003); Scharff-Smith (2006a); Smith (2009); Webb and Webb (2020).
[4] Criticisms date back to early 1900 and include concerns about the overly restrictive and dehumanising nature of segregation and its ineffectiveness for deterring and/or rehabilitating prisoners (Brockway & Hobhouse, 1922). For current concerns and reform efforts, see Haney, Williams, and Ahalt (2020).

It first appeared as prison-wide mandatory solitary punishment in English prisons; the history of which has been well researched by others[5] and will not be rehearsed here. However, a brief outline is provided to understand the different iterations of segregation, which in turn help us understand why the prison service remains so reliant on the use of segregation today.

Prison-wide solitary punishment developed from the ideas of John Howard. Howard was a High Sheriff of Bedford, interested in prison reform. In the 1770s, he visited every prison in England and Wales, as well as European penal institutions. He was impressed by the programme of silence and solitude at San Michele House of Correction in Rome and advocated for a similar programme in English prisons (Howard, 1777). Howard's recommendations led to the Penitentiary Act 1779, which called for solitary imprisonment to be accompanied by labour and religious instruction (Jackson, 1983, pp. 10, 15); they were believed to deter individuals from crime, whilst simultaneously reforming individuals and inure them to the customs of industry (London Metropolitan Archives, 2018). Howard's proposals were adopted at Gloucester Prison, which opened in 1785 (Howard, 1960; Parliament, 2018). The opening signalled a new approach to the construction and management of English prisons. Gloucester was predicated on principles of isolation; it was built with solitary cells and incorporated a regime which required prisoners to sleep and work alone. However, the conditions and operations at Gloucester quickly became unsustainable. Pressures of overcrowding soon required prisoners to share cells. Frequent disturbances and riots ensued; provoked by the frustration of prisoners who refused to comply with the solitary nature of their confinement (Jackson, 1983, p. 17).

The problems at Gloucester did not signal the end of segregation. Practices of segregation continued to appeal to the British Government, in large part because of the perceived success, in 1834, of the solitary system at Eastern State Penitentiary in Pennsylvania (the Pennsylvania Model). This led to the opening of a new prison – Pentonville Prison – in 1842, which was designed specifically for cellular confinement and organised along similar principles (silence and solitude) to the Pennsylvania Model (Howard, 1960, p. 17). Pentonville prison was intended to house convict prisoners between the ages of 18 and 35 years, sentenced to transportation for their first offence, and was conceived to be the 'portal to the penal colony' (Cross, 1971, p. 8). Pentonville's principles of solitary punishment later spread to Millbank, Wakefield, Leicester, Wormwood Scrubs, Chelmsford, Dorchester, Durham, Exeter, Lewes, Reading, Winchester, Knutsford and Leeds (Gladstone Committee, 1895, p. 28). In the words

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[5] See Charleroy and Marland (2016); Fox (1934); Howard (1960); Jackson (1983); Scharff-Smith (2006a); Shalev (2011); Shalev (2015); Smith (2020).

of Henriques, this period was the 'great age of the separate system of prison discipline' (1972, p. 78), where prison administrators firmly believed that prisoners could be reformed through isolation and religion, and that when a prisoner's resolve was truly shattered, the prison chaplain would be there to restore the prisoner to live a new, honest life (Henriques, 1972, p. 79).[6]

The 'great age' of a separate system was short-lived. By the 1850s, in England and Wales, support for isolation began to wane. In some prisons, isolation gave way to practices of cruelty: indefinite confinement alone, in dark cells, with only bread and water; restraining prisoners in straitjackets; and abuse of practices like the crank and treadwheel (Bailey, 1997; Henriques, 1972). Critics began to question the utility of isolation amidst increasing rates of reoffending and its perceived failure to reform prisoners, and growing concerns about the prevalence of mental illness, which was considered to be brought about by solitary confinement (Henriques, 1972, p. 86). There was a tentative changing of the tide. Questions were asked in Parliament and Committees were established to review the practice of solitary confinement. The Select Committee of the House of Lords on Gaols and Houses of Correction (1863), whilst reluctant to do away with the practice, expressed unease about the purpose of isolation and whether it can truly reform individuals. Later, the Gladstone Committee expressed concern with the 'dull and wearying monotony of the constant isolation' which for many led 'to moral and physical deterioration' and advocated for greater association (1895, pp. 20-21). By the early 1900s, prison-wide solitary punishment had lost much of its support. It was permanently done away with in 1931 (Bailey, 2019, pp. 188-189; Fox, 1952).

Whilst prison-wide solitary punishment remains in the past, the system of special units (including segregation units) – created to house those deemed particularly violent or who posed a substantial risk of escape – remains a fundamental part of the modern English prison. Whilst much was written about the historical roots of prison-wide solitary punishment, less is known about the history of the separate special units.

I was able to trace the origins of a separate system of confinement, for those who violated prison rules, to at least the 1840s. The Prison Regulations, at that time, allowed for a visiting justice to impose *close confinement*, not exceeding one month, for any 'criminal prisoner guilty of any repeated offence against the rules of the prison' (1843, p. 16). Close confinement saw a prisoner confined alone, to his own cell or to a cell on a landing set apart

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[6] During this period, principles of isolation were not restricted to England or the United States. Similar developments were seen in Switzerland and Germany (Grassian, 2006, p. 342; Jackson, 1983, p. 20) and Demark (Smith, 2008).

for punishment. All articles were removed from the cell, except a stool, chamber, one educational book and the Bible, and the prisoner was initially prohibited from attending exercise, labour or chapel, although the latter three 'privileges' could be reinstated for good behaviour (Brockway & Hobhouse, 1922, p. 236). *Close confinement* was a punishment that appeared in various iterations of the early Prison Rules:[7] it was commonplace amongst English prisons[8] and was the blueprint for segregation.

However, in the early 1920s, there was growing scepticism about close confinement, and whether it was the best way to manage indiscipline in prison. The Prison Commissioner of 1922 reported that reliance on close confinement had 'practically disappeared…at several of the Institutions' (p. 21). The Commissioner acknowledged how it was 'difficult to see that close confinement can do anything but harm' (p.21). Challenging questions were asked in Parliament and the practice declined in prisons (see Commissioner Reports of 1922; 1932, 1946, 1955), at least until the 1960s.

By 1960, the Prison Service faced rising prison populations, escapes and assaults (on prisoners and staff) (Home Office, 1964; Prison Commissioner reports of 1960; 1962). These were met with concern from prison administrators who sought new solutions to manage indiscipline and disorder in prisons. In response, the Prison Service created a number of special units at different prisons across England and Wales. It created special units in Durham, Hull, Parkhurst, Brixton, Manchester and Wakefield prisons (Liebling, 2001a, 2016; Home Office, 1964; Prison Commissioners, 1961; 1962). These units were designed to hold men who posed grave threats to security and discipline (Prison Commissioners, 1961, p. 4). The units had various names: Brixton was termed a 'diagnostic centre' (Prison Commissioners, 1962, p. 12) and the two units at Wakefield were named 'control units'.[9] Whilst the design and regime of the units varied somewhat, they were the genesis of the segregation units we have today.

The rise in special units during this period coincided with changes to the legislative

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[7] See 'Draft of rules proposed to be made under the Prison Act 1898' and 'Draft of rules proposed to be made under the Prison Act 1899'.
[8] See 'Report Relative To The System of Prison Discipline' (1843) and Brockway and Hobhouse (1922, p. 237) who describe the commonality of close confinement.
[9] The two 'control units' at Wakefield were heavily criticised for having a negative effect on prisoners (fuelling resistance and anger at the prison authorities) and swiftly closed in 1975 (Liebling, 2016, p. 486). Following the failure of the 'control units' at Wakefield, the Prison Service sought suitable replacements. In 1985, pursuant to recommendations from the Control Review Committee ('CRC'), a number of smaller self-contained units were opened (HMCIP, 2015). The CRC units operated according to unstructured regimes, with an emphasis on managing prisoners in an individualised way (Liebling, 2016, p. 486). These regimes were also subject to criticism: some prisoners struggled to cope with the unstructured regime (HMCIP, 2015), whilst others learned to cope too well and refused to locate elsewhere in the system (Liebling, 2001a; 2016, p. 486). The CRC units closed in 1995 and, in 1998, were replaced by Close Supervision Centres ('CSC').

framework. Primary legislation, in the form of the Prison Act 1952, was introduced to replace the Prison Act 1898. As far as segregation was concerned, the new Act changed very little.[10] However, it was the Prison Rules 1964 (a statutory instrument created pursuant to the new Act), which had a much greater influence. The Prison Rules 1964 departed from the language of close confinement and established the practice of 'removal from association' (Rule 43), the form of segregation which currently exists in prisons in England and Wales. The Prison Rules 1964 were replaced by the Prison Rules 1999 ('PR 1999'). Specifically, Rule 43 became Rule 45, although the language (and practice) changed very little. Rule 45 allows a prison governor to remove a prisoner from association for the maintenance of good order or discipline or for a prisoner's own interests. Despite various amendments by the Secretary of State for Justice, the PR 1999 are still in force and the practice of segregation, authorised by Rule 45, remains substantially the same as that envisaged by Rule 43 in the 1960s.

For now it is important to recognise that, over the last two hundred years, the English prison system has seen 'segregation' evolve from being a prison-wide practice, to being one which takes place in separate special units. These units take various forms, including segregation units, close supervision centres, special security units, the protected witness units and detainee units (Liebling, 2016, pp. 487-488). Whilst the legal authority for such units, the ways in which they are used and the profiles of the prisoners they contain, have changed over time, their continued existence reveals an ideological commitment to separation and segregation. This ideology is predicated on the belief that segregation is important, if not essential, for the proper functioning of the English dispersal system. The relative merits of the dispersal (as opposed to a concentration) system have been discussed elsewhere at length (Mountbatten, 1966; Radzinowicz Committee, 1968; King, 1999; Liebling, 2016; Price, 2000). Importantly, the integration of the dispersal approach meant that, in England and Wales at least, there was a significant departure from the ideas first espoused by Howard and an implicit rejection of the wholesale isolation of prisoners. England and Wales adopted a system of association, whereby prisoners of all different security categorisations associate together. Therefore the system of small special units, within this dispersal system, became attractive to policy-makers and prison managers, perceived as being the best possible way to manage indiscipline (Liebling, 2001a, 2016). Segregation is deeply embedded in the English penal system, albeit not without scrutiny, sceptics and challenge.

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[10] The Prison Act 1952, s47(1) still enabled the Secretary of State to 'make rules for the regulation and management of prisons' and equipped the Secretary of State with a large amount of discretion in organising and managing the prison system (Lazarus, 2004; Livingstone, Owen, & Macdonald, 2003).

## 2. The definition of segregation[11]

Segregation, at its most basic, means 'put apart from the rest' (Oxford English Dictionary, 2011). As the above illustrates, there are varying degrees and manifestations of segregation and different approaches to 'putting apart'.

Segregation took the form of a *practice*, in the mandatory prison-wide solitary confinement imposed under the Penitentiary Act 1778. However, as a *practice,* it continues to be used in contemporary prisons today, although its form is substantially different. For example, Rule 55 of the PR 1999 allows a governor to impose 'cellular confinement' not exceeding 14 days. This is a form of segregation imposed on individuals, on the wing, and prohibits individuals from taking part in association and other activities (or sometimes imposed on individuals ordered to serve their 'CC' in the segregation unit). Cellular confinement may even be imposed on full spurs or wings – as total wing lockdowns – whereby all prisoners are detained in their single cells on the wing and are not unlocked for association. There are also hybrid forms of segregation, for example, the practice of 'single unlock' which, if imposed, prohibits a prisoner from being unlocked with other prisoners.[12]

However, the historical account described above also highlights how segregation manifests as a *place*: the introduction of special units led to the creation of separate segregation units in many of our prisons. Further, the development of Rule 45 of the PR 1999 provided the legal authority for moving individuals, away from the wings, into segregation units. Therefore, segregation is capable of manifesting as *both* a practice and place. Notably, the conditions, regimes and names assigned to the place – the segregation unit – have changed over time. For example, in 2008/09 the Prison Service attempted to 'rebadge' segregation units as 'care and separation', 'reorientation' or 'intensive supervision' units. Despite the rebranding of the unit,

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[11] My research focuses on segregation in men's prisons. During my research, I found little attention had been given to women's experiences of segregation. I could not untangle whether this was because women's experiences were less visible, or whether segregation was less common, or researchers less interested. In any event, women's experiences are omitted from this research and they would be worth investigating further.

[12] The English courts have been asked to consider a range of practices, specifically to determine whether they constitute 'removal from association' for the purpose of the legal frameworks. In *R(AB) v Secretary of State for Justice* [2017] EWHC 1694 (Admin) the High Court was asked to consider whether 'single unlock', the practice of allowing a young offender to only leave his cell alone, between 30 minutes and 2 hours each day, constituted removal from association. In *R (Syed) v Secretary of State for Justice* [2017] EWHC 727, the High Court considered whether an individual who had the *possibility* of association with other prisoners – albeit such association varied in the number of hours and operated on a reduced regime compared to the wider prison population – was able to enjoy association with other prisoners or whether his conditions constituted removal from association for the purposes of Rule 45. In *R (KB, a child, by his litigation friend LW) v Secretary of State for Justice* [2010] EWHC 15 the court considered the meaning of 'association' but avoided defining the term other than by reference to its ordinary meaning.

little changed in substance: 'they continued to operate as traditional segregation units, with the emphasis on separation rather than care' (HMCIP, 2010, p. 67). Whilst the 'care and separation' unit has been retained in some prisons (such as Doncaster), Whitemoor never deviated. It was committed to the segregation unit, in both name and substance (see HMIP reports from 2008, 2011, 2014, 2017).

Whilst there are various forms and degrees of segregation, my research focused on the segregation unit, and therefore considers segregation as a place. This thesis concentrates on Rule 45 segregation ('removal from association…for good order, discipline or own interests'). The reason being a practical one: only two or three prisoners (less than 10%) were in the segregation unit under Rule 55 during my fieldwork. Therefore, I focused my inquiries on the most commonly occurring form of segregation, that which was sanctioned by Rule 45 of the PR 1999.[13]

Before moving on, it should be noted that the term segregation has, at times, been conflated with 'solitary confinement'. The term solitary confinement features commonly in international legal frameworks. For example, the European Prison Rules (2006), the United Nations Standard Minimum Rules for the Treatment of Prisoners (as amended on 5 November, 2015, by the General Assembly and reaffirmed as the 'Mandela Rules'), and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (2011) all use the term 'solitary confinement'. They define this, although with some variation, as the confinement of prisoners for at least 22 hours a day without meaningful human contact.

In contrast, at the domestic level, legal frameworks (and the English courts) revealed a preference for the terms 'removal from association' and 'segregation'. In fact, the courts determined the two terms are effectively one and the same.[14] That said, the courts have also looked to international legal frameworks for guidance. Consequently, international law principles and the language of solitary confinement have penetrated the analyses of English courts.[15]

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[13] In reality, this division was somewhat artificial. There were two cells for CSC prisoners and, whilst they had a slightly different regime (see Chapter Three), their material conditions were the same as anyone else detained in the unit. Moreover, Rule 55 prisoners had the same conditions and regime as those detained under Rule 45.

[14] *R (Dennehy) v Secretary of State for Justice and Sodexo Limited* [2016] EWHC 1219 where the High Court interpreted removal from association to be segregation.

[15] *R(AB) v Secretary of State for Justice* [2017] EWHC 1694 (Admin), the High Court referred to both segregation and solitary confinement, and was explicitly guided by both domestic and international legal frameworks (appealed: [2019] EWCA Civ 9).

Whilst this creates some level of ambiguity: segregation arises in different forms ('CC', 'removal from association'), in different parts of the prison (on the wings or a designated unit) and attract different labels ('wing lockdown', 'segregation', 'solitary confinement'), there is some commonality across the different forms (whether Rule 45 or Rule 55) and solitary confinement (as defined in international legal instruments). For example, they all involve extreme isolation: confining someone alone to a cell with limited contact with staff and other prisoners. In England and Wales, segregated prisoners cannot associate with other prisoners, they have limited visitation rights and they cannot participate in the full range of activities made available to the main prison population (Arrigo & Bullock, 2008; Shalev, 2015; Shalev & Edgar, 2015). Isolation is imposed for a substantial part of the day, varying between 20 and 24 hours. Staff are largely responsible for much of the prisoner's day; staff determine when he eats, when he showers, has exercise or makes a phonecall.

## 3. Challenges to segregation

Segregation has not always been readily accepted. Even in its earliest forms, segregation received criticism from individuals within and outside the Prison Service. For example, in 1922, the Prison Commissioner expressed concern that it was 'difficult to see that close confinement can do anything but harm' (1922, p. 21). Similar concerns were reiterated in 1931, in a heated Parliamentary debate. Labour MP Peter Freeman asked John Clynes, then Home Secretary, whether he was satisfied that the separate treatment of prisoners was the 'best method of dealing with delinquent cases?' (11 June, 1931, Vol 253, cc1187-8). This question was not resolved at the time and is one which many scholars, politicians and lawyers still grapple with today (Howard et al., 2018; Vince, 2018).

In fact, for much of the 20th Century, segregation in Western prisons has attracted substantial criticism from politicians, lawyers, psychologists, criminologists and sociologists. Many grew concerned about the impact of segregation on prisoners' health and well-being, and a substantial body of literature developed to explore this. The literature developed gradually, in a fragmented manner, and was not limited to prison environments. There are discrepancies and disagreements (see Brown, 2020), especially in relation to the question of the harmfulness of segregation. However, a substantial number of studies suggest that segregation is

significantly associated with negative psychological consequences,[16] which broadly include: a greater prevalence of psychological distress (Miller, 1994; Miller & Young, 1997); post-traumatic distress (Hagan et al., 2017); psychiatric morbidity (Andersen et al., 2000); and greater incidents of self-harm, in segregated groups when compared against non-segregated groups (Jones, 1986; Kaba et al., 2014; Lanes, 2009; Lanes, 2011). Moreover, segregation has been found to do little to mitigate subsequent institutional violence or reoffending (Butler, Steiner, Makarios, & Travis, 2017; Mears & Bales, 2009; Medrano, Ozkan, & Morris, 2017; Morris, 2016; Motiuk & Blanchette, 2001); and has been found to lack an obvious deterrent effect (for a review, see Brown (2020)).

Concerns about segregation have not been limited to the academic and political realms.[17] Concerns have been echoed by practitioners, like the Independent Monitoring Board ('IMB'). Alex Sutherland, Chairman of the IMB at HMP Whitemoor (2015-17), wrote:

> Segregation is a blight on the Prison Service….[I]n too many cases segregated prisoners are being stored rather than progressed. In such cases the effects are not even neutral. Prisons don't set out to use segregation to break prisoners but in managing it badly they risk doing just that (2018, p. 48).

Specifically, there have been calls from senior directors within HMPPS, to seek alternatives, to reform the law[18] and even to abolish segregation in prisons (Prison Reform Trust Perrie Lectures, 2018; Vince, 2018).

Penal reformers have turned to legal mechanisms to challenge the use of segregation (Janes, 2018; Lee, 2016). For example, the Howard League for Penal Reform has been a loud voice in calling for legislative changes to segregation and especially active in using the courts to challenge: the procedures for segregating individuals;[19] the inability of individuals to make representations before being segregated;[20] and the lack of educational provision during

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[16] Luigi, Dellazizzo, Giguère, Goulet, and Dumais (2020) for a recent systematic review and meta-analysis of segregation. They found a significant relationship between segregation and an increase in adverse psychological effects, self-harm and mortality.

[17] Nor have they been limited to the United Kingdom. After publishing my systematic review on segregation, I was contacted by the head of psychology in the Israeli Prison Service, to discuss opportunities for reform. I have also spoken to colleagues in Canada and Norway about changes to their use of segregation.

[18] During 2018 – 2019, I was invited by the MOJ to offer advice on revising PSO 1700. I met twice with their working group. They presented their draft, little had changed, with most amendments made to the formatting rather than the substance of the order. The group has since been disbanded, moved to other parts of government, and support for the project appears to have disappeared.

[19] *R(KB) v Secretary of State for Justice* [2010] EWHC 15 (Admin).

[20] *R(SP) v Secretary of State for the Home Department* [2004] EWCA Civ 1750.

segregation.[21] Thus, the law has been an important resource for prisoners to challenge the practices and procedures involved in prison segregation in the English courts.[22]

In particular, in 2015, Kamel Bourgass successfully challenged his segregation in HMP Whitemoor (my fieldwork site). His case went all the way to the Supreme Court (*R (Bourgass) v Secretary of State for Justice* [2015] UKSC 54). Bourgass, on the one hand, inspired hope. The Supreme Court was disappointed with the prison service for failing to seek external approval from the Secretary of State, for Bourgass's segregation, and its failure to provide Bourgass with sufficient information about why he was being segregated. The case raised important questions about procedural justice, the powers of the governor[23] and the importance of internal and external oversight mechanisms. Importantly, it touched on the ability of law, as a mechanism, for upholding prisoners' rights, and reminded us of the need to subject the internal processes and decisions of prison authorities to external review. It was heralded as a major advancement in prisoners' rights and procedural justice (Beaton, 2016).

However, Bourgass was one of few cases which achieved a positive legal outcome, and its impact was limited. Shortly after the judgment, the Secretary of State amended the PR 1999 in a way which strengthened the governor's discretion and weakened the external review process (discussed further in the next chapter). The case was a prime example of how litigation can provoke unintended consequences and only offers limited, retrospective redress. A court can determine whether an individual's rights have been violated, and whether the prison has complied with its obligations. However, litigation cannot rewind the clock: it cannot undo the harm that may have already occurred. Whilst the courts have an important role, as an external arbiter, in overseeing and safeguarding the use of segregation, in many ways, their involvement comes too late. 'Law' is not just a matter for the courts, it is effected in the everyday decisions of staff and prison managers. Law is made present, for example, in the internal safeguarding mechanisms of segregation review meetings, in the approval processes, in the time limits, via the duties of the IMB, the Ombudsman, and so forth. Therefore, the law is contingent on the 'good faith' of the administration. It is for the prison administration itself, to act in good faith, and assume a responsibility to supervise the fairness of segregation (Jacobs, 1977, p. 116).

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[21] *R(AB) v Secretary of State for Justice* [2017] EWHC 1694.
[22] See Annex One for an overview of the legal cases which challenged segregation.
[23] 'Governor' is a broad term which captures managers at 'governor-grade' levels within the prison. It is distinct from the 'Governing Governor', who is in charge of the prison and responsible for the decisions of the governor grade managers; and such distinction is used throughout this thesis.

# 4. Segregation and law

I: What do you think the law is for in seg units?

R: The law? … What do you mean by the law? Do you mean our human rights, miss? Or do you mean the law as to why I'm down here?

I: It can be any of those things really because the law is... yes human rights… but you've also got processes and procedures…

R: I think the law is there to protect the prisoner... the processes and procedures are guidelines for staff to abide by.

I: Has the law ever helped you?

R: To be honest, the law has made a bit of an arse out of me miss. (Mark, prisoner).

The primary aim of this research was to understand how *law* 'worked' in the segregation unit at HMP Whitemoor. I am mindful that 'law' as a concept, is subject to various different meanings, constructions and interpretations (Freeman, 2014; Llewellyn, 1930). The purpose of this thesis is not to engage in a jurisprudential discussion about the purpose and meaning of law. Instead, it seeks to understand how legal rules, such as those contained in the PR 1999, are complemented by non-legal rules (like the Prison Service Orders ('PSOs') and local site rules) and how they, together, apply in practice. I have not neglected the informal norms and customs, which can be at least as influential on behaviour, culture and practice, as formal rules and laws. As Hayek (1973), Hart (1961) and Duxbury (2017) suggest, local norms and customs can attract the character of 'law', as broadly construed, albeit they are distinguished from formal laws. In fact, much of staff behaviour was influenced by entrenched norms and customs (see Chapter Five). Importantly, segregation is not governed by one clear distinct law (or set of laws). Instead, it functions according to a complex and fragmented web of legal rules (in the PR 1999) and non-legal rules (PSOs, local-site rules and local norms and customs). The latter may give rise to duties, obligations and entitlements, but are not directly enforceable in the courts. The point being, any study of 'law' must include a consideration of the non-legal rules, the individual actors, the norms and customs, that all give effect (or attempt to give effect) to the law (which, at its narrowest, is Rule 45 of the PR 1999, as the primary authority for segregation).

During my research, 'understanding law' transformed into broader questions about the existence and utility of law in segregation units, and how law (and all the rules and procedures) can function in such a restrictive and controlled environment. Few environments are so naturally conducive to despotism and arbitrariness. They are isolated and hermetic

units, where prisoners are particularly vulnerable to staff abuse, procedural breaches, human rights violations and wilful neglect. All this has been exposed by a number of long and interesting case law histories (see Chapter Two). Segregation units are places of harm: they facilitate or exacerbate the psychological deterioration of prisoners, have high incidents of self-harm and suicide, and can be environments which perpetuate violence and 'ethical violations' of human dignity (Guenther, 2013; Kupers, 2006; Montford, Hannah-Moffat, & Hunter, 2017, p. 142). They are places in which prisoners are rendered vulnerable, although such vulnerability can take various forms: mental illness, threats on the wing, or because of the substantial power differentials and prisoners' almost complete reliance on staff. Consequently, segregation units are parts of the prison where the law must be robust, and the 'rule of law' must be present.

The 'rule of law', traditionally postulated by A.V. Dicey (1915, p. xvii), means law should operate: (i) without any arbitrary or discretionary power of the decision-maker; and (ii) in a manner which places every man as equal before the law i.e. free from discrimination and bias. Dicey's ideas were developed by Lord Bingham (2006), in his eight principles for the rule of law: (i) the law must be accessible, intelligible, clear and predictable (p. 6); (ii) legal questions should be resolved by the application of law and not by the exercise of discretion (p. 10); (iii) laws should apply equally to everyone (p. 12); (iv) law must provide adequate protection for fundamental human rights (p. 16); (v) means must be provided for the resolution of civil disputes (p. 20); (vi) ministers and public officers must exercise their powers reasonably, in good faith and for the purpose in which they were conferred (p. 23); (vii) adjudicative procedures must be fair (p. 26); and (viii) the state must comply with obligations in international law (p. 29). For Dicey and Bingham, the 'rule of law' was the bedrock to the proper functioning of law in England and Wales. In addition to rule of law principles, there also exists the concept of natural justice in English law. Natural justice requires that everyone receives a fair and unbiased hearing before any decision is made which will negatively affect them (Shauer, 1976).

In the prison segregation unit, attempts are made to give effect to the 'rule of law' in several ways. The PR 1999, PSOs and local site rules together, purportedly, set out the law in a manner which is 'accessible, intelligible, clear and predictable'. The rules attempt to limit the use of segregation to certain prescribed situations (for 'good order or discipline' or an individual's 'own interests'). They introduce internal oversight mechanisms, such as segregation review boards, internal approval processes and time limitations for segregation.

The rules also allow for independent bodies, like the IMB, to be involved in the oversight process (by attending segregation review boards). In addition, prisoners retain certain rights: to access their legal advisers and to have recourse to a court, as final arbiter of the workings of the 'law'. Together, these rules and rights are important mechanisms for constraining discretion and arbitrary power, and for reducing the opportunities for discriminatory decision-making.

However, as we proceed through the thesis, I suggest that the 'law' does not always function in ways which give effect to 'rule of law' principles. I identify how the legal rules (like PR 1999) and non-legal rules (PSO 1700 and local site rules) are not clear or predictable. Moreover, they contain substantial discretionary power, which means, at times, they function according to the whims of the actors responsible for their implementation – sometimes staff, prison managers and the judiciary (Chapters Two and Four). I suggest that law is not always enacted through procedures which are fair, or able to remove bias and constrain discretion. Specifically, in Chapter Six, I discuss the various safeguarding mechanisms (segregation review meetings, approval processes and complaints mechanisms) to demonstrate some of the limitations of law in protecting prisoners' rights in segregation. Throughout, I identify a contradiction between the external *law of segregation* and the internal norms, customs, cultures and practices which give effect to the *law in segregation*. Whilst law is 'present' – in name, language and the complex web of rules and procedures – it is subsumed within everyday life of the segregation unit. The effect being, at times, 'the rule of law is absent, although rules are everywhere' (Arbour, 1996, p. 180). Thus, the 'rule of law' is a guiding benchmark to which I return in most chapters. I rely on its principles to identify the ways in which laws and rules in segregation may, or may not, be 'effective' in preserving the eight principles of Lord Bingham (as described above).

The law, and specifically rule of law principles, are important conduits for creating or diminishing the legitimacy of the prison institution. When prison authorities comply with their own rules and procedures, it may be more likely that the prison institution is perceived as fair and legitimate (Sparks, Bottoms, & Hay, 1996). Thus, conformity with the 'letter of the law' is of fundamental importance for the legitimacy of the prison (Whitty, Murphy, & Livingstone, 2001, p. 239). However, it is not enough for institutional legitimacy to simply comply with the letter of the law. Decision-making processes also need to be perceived as fair (i.e. neutral, transparent and allowing voice to those involved) and individuals need to feel treated with respect and dignity (Bradford, Hohl, Jackson, & MacQueen, 2015, p. 4). Thus,

institutional compliance with the rules is important, but so are the ways in which the rules are implemented (and the latter is where 'rule of law' principles are valuable). Specifically, staff discretion and the inter-personal relationships between staff (those who implement the rules) and prisoners (those affected by the rules) are important contributors towards institutional legitimacy. There is a utility for the prison to comply with its rules and procedures; existing research supports the idea that if a prison is deemed more legitimate, then prisoners will more likely comply with its rules, laws and processes (Tyler, 1990). Thus, legitimacy has important consequences for the safety and order of the institution. However, there are also broader ethical and moral dimensions to the role of law in prison. Law and rules are important mechanisms through which prison authorities can be made, and held, accountable. The existence of rules and laws can impose limits on the exercise of discretion and encourage the 'right' use of power. Law and rules are especially important in the segregation unit, which is the deepest part of the prison, containing especially vulnerable prisoners, and is characterised by significant power differentials. Therefore, rules and processes, such as those which demand: an external review of segregation after 42 days; the approval of the governor and mental health team; the involvement of the IMB; and regular meetings with, and reviews by, the segregation review board, become all the more important. They are important not just for the legitimacy of the institution, but for the safety of the individuals confined there.

## 5. The structure of this thesis

In Chapter Two ('Law and Sociology: Bridging the divide') I discuss the existing legal and non-legal rules[24] which govern segregation in English prisons. Through an analysis of case law, I demonstrate the ways in which segregation has been challenged by prisoners in the past, and how procedural complaints are often more successful than substantive treatment complaints. I argue that the rule of law is limited, in the prison context, by the court's narrow construction of human rights, as well as its preference for procedural justice (over substantive justice), and its deference to prison authorities. I suggest that prisoners' rights are narrowly construed and can be constrained by the behaviour of the individual, but sometimes by the very fact of imprisonment. I also discuss the benefits of a socio-legal research approach which underpins much of this thesis. I review and challenge the current division in the existing literature – the fissures between criminological and legal scholarship – and suggest that, in order to understand properly how law is understood, applied, used and experienced in

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[24] 'Non-legal rules' are explained in Part 2, Chapter Two.

segregation units, we need to bridge the 'gap' between the two. Only then can we understand how *law matters* (Levine & Mellema, 2001) in segregation units.

In Chapter Three ('Methods: At the margins, without trust and the fragmented self'), I discuss the research design, site and methods used in this thesis. I describe HMP Whitemoor and its segregation unit ('Unit'). I draw out the challenges I experienced from researching two, often polarised, groups. I close by exploring four challenges which arose from researching at the margins of the worlds of both prisoners and staff. In particular, I was confronted with ethical and practical difficulties relating to: maintaining trust and mitigating suspicion; being able to truly understand *their worlds*; retaining my own sense of 'self'; and grappling with the ethnographic loneliness which ensued as a result.

In Chapter Four ('Law and contradiction: the use of segregation') I focus on the ways in which Rule 45 PR 1999, as the initial authority for 'removal from association' and the first step in the segregation process, is interpreted and applied in practice. I suggest that the current law of segregation is an inadequate mechanism for controlling and constraining the *use* of segregation in prison for three reasons. Firstly, the concept of 'removal from association' contained within the PR 1999 is vague and imprecise. It has been interpreted and applied in a number of ways by the English courts and, accordingly, creates problems for legal certainty and undermines some of our most basic rule of law principles. Secondly, the concepts of 'good order or discipline' and 'own interests', also within the PR 1999, are just as broad. As such, they are used to justify a range of prison decisions. Contrary to the intention behind the legal rules, I suggest that segregation may not be the 'last resort', nor is it reserved for the most violent offenders. Thirdly, I demonstrate how the PR 1999 are characterised by a substantial amount of discretion, which is not constrained by the supplementary PSO 1700 or local rules. I suggest that, although there are opportunities for legal and policy reform (to improve the PR 1999, PSO 1700 and local rules), and opportunities for strengthening the 'rule of law', such efforts may only result in limited outcomes. Reforming the rules may do little to reform the circumstances which necessitate the use of segregation (such as the violent and turbulent wings, high rates of mental illness and lack of progression in the prison).

In Chapter Five ('Law and discretion: the culture of segregation') my analysis focuses on the next phase of segregation, once prisoners are moved to the Unit, and how the rules interact with the regime, staff conduct, and individuals' experiences. I demonstrate how the rules are contingent on those responsible for their implementation. I show how staff culture is a

dominant force; and how the culture strongly influences the ways in which individuals engage with, and apply, rules. I argue, in this chapter, that the rules create a space in which staff discretion can thrive. For the most part, staff discretion is exercised in ways which result in the selective enforcement of rules. Those rules (whether legal or not) are used to legitimate, or are even rejected in favour of, practices which are sometimes punitive, discriminatory and unfair. Moreover, the dominant staff culture erodes certain oversight and accountability mechanisms, and means there are weak internal constraints on staff discretion. Consequently, the rules do not always function in accordance with the rule of law. Instead they are subsumed within the Unit's culture; and the Unit's culture has important implications for reform efforts. I discourage efforts which focus only on policy or legal reform: they will not remedy the complex operational, organisational and cultural conditions of the Unit.

In Chapter Six ('Law and context: application, accessibility and authority'), I advance the argument that the functioning of law is contingent on the staff who implement it, but also on the institutional context in which it applies. I suggest that 'structural' constraints manifest as the *proceduralisation* of law, whereby processes, paperwork and bureaucracy seep into the Unit in ways which prioritise 'procedural justice' above 'substantive justice'. I highlight how 'structural' constraints also appear in the limited and contingent ways in which prisoners access and engage with legal resources and safeguards. Together, they cultivate, for staff and prisoners, a lack of faith and distrust of legal mechanisms and processes. Importantly, they create a sense that the rules and processes privilege the 'other' (i.e. staff group or prisoner group). Specifically, for prisoners, they create a degree of 'legal authority' – they justify the decisions of those in power – but fail to create 'legitimate authority' (they do not render those decisions 'legitimate').

The aim of this study is not to diminish the value of law. As a previously practising lawyer, I remain committed to the importance and usefulness of law in segregation units. I do not dispute that law reform is needed. However, I aim to inspire more reflection about *whether* and *how* the 'rule of law', along with principles of human rights and procedural justice can best be supported. In Chapter Seven ('Challenge, change and hope') I note, with regret, how law *alone* is not the most appropriate mechanism for improving standards in the Unit. Even if the legislation and accompanying guidance are revised, and if legal knowledge, practice, procedures, appeal mechanisms and remedies are at their very best, there are still a number of limits to the law. Specifically the law may not be able to correct the attitudes, customs and culture of the segregation unit, nor may it correct the problems found elsewhere in our prison

system (overcrowding, mental illness, volatile wings and inexperienced staff), nor the 'legitimacy deficit' (Sparks et al., 1996, p. 299) found in the prison; nor the deficiencies of our social, economic, political and criminal justice system. The law may be of limited consequence until there is greater acceptance that segregation is innately harmful and dehumanising, and capable of perpetuating violence and violations of dignity. As Hudson argued the 'law cannot be expected to remedy injustices legally before they are recognised as injustices socially' (2006, p. 30).

The final chapter closes by making the point that, although law may not be the most appropriate mechanism for reform, it does not mean that all is lost. The law is one of a range of factors affecting the prison, so we should not limit ourselves to seeking change by law reform alone. Change is possible: HMP Wormwood Scrubs and HMP Oakwood had a different vision for their segregation units; and HMP Warren Hill managed to close its unit.

I am conscious that, by focusing my analysis on efforts to improve standards and the substantive experience of segregation, I may be inadvertently diverting attention away from bigger questions about the justification for segregation. Perhaps by attempting to resist, curtail or revise segregation based on 'best practice' or 'humane treatment' we, in effect, work to normalise this mode of captivity, we inadvertently support its existence and sustain its immunity from abolition (Montford et al., 2017, p. 151). This was never the aim of this study. However, the practical reality is that segregation exists: there is an institutional reliance on its use, and it seems, *for the moment*, that it may be here to stay. I hope to show that whilst there are opportunities for change, there are also opportunities for asking uncomfortable questions about the utility of segregation. Segregation perpetuates violence and harm, it can dehumanise and 'other' prisoners. This creates risks for the prison but also the rest of society. As Desmond Tutu (2000, p. 35) argued, the greater whole of humanity is diminished when we agree that others within it can be humiliated, denigrated or treated as less than human (quoted in Drake, 2012, p. 159).

# Chapter Two – Law and Sociology: Bridging the Divide

> [Y]ou've seen the law changing prison policy…if you go through all the way down, from Rule 39, where a prisoner could have confidential correspondence with their lawyer, that's been there a long time. Then you had searching, where the prisoner was kicked out of their cells and legal documentation was searched. There's been so much case law in regards to prison, actions of management, so yeah I say the law is an important part of being in prison. It's funny that a prisoner is in prison, has abused the law but yet they readily rely on the law to enforce their human rights. That's kinda ironic, innit? (David, prisoner).

At the start of this study, one of the primary aims was to understand how law *functions* in the segregation unit. I set out to explore how law is construed, understood and used. I questioned the relevance of law in the Unit, and was interested in learning what law can (or cannot) achieve in restrictive spaces, like segregation units. To put it another way, I was interested in understanding *how law matters* – to individuals, to the prison institution and to social change (particularly in changing prison standards) (Levine & Mellema, 2001). To explore this, it was first important to understand the rules (both legal and non-legal) which apply to segregation in English prisons. Therefore, in this chapter, I first outline the formal legal rules, followed by a description of the non-legal rules, which govern segregation. I then, through an analysis of case law, discuss the ways in which legal mechanisms have been used to challenge segregation in prison. I identify some of the limits to litigation: some are financial in nature (changes to legal aid), judicial (preferences for procedural rather than substantive justice) and remedial (reluctance to award damages). The case law analysis raises important questions about the function and availability of law in prison; questions which a purely doctrinal (case law) approach cannot adequately answer. As such, the fourth and final part of this chapter closes with a discussion of the value of legal sociology, and of 'gap studies', for understanding the relationship between law, rules and experiences (Levine & Mellema, 2001, p. 172).  I argue that a socio-legal approach offers considerable value for understanding how *law matters*, as well as some of the limits to law, and pervades much of this thesis.

## 1. Legal rules

The use of segregation is established and governed (in theory, at least) by a complicated legal framework. This framework exists to ensure prisoners' rights are upheld and that decisions are made legally, fairly and consistently. Prison rules and regulations provide a dual purpose: they serve as both 'a shield and a sword'. Legal rules can protect prisoners from arbitrary and

improper interference with their rights and can, at the same time, legitimate and justify the decisions of prison officials, and thereby protect them (and the institution) from unscrupulous or groundless complaints.

The current legal framework derives from s47(1) of The Prison Act 1952, which permits the Secretary of State to make 'rules for the regulation and management of prisons'. Importantly, the Secretary of State has a vast discretion in organising and managing the prison system (Lazarus, 2004, p. 146). Exercising this function, the Secretary of State created the PR 1999. The PR 1999 are statutory instruments, approved by Parliament and have been amended on several occasions.

Rule 45 of the PR 1999 provides for 'removal from association' and, whilst it does not explicitly refer to 'segregation', the courts have interpreted the rule to mean 'segregation'.[25] Rule 45 of the PR 1999 was amended in 2015, as a result of the decision of the Supreme Court in *R (Bourgass) v Secretary of State for Justice* [2015] UKSC 54. Pursuant to the 2015 amendment (enacted by the Prison and Young Offender Institution (Amendment) Rules 2015) the rule now states:

> [W]here it appears desirable, for the maintenance of *good order or discipline* or in his *own interests*…the governor *may* arrange for the prisoner's removal from association (R45(1)).

The governor can authorise removal for up to 14 days (R45(2)), which can be renewed for subsequent periods of 14 days (R45(2A)), except, any removal beyond 42 days requires leave from the Secretary of State (R45(2B)).

Similarly, the Young Offender Institution Rules 2000 ('YOI Rules') permit the governor to remove the offender from association where it appears desirable for the maintenance of good order, discipline or for his own interests (R49(1)). Such removal shall not exceed three days, without the authority of a member of the board of visitors or the Secretary of State (R49(2)). Such authority can authorise removal for up to 1 month (for a female offender aged 21 or over) but, in the case of any other offender, shall not exceed 14 days (R49(2)) and may be renewed from time to time for a like period (R49(2)).

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[25] See *Dennehy v Secretary of State for Justice and Sodexo Limited,* [2016] EWHC 1219 (Admin) [9] and *R (Bourgass) v Secretary of State for* Justice [2015] UKSC 54, in which the Supreme Court described removal from association and segregation and solitary confinement as one and the same.

In addition, human rights protections are set out within the European Convention on Human Rights ('ECHR'), which was given effect in domestic law by the Human Rights Act 1998. A number of prison segregation decisions have been challenged on the basis of Article 3 (prohibition of torture, inhuman or degrading treatment or punishment) and Article 8 (right to respect for private and family life) (see Annex One). Segregation decisions have also been challenged on grounds of 'procedural fairness'. This common law right requires prison decision-makers to act fairly 'when reaching a decision which could adversely affect those who are the subject of the decision' (*Roberts v Secretary of State* [2005] UKHL 45 (per Lord Woolf [41]). Procedural fairness requires that the individual affected by the decision is: (i) given an opportunity to make representations 'with a view to producing a favourable result' (*R v Secretary of State for the Home dept ex p Doody* [1994] 1 AC 531 (per Lord Mustill); (ii) provided with information pertaining to the 'substance' of the case against him (*R (Bourgass) v Secretary of State for Justice* [2015] UKSC 54 [100]); and (iii) an opportunity to participate in decision-making in order to contribute relevant information or to test information before the decision-maker (*R (Osborn) v Parole Board* [2013] UKSC 61).

Moreover, public law mechanisms, such as judicial review, are important for allowing the decisions of public bodies (such as a prison) to be challenged in the courts and scrutinised by the judiciary (see Creighton & Arnott, 2009, pp. 607 - 609). Private law mechanisms have also been relevant to segregation: prisoners have brought legal complaints founded in a breach of statutory duty, negligence, assault and discrimination (to name only a few).

International law standards have also been given some weight by the English courts. For example, the courts have, in the context of prison segregation, considered the European Prison Rules 2006, as well as the Mandela Rules, and have treated the reports from the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment ('CPT') as compelling forms of evidence (*R (AB) v Secretary of State for Justice* [2019] EWCA Civ 9).[26]

## 2. Non-legal rules

Throughout this thesis I refer to 'non-legal rules'. By this I mean the guidance and rules which supplement the formal legal rules, set out above, which are not contained in primary or

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[26] This thesis does not explore these international legal standards in great detail. The European Prison Rules may be persuasive for the English courts but they are not binding. The Mandela Rules and CPT reports have only been referenced in a small number of cases. They were given little mention during fieldwork, with staff and prisoners having little knowledge of their existence. Together, they appeared to be of limited impact in the prison (Abati et al., 2018).

secondary legislation, nor are they derived from the common law. I am specifically referring to: (i) Prison Service Order 1700 ('PSO 1700'); and (ii) the local guidance issued within Whitemoor.

PSO 1700 is a non-statutory government policy specifically created to manage the use of segregation in prisons. PSOs were issued until 2009. They were intended to be 'long-term mandatory instructions, designed to last indefinitely'.[27] PSOs remain in force until they are replaced by Prison Service Instructions ('PSIs') or are cancelled. PSO 1700 was issued in October 2003. It was amended in 2006 by PSI 17/2006, which was replaced in 2009 by PSI 26/2009, and subsequently cancelled in May 2018. However, HMPPS states that the amendments have been 'included in the Segregation website PSO 1700'[28] (see HMPPS, 2019a, 2019b). PSO 1700 does not have any direct legal status:[29] it cannot legitimate infringements of prisoners' rights, empower prison administrators beyond the statutory prison rules, nor can it give rise to any specific legal entitlements to prisoners (except insofar as it creates a 'legitimate expectation', which may be recognised by the courts in certain judicial review cases) (Lazarus, 2004, p. 158).

PSO 1700 sets out the purpose of segregation and affirms how segregation should only be used 'as a last resort' and with a focus on managing behaviour and problems instead of punishment (p. 4). PSO 1700 is a 73-page document which sets out matters such as: the training of staff in segregation units; the purpose and reasons for segregation; the process for authorising segregation; and the process for returning a prisoner to normal location. Importantly, PSO 1700 contains a number of safeguarding provisions. For example, it stipulates that segregation must be reviewed by a doctor or nurse within 2 hours of the prisoner being segregated; segregation must also be approved by a governor; it should be

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[27] As described on the Ministry of Justice website. However, the 'mandatory' status is far from clear in the wording of PSO 1700, where only certain parts are designated as mandatory. For example, it is mandatory for a doctor to visit prisoners in segregation daily and for the 'segregation, monitoring and review group' to monitor and review the number of prisoners held in segregation each week, as well as their ethnic statuses, and to 'assess…any prisoner' held in segregation for over three months. However, many of the rules, in PSO 1700, are not designated as mandatory and therefore, by implication, are discretionary.

[28] HMPPS means, although not expressed clearly, the up-to-date PSO 1700 can be found online, on the PSO part of its website. Although this is only made clear after one reviews the other documents, follows the paper trail, finds this instruction (contained in the PDF list of all PSOs) and returns to the webpage. It is a circuitous process.

[29] The status of PSO 1700 has been disputed. In *R (on the application of MA) v Independent Adjudicator* [2013] EWHC 438 ,the defendant alleged that PSO 1700 was 'non-statutory' and therefore had no mandatory requirements: at 'its highest, it conferred a legitimate expectation' [30]. The courts have not resolved this issue and I do not intend to resolve it here. For now, it is important to note that PSO 1700 has a complex status: it contains both mandatory and discretionary instructions, and the courts have not defined the extent to which it imposes obligations or rights on prisoners.

monitored and reviewed by segregation review boards every two weeks; and the IMB should be involved in the process.

Within PSO 1700 there is a provision urging prisons to create local segregation policies, which 'reflect their own needs' (p. 4). This, in part, recognises the difficulties of creating a comprehensive policy, appropriate for every prison. There is no denying that there is a role for discretion in the penal and legal system (Klatt, 2007), and this is evident in PSO 1700 which equips each establishment with a substantial amount of discretion to develop a segregation policy specific to its environment and circumstances. Although it would be difficult to create an all-encompassing policy applicable to each category of the male, female and young offenders' estates, this perpetuates the uncertainty and inconsistency in the existing rules.

In response to PSO 1700, Whitemoor developed local site-specific guidance: 'HMP Whitemoor Segregation: Information Booklet and Segregation Unit Expectations', the latest version of which was dated February 2019 ('Local Site Rules'). Notably, during fieldwork, they had not been distributed to staff. The Local Site Rules restate rules 45, 46, 53, 55 of PR 1999 and describe the accommodation, the regime and behavioural expectations of prisoners (p. 5). For example, the rules instruct how cells must be cleaned, curtains opened, how property will be checked, how razors will be issued and removed. They state there will be no passing of newspapers or other items and noise must be kept to a reasonable level (p. 14). They make clear that access to the regime and other facilities is based on prisoners' behaviour and staff judgments. There is ample discretion within the rules and, importantly, they are drafted as a framework for prisoners to abide by. They are not additional guidance to staff or managers on how segregation should be used, nor do they contain conditions or standards for the Unit or the regime. The Local Site Rules satisfy the instruction in PSO 1700, in that they 'reflect the needs' of staff and management, but provide little consideration to the needs and rights of prisoners contained there.

During fieldwork, it became clear that the segregation unit was a part of the prison where the *language of law* was very present. Staff commonly referred to prisoners by their associated Rule: 'oh, he's a Rule 45 prisoner', 'he's Rule 46'; or 'he's a 42 day-er', meaning the prisoner had been in the Unit beyond the 42 day approval period, set out in the PR 1999. There was also a language of 'rules', 'rights' and 'entitlements' and these became difficult to untangle. Some staff referred to 'rules' in the context of the formal legal rules (in PR 1999) or non-legal rules like PSO 1700. Whereas others referred to 'rules' in the context of formalised local

practices, those contained in the Local Site Rules, but also those dictated by informal ways of working, established norms and practices.

Thus, a complex and fragmented framework, of both legal and non-legal rules, applies to the segregation unit. The legal rules dictate, at least in theory, how segregation is used, when it is used and why it should be used. The non-legal rules shape how discretion is exercised, the availability of entitlements and privileges. Together, the rules can make time in segregation more or less survivable. By understanding experiences of law and rules, we can understand broader experiences of segregation. The ways in which rules are implemented can have an important impact on experience, and particularly how individuals assess whether a practice or decision is deemed to be fair. If rules are followed, and implemented fairly, by an honest and impartial authority, one who listens to views and treats individuals with respect and dignity; then the outcome is more likely to be experienced as just and reasonable (Paternoster, Brame, Bachman, & Sherman, 1997; Tyler, 1988, 2003). However, if a practice operates outside the established rules and procedures, it will more likely be experienced as illegitimate and may create a strong sense of injustice and feelings of discontent. Consequently, the rules and procedures which govern segregation, and the ways in which they are implemented, are important for shaping one's perceptions and experience of segregation. Therefore, any analysis of segregation must take into account the role of both legal and non-legal rules, as well as the actors responsible for their implementation (see Chapters Four, Five and Six).

## 3. Case law

The aim of this research – to understand law in the segregation unit – could have been answered in one of two ways. Firstly, through a traditional doctrinal approach, by reviewing case law decisions and court judgments, to understand the ways in which prisoners have used the law to hold prison administrators to account. Or, secondly, through a sociological analysis, to explore how prisoners conceptualise law, how they exhibit 'rights consciousness' and, relatedly, make use of their legal rights (Murphy & Whitty, 2016, p. 130); and how staff interpret legal obligations and engage with legal processes. As the remaining parts of this chapter show, both approaches have promises and pitfalls, therefore a multi-disciplinary 'socio-legal' approach is needed.

An examination of case law can be valuable as a means for understanding the use and experience of segregation. Legal disputes have, in the past, served as conduits for academic research and culminated in published works (Grassian, 1983; Haney, 1993; Jackson, 1983).

Much of this work was produced in the United States and in Canada, but very little has arisen from the UK context. Litigation can reveal the parameters of the acceptability of prison conditions and regimes, and can expose the instances in which these parameters become breached. Case law can reveal our tolerance threshold. We all have different ideas about justice, fairness, entitlements and equality, and the point at which losses, grievances or treatment move beyond an acceptable threshold and divert into the realms of unacceptability and illegitimacy (Ewick & Silbey, 1998). Reviewing segregation, in the context of legal challenges, furthers our understanding of where that threshold lies. It is through legal complaints that conditions and/or treatment can become recast as illegitimate practices.

Since 1980, in England and Wales, there have been twenty-four[30] reported cases brought against segregation (or some aspect) (see Annex One). My initial case searches revealed hundreds of cases (377). Some challenged practices in Immigration Removal Centres, secure psychiatric hospitals, as well as prisons. The cases involved a range of issues, including extradition proceedings, challenges to security categorisation, appeals of conviction and sentence, challenges to prison policies and procedures. However, a more nuanced review revealed twenty-four cases which directly concerned segregation in prison.

Much was learned from the case law review. The majority of complaints were made by men, a finding which reflects the realities of our prison population: men substantially outnumber women.[31] The majority of complaints were submitted by prisoners in public prisons (twenty-one), in the High-Security Estate (ten), followed by local prisons (eight), YOIs (five) and one unknown prison location.

Eight cases were heard between 2009 and 2012. The remainder were unevenly distributed across the years, and only five cases were heard from 2013 to 2020. The patterns in the number and frequency of cases follow a similar trajectory to the patterns witnessed in the provision of legal aid. During 1997 to 2007, the cost of legal aid provision increased from £1.5bn to £2.1bn (Grimwood, 2015, p. 5). The increase provoked concerns for the

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[30] During 1 March–11 June 2020, I searched the Westlaw database for cases on 'segregation', 'solitary confinement', 'seclusion', 'isolation', 'prison' and 'YOI', in various combinations. 'Solitary confinement and prison' revealed 264 results, 'isolation and prison' revealed 1505 results, 'seclusion and prison' revealed 105 results and 'segregation and prison' revealed 375 results. Taken together, they would have created a large, and repetitive, dataset. Many of the cases appeared on a repetitive basis, regardless of whether 'segregation', 'seclusion' or 'solitary confinement' were used. Consequently, I limited the search terms to 'segregation AND prison'. This search revealed 377 cases. I then reviewed each case and created a spreadsheet with 86 headings such as: case name, date of judgment, court, location, length of segregation, alleged violations, outcome and remedies. A second phase of review was undertaken which simplified and consolidated the review into 28 categories, to enable the data to be more easily reviewed and analysed.

[31] At 5 June 2020 there were 79,878 male prisoners and 3,255 female prisoners (Ministry of Justice, 2020c).

Government and, in July 2005, Lord Carter of Coles was commissioned to review the provision of legal aid. Lord Carter called for a new system in England and Wales, which centred on 'best value…quality, competition and price' (Carter, 2006, p. 3). As a result, a number of changes were made to the provisions of both civil and criminal legal aid. As far as prisoners were concerned, this culminated in the development of the Legal Aid, Sentencing and Punishment of Offenders Act 2012 ('LASPO'), enacted in 2013. LASPO reduced funding for legal aid and narrowed the scope of the eligibility criteria, meaning that fewer people had access to legal advice and representation (Organ & Sigafoos, 2018, p. 6). This occurred alongside the implementation of the Legal Aid Transformation ('LAT') programme, which specifically affected the scope of legal aid available for prison law cases. From 2011, there was a reduction in the number of publicly funded prison law cases, with a steep reduction in the number of claims relying on 'free standing advice and assistance' (Figure One).

Figure One: Prison Law Completed Cases April 2011 to December 2019 (Ministry of Justice, 2020b, p. 7)
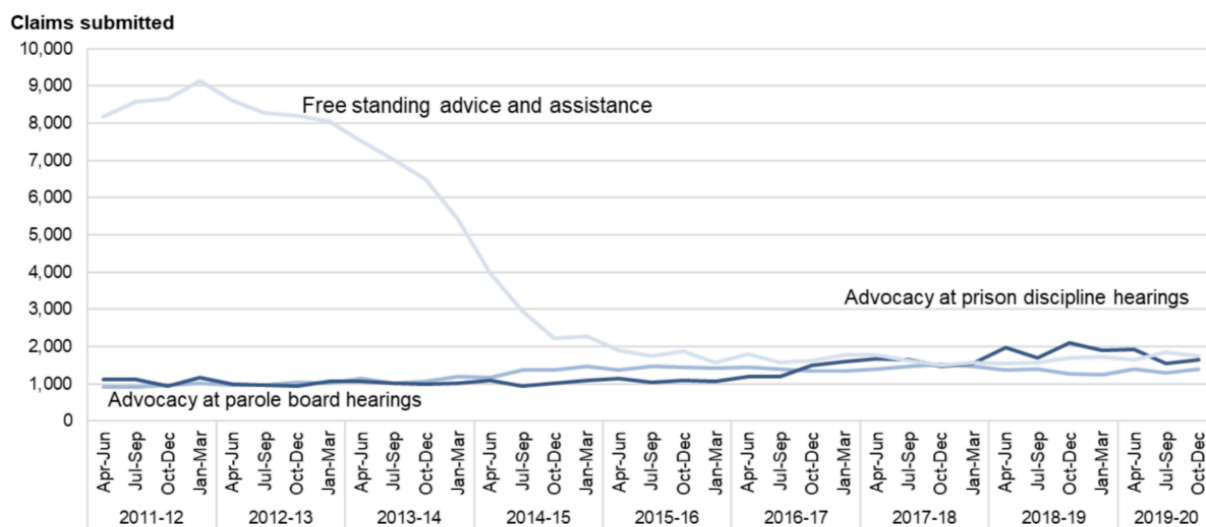


| | Advocacy at prison discipline hearings |
| | Advocacy at parole board hearings |
| | Free standing legal advice and assistance |

From April 2011 to April 2019 the volume of publicly funded prison law matters reduced by 54% (from 42,681 claims in 2011 to 19,516 claims in 2019) (Ministry of Justice, 2020a, table 2.1). The number of prison law legal aid providers reduced by 65% (from 485 in 2011 to 170 in 2019) (Ministry of Justice, 2020a, table 9.1). Taken together, they illustrate how macro level changes to the provision of public funding may have substantially impacted the prevalence of prison litigation. It illustrates the importance of the broader socio-political context in which litigation is pursued. It demonstrates how legal funding and resources both have an important impact on engagement with the law, and the circumstances in which people resort to 'using' the law (Ewick & Silbey, 1998, p. 185). As previous research found, those with greater resources, including income, funding, education, or familiarity with the law, were more likely to use the law to resolve disputes (Carlin, Howard, & Messinger, 1966; Goodman & Sanborne, 1986; Mayhew & Reiss, 1969).

Further, the case law review revealed a multitude of legal issues. Importantly, about half (13) challenged the processes and procedures which authorised segregation; and another half (12) challenged the substance of segregation (sometimes both featured in the claim).

Insofar as the procedures were concerned, complaints challenged the lack of opportunities to make representations and to receive information associated with the segregation decision, the adequacy of oversight mechanisms, as well as procedural fairness (see *Syed, Dennehy, Bourgass, S.P, Ex Parte Hague, MA, AB)*. Complainants challenged the substance of the regime, insofar as it related to the limited provision of fresh air (*Malcolm)* and food (*Ex Parte Russell)*, and access to 'purposeful activities' including education and exercise (see *S.P, Bary, MA, AB)*. A number of cases illustrated the detrimental impact of segregation on both those with and without pre-existing mental health conditions (see *Racz* and *Bary*), and incidents of self-harm and suicide in segregation units (see *Keenan, BP, Russell)*. A small number of cases involved allegations of staff abuse and violence (*Weldon, Racz, Russell*). We can observe, in case law, how prison complaints became reframed within a human rights discourse. Wide-ranging complaints, such as poor physical conditions, extensive isolation, bare cells, and a lack of purposeful activity were recast as Article 3 violations (protection from torture, inhuman, degrading treatment or punishment) or Article 8 (right to private and family life) ECHR complaints. In doing so, the actualities of the experience became depersonalised, selectively extracted and decontextualised, removed from the individual, his/her treatment and the institution (Armstrong, 2020, p. 90).

Notably, Article 3 complaints were rarely successful. Whilst the courts have a wide ambit to consider a range of factors, to determine an Article 3 claim,[32] complaints often failed to reach the high 'severity of treatment threshold'. Prisoners had difficulties as 'ideal' complainants: the court judgments painted a negative picture of the prisoner, often as risky, disruptive and violent individuals (see *Hassan* and *Dennehy)*. At the same time, the judgments presented a positive picture of the prison authorities: judges deferred to the expertise of prison officers, accepting their views of risk, the justification for segregation, and their assessments of what was necessary to maintain security and control within the prison. In *Hassan*, when referring to evidence from prison staff, the court said '[t]heir expertise, knowledge and experience in a testing environment warrant respect' [49]. The court aligned itself with the prison authority's view; it 'respected' its expertise and appeared to treat this party as an expert (Armstrong, 2020, p. 94). Thus, a weak test of proportionality, necessity and reasonableness seemingly operates (this is not unique, see Armstrong, 2020, pp. 93, 94; and Whitty et al., 2001, p. 242). For example, in *Bary,* the High Court assessed the segregation of the claimants according to the '…risk they present to staff…risk of escape…risks they present to themselves….[and] risk they present to other prisoners…'. However, the court overlooked the extent to which 'risk' was compounded by the institution; it was not relevant for assessing the legal issue at stake. The court overlooked the harmful impact of imprisonment, instead, deviance was construed as a deficit of the individual claimants, who were blamed for the risks they posed. Thus, the court denied the difficulties of 'surviving such deeply damaging environments' (Armstrong, 2020, p. 101). In *Bary*, the court concluded: 'even harsh regimes may not be in breach of Article 3, if the regime is justified by the particular risks posed by the prisoner'. By doing so, the court demonstrated how rights (including Article 3, which is supposedly absolute in nature) can be limited or qualified not only by the behaviour of the individual, but by the very fact of imprisonment and its demands of risk, security and order (Eady, 2007, p. 265).

Prisoners found greater success from procedural complaints i.e. those which challenged the interpretation and application of the PR 1999 and YOI Rules. It was easier, for the courts, to assess whether a procedural rule or requirement was complied with, than to gauge the full impact of segregation (and imprisonment) on a person. This reflects the orientation of the

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[32] The courts can consider 'the duration of the treatment, its physical or mental effects…the sex, age and health of the victim' (*Keenan v United Kingdom* [2001] 33 EHRR 38 [108]) and such considerations are, as the court observed in *Keenan*, relative. The courts can also consider whether there was an intention to debase or humiliate the individual, whether there was any specific justification for the measure, whether the measure was arbitrarily punitive as well as the 'particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person' (*Ahmad v United Kingdom* [2013] 56 EHRR 1 [178] [209]). There is, as the court in *R (Bary and Others) v Secretary of State for Justice and the Governor of HMP Long Lartin* [2010] EWHC 587 [36] noted 'no test of universal application' for determining severity of treatment.

English courts: their preoccupation that justice, or at least procedural justice, is seen to be done (Kingwell, 2017, p. 8). As Gelsthorpe and Padfield (2013, p. 12) argue, the courts are more interested in 'procedural justice rather than substantive justice', to ensure that the procedures are fair. Whether the outcomes are fair is another matter. In the segregation cases, the courts spent much time considering whether the right approvals were sought, from the right people, according to the correct timeframes, and whether the paperwork was completed. Whilst procedures are important for fairness, transparency and governance, focusing on the procedural duties diverts attention away from considering whether segregation, itself, is an acceptable outcome. The courts assume the current institutional framework, rather than question it – they focus on how segregation units are managed, and the enforcement of fair procedures, rather than question why this measure is used in the first place (Garland, 1990, p. 3). Whilst the courts are limited in what they can and cannot question, challenge and consider (and the foundations of segregation may be beyond the court's remit), we cannot deny this stark illustration of one of the limits of the law.

Moreover, when claims succeeded, they did not necessarily result in the outcomes the claimants' desired. For example, the courts were reluctant to award damages, preferring to make a declaration i.e. declaring that a party had been wronged and that procedural or human rights had been violated (for a discussion of the respective merits and limitations of declarations see Foster (2017) and Shelton (2006)). There is always a risk with litigation: the case may not be resolved in a manner satisfactory for the claimant or the claim may result in unforeseen (and unintended) consequences. This is best illustrated by *R (Bourgass) v Secretary of State for Justice* [2015] UKSC 54. Bourgass was segregated, for at least seven months, following an incident with another prisoner. His segregation was renewed by the prison governor. Bourgass complained that the governor was not authorised to extend his segregation and that the external review mechanisms (which required an external referral to the Secretary of State for any segregation beyond 72 hours) were not followed. The Supreme Court declared that segregation, beyond 72 hours, must be approved by the Secretary of State. This was an important safeguard to ensure external scrutiny and review of segregation decisions. The decision, taken by the prison governor, was therefore unlawful and breached the PR 1999.

Bourgass also complained that he should have: (i) been given an opportunity to make representations; and (ii) been provided with the reasons and information behind his segregation. Lord Reed was persuaded that prisoners should 'normally have a reasonable

opportunity to make representations and should be given sufficient information'. He criticised the information provided which, at best, gave only the 'most general idea' about the reasons for segregation and that 'more could and should have been said' [100]. He expressed disappointment in the prison service for imposing prolonged periods of segregation 'on the basis of what are, in substance, secret and unchallengeable allegations [which] is, or should be, unacceptable' [100].

The Bourgass judgment was viewed as a major advancement in prisoners' rights and procedural justice (Beaton, 2016). Lord Reed set out a minimum level of information, reasons and evidence that should be made available to prisoners facing segregation. The judgment was important for reaffirming the roles and responsibilities, as well as the decision-making limits, of prison officials. It was a positive example of the power of litigation and its potential for prison reform. The judgment highlighted the failings of the prison service and provided a strong reminder of the importance of procedural safeguards in prison segregation.

After Bourgass, there was a window of opportunity in which the law of segregation could have been reviewed (and improved). The opportunity was taken, but not in a manner which benefited prisoners. Two months after Bourgass, the Secretary of State amended the PR 1999. A new Rule 45(2) was enacted on 4 September 2015 which specified that the governor may authorise segregation beyond 72 hours up to a period of 14 days, and may renew each period of segregation up to 42 days. Segregation beyond 42 days must be authorised by the Secretary of State. This is a significantly longer period: external approval was previously required for any segregation beyond 72 hours. Extending the timeframe for external review weakened the protections afforded by the legal rules: early referrals to the Secretary of State were an important safeguard against arbitrary and unlawful segregation decisions (and an approval mechanism which the Supreme Court, in *Bourgass*, regarded as extremely important).

The reaction by the Secretary of State reveals the reluctance by the British government and prison service to affirm prisoners' rights (Eady, 2007; Lazarus, 2004). It demonstrates how court decisions may not always translate into progressive changes in law, policy and practice (Whitty et al., 2001, p. 241) without political will. The outcome of the Bourgass litigation (the amendment to PR 1999) redefined the parameters through which segregation (and governor decision-making) can lawfully operate. The outcome was a form of 'legal proofing' (Whitty, 2011, p. 129), which created new minimum standards for external oversight and makes segregation harder to legally challenge. Bourgass proffers a cautionary lesson about the merits

of litigation: whilst Bourgass succeeded in his legal challenge, he undermined some of the safeguards and protections afforded to the prison community as a whole.

The case law review revealed how litigation may have unforeseen consequences. It also revealed how, for prisoners, the substantive *experience* of segregation matters just as much as the *process* for segregation. It provided insights into common areas of contention in prison and into prisoners' experiences and their engagement with the law. However, we need to be mindful that case law only offers a narrow lens through which law and experiences can be understood:

> Much legal study, perhaps most of it, by its very nature concerns itself with the extraordinary. To focus on case law is, as we know, to focus on the unusual. Most disputes do not reach the stage of court judgments, let alone litigation. (Halliday & Morgan, 2013, p. 2)

As Halliday and Morgan (2013) correctly observed, most complaints do not result in litigation and will not be evidenced in case law. Reported judgments only provide a limited window into disputes. Disputes which crystallise in litigation, and proceed all the way to judgment, are those which overcame a number of barriers. Firstly, they were brought by claimants who had the financial resources to support a claim. The claimants, in each of the referenced cases, were either publicly funded through legal aid or self-funded. The matter of financial resources is a significant barrier for accessing the justice system. Court cases are costly and the fees of solicitors, barristers and the courts soon mount. Secondly, the reported cases were those which managed to satisfy the procedural requirements of judicial review or appeal. The claimants managed to demonstrate a 'chance of success'; that they were within the strict limitation periods; and were therefore able to pursue their complaints in the courts. Thirdly, they were disputes which a defendant (HMPPS or Ministry of Justice, for example) deemed crucial to defend. For a defendant, there would usually be arguable grounds for dispute or sometimes a strategic motivation for defending the claim. Perhaps a defendant believes their case to be correct in law or wishes to avoid opening the floodgates for further cases. In other words, there might be strategic or public policy grounds for mounting a defence. As such, case law comprises a set of unique disputes, ones which have not been diverted away by resource considerations, and ones which have not been settled out of court.

Further, the cases referenced here were heard in higher tier courts, such as the High Court, Court of Appeal and Supreme Court. Lower tier judgments are not reported to the same extent. Therefore, this analysis only includes judgments from the superior courts and, as a

consequence, only offers a small snapshot of litigation in the context of segregation units.[33] Moreover, as Annex One demonstrates, a whole host of issues can arise, in a variety of contexts. Case law only affords a limited perspective on law: one which narrowly relates to its interpretation and application by the judiciary, not one which exposes the real, lived experiences of law. Written judgments provide truncated narratives, they contain technical descriptions of the prisoner, his treatment, and the matters at the heart of the case, but fall short on both 'depth and dimension' (Murphy & Whitty, 2016, p. 132). Case law is not designed to explore why prisoners brought their cases at that particular moment in time. Was it because a particular constellation of resources, support and individual indignation made it possible and proved to be the catalyst? What was it about the experience of segregation which, for some, culminated in the need to embark on legal action? Whereas, for others, legal action was overlooked, dismissed or avoided? Was litigation pursued by those who had greater faith and belief in the utility of law? Or was litigation the final, last resort, when prisoners felt they had no other choice but to resort to legal proceedings? What did prisoners hope to achieve by resorting to litigation? There are a whole host of ancillary questions which can help us understand individuals' engagement with, and use of, the law. These questions cannot be answered by case law alone.

Whilst case law offers the opportunity to understand law in the context of litigation, it is not the mechanism (and nor was it ever intended to be) through which broader subjective and sociological questions can be explored. Moreover, through case law, individual experiences become reframed as human rights violations and procedural injustices. The substance of the experience becomes lost in a rhetoric and language of law, and becomes contingent on resources, time-limits and procedural obligations, all imposed by *the* law in order to engage *with* the law. Accordingly, case law speaks to the transcendental nature of law in the books, one which is removed from the daily experiences of law in action (Armstrong, 2020; Silbey, 2005).

## 4. The bridge

This division, between 'law in the books' and 'law in action', touched upon by Silbey (2005) is, in the main, a product of the disciplinary fissure between legal and criminological research (the latter deploying broader sociological principles). On the one hand, lawyers have

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[33] Importantly, judgments from the higher courts bind decision-makers in the lower courts. Their principles (*ratios)* will be followed by lower courts and therefore will be influential in our common law system. As such, the reported cases are helpful in providing insights into the approaches of senior courts, their legal analysis and legal precedent, which should be followed by lower tier courts.

produced textbooks on prison law (Creighton & Arnott, 2009; Livingstone et al., 2003), analyses of legal frameworks and historic case law decisions (Kerr, 2015; Parkes, 2017; Polizzi, 2017) and explored the relationship between segregation and human rights frameworks (Coppola, 2019; Scharff-Smith, 2006b; Shalev, 2008, 2011), as well as broader principles of prisoners' rights (Crawford, 1971; Easton, 2013; Lazarus, 2004; van Zyl Smit, 2010). They approached their inquiries through a strict legal lens, analysing case law and legal instruments but with little empirical qualitative research.

In contrast, criminologists have grounded their prison research in empirical investigations, to consider wide-ranging cultural issues. Prisons research, generally, has explored the character and behaviour of prison officers (Liebling, 2000; Liebling, Price, & Shefer, 2011); institutional culture (Liebling, 2004; Liebling, 2007; Liebling, 2016; Liebling & Kant, 2018); prison monitoring bodies, like the Independent Monitoring Board (Padfield, 2017; Rogan, 2019); and the exercise of power (Crewe, 2007, 2009; Scott, 2006) and discretion (Liebling, 2000; Padfield & Gelsthorpe, 2013). Insofar as segregation is concerned, researchers have been more narrowly focused on understanding the impact of segregation practices in the United States of America,[34] Canada,[35] Denmark[36] and, to a lesser extent, the United Kingdom.[37] The majority of the studies sought to understand the experience of prisoners in segregation conditions, particularly its psychological impact, as well as its influence on subsequent institutional violence or reoffending rates. The sociological studies provided first-hand accounts of segregation and invited us into the lives and societies of the participants involved. However, in a similar manner to the partisan accounts offered by legal scholarship, which often neglected the lived experience and realities of segregation units, research studies from the social sciences largely neglected law.[38] This was a disappointing omission. Legal principles were often in the background, ever present, but received less attention. Shalev and Edgar (2015), in one of the few studies of segregation from England and Wales, attempted to reconcile this division, in their analysis of the legal foundations of segregation, and their exploration of how segregation practices were used and experienced. Their report culminated in a number of best practice recommendations. Their study achieved breadth: they visited

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[34] See Butler et al. (2017); Hagan et al. (2017); Jones (1986); Kaba et al. (2014); Korn (1988); Lanes (2009); Lanes (2011); Mears and Bales (2009); Medrano et al. (2017); Miller (1994); Miller and Young (1997); Morris (2016); O Keefe et al. (2010); O'Keefe (2007).
[35] See Motiuk and Blanchette (2001); Zinger, Wichmann, and Andrews (2001).
[36] See Andersen, Sestoft, Lillebaek, Gabrielsen, and Hemmingsen (2003); Andersen et al. (2000); Andersen, Sestoft, Lillebæk, Gabrielsen, and Kramp (1996).
[37] See Coid et al. (2003a, 2003b).
[38] This division was also identified by Whitty and Murphy (2007a, pp. 798-801) who argue that there is little overlap between criminologists and lawyers, particularly in the concepts of risks (which permeates criminological thinking in prisons) and human rights (a preoccupation of lawyers).

fourteen segregation units and interviewed fifty segregation prisoners and forty-nine prison officers. However, the depth of the study was limited by the type of prisons they attended – only two high security prisons – and the limited time spent at each prison site (only three days). The findings, whilst informative, prioritise breadth at the expense of depth.

The separation of law and criminology means our understanding of segregation (and prison more broadly) is incomplete, only understood through the distinct lens of each discipline. This disconnect partly reflects the 'disciplinary boundaries' (Murphy & Whitty, 2007a, p. 800), the impenetrability of law for non-lawyers, the divergence of intellectual interests, the issues under inquiry, and the research methods deployed. However, as this chapter (and the rest of the thesis) attempts to show, much can be gained from the intersection of law and criminology and this thesis attempts to bridge that gap. Law is a social phenomenon and therefore criminology, as a social science, must be able to accommodate analyses of law (and vice versa) (Ehrlich, 2002). Law, culture and experience are interdependent. Ideas about law, both conscious and unconscious, can influence how people behave, how they ascribe meaning to interactions and how they make sense of their social worlds (Nielsen, 2000). Understanding law, and its role in the Unit will in turn help us understand the use and experience of segregation for both prisoners and staff. As a consequence, this research embraces a socio-legal orientation, to explore how law works in societies 'law in action' as opposed to 'law in the books' (Morison, 1982, p. 190), to understand the ways in which *law matters* ('gap studies') (Levine & Mellema, 2001, p. 172).

Important for the development of socio-legal studies is the branch of inquiry known as 'legal consciousness', which explores how ordinary citizens perceive and understand law, its institutions and rules (Ewick & Silbey, 1998; Merry, 1985, 1990; Nielsen, 2000, p. 1058). As a concept, legal consciousness has gained prominence over the last thirty years. It has been keenly studied, debated and discussed by scholars interested in law and society (Hull, 2016, p. 551). It has been considered in many different contexts, including legal elites (Kennedy, 1980), poor and marginalised working class groups (Merry, 1985, 1990; Sarat, 1990), claimants in court (Yngvesson, 1993), social activists (McCann, 1994; Silverstein, 1996) religious groups (Greenhouse, 1986) and victims of discrimination (Bumiller, 1988). Legal consciousness has gained value as a concept which can help us understand the way people perceive, experience and use the law (Hull, 2016; Merry, 1990, p. 5). It offers, according to Halliday and Morgan (2013), an 'interesting and distinctive way' of contextualising law; it

departs from traditional instrumental perspectives and moves our attention towards understanding law's interactive and constitutive role in society (p. 2).

Legal consciousness has been defined by Merry, in her much-cited definition, as 'the way people understand and use law…[it] is the way people conceive of the 'natural' and normal way of doing things, their habitual patterns of talk and action, and their common sense understanding of the world' (1990, p. 5). Nielsen (2000, pp. 1058, 1059) elaborates, 'it is [the] prevailing norms, everyday practices, and common ways of dealing with the law or legal problems', those which have a role in 'constructing understandings, affecting actions, and shaping various aspects of social life'. Importantly, as Cowan suggests, it is 'not merely a state of mind. Legal consciousness is produced and revealed in what people *do* as well as what they *say'* (emphasis in the original) (2004, p. 932). For legal consciousness scholars, law is not perceived as a natural consequence of common human conceptions of morality (*natural law)*, nor as the product of formal rules and sanctions (*positivists),* nor solely embedded within the powers of the judiciary (*interpretivists)*. Instead, law is connected to and embedded within social life, normative systems and social institutions. Conceived this way, law is subject to cultural constrains, as well as the influence of social norms. Law arises from the 'bottom up'; it emerges from routine, discretionary interactions among individuals, institutions and society more generally. Therefore, law is part of an interactive process in which it can shape our understandings, influence our actions and various aspects of social life (Nielsen, 2000, p. 1059).

Legal consciousness is traditionally associated with Ewick and Silbey's (1998) work published in *The Common Place of Law.* They aimed to 'trace the ways in which commonplace transactions and relationships' came to assume a 'legal character' (p. 17). They sought to demonstrate how 'legality' was an 'emergent feature of social relations rather than an external apparatus acting upon social life' (p. 17). They refer to the broader concept of 'legality' as opposed to 'law'. The former was intended to capture the broader frameworks, cultural norms, social networks and interactions which 'bear the imprint of law' (p. 20). Legality was perceived as a form of cultural practice, as an 'emergent structure of social life that manifests itself in diverse places, including but not limited to formal institutional settings. Legality operates then, as both an interpretive framework and a set of resources with which and through which the social world (including that part known as law) is constituted' (1998, p. 95). Conceived this way, individuals are all agents insofar as they 'actively make law, even when no formal legal agent is involved' (p.20). 'Legality' was therefore deployed as a term to

refer to the 'meanings, sources of authority and cultural practices that are commonly recognised as legal, regardless of who employs them or for what purpose' (1998, p. 22). This term is distinct from law in that it is distinguished from the formal laws of the constitution, statutes and court decisions which, for Ewick and Silbey, were too narrow a lens through which law could be understood.

In their analysis, Ewick and Silbey (1998) reject 'attitudinal approaches' to law, as well as 'social structural' approaches. Instead, they concentrate on 'cultural practices' which produce, shape and transmit legal consciousness. They focus on 'schemas' (codes and established patterns) and 'resources' (the full range of human resources, anything from knowledge to physical strength). They argue that the relationship between both schemas and resources underscores variations in social power and agency (p. xii), and produces three typologies of legal consciousness ('before', 'with' and 'against' the law).

Participants were 'before the law', when they expressed 'loyalty and acceptance of legal constructions', convinced of the legitimacy of formal laws, awed by their majesty, and held a belief that formal legal procedures would produce just and appropriate outcomes (p. 47). This group positioned formal law as external to everyday life. When they encountered the law, whether it be through an interaction with a police officer, being audited by the tax authorities, or serving on a jury, it constituted a disruption to their ordinary lives (p. 77).

Those 'with the law', described law as a game, an arena in which existing rules can be deployed and new rules invented 'to serve the widest range of interests and values' (p. 48). These participants perceived law as a tool 'putting it to their own ends' (p. 131), which could be used to gain strategic advantages; wielded to purse their own self-interests. Respondents accepted formal legal constructions and procedures, but only insofar as they related to their own personal objectives and situations. Individuals were less concerned about the legitimacy of legal procedures and more concerned about the effectiveness of law for achieving their own desires (p. 48).

Those 'against the law' revealed a sense of 'being caught within the law, or being up against the law' (p. 48). Participants in this group described legality as a net in which they were trapped, one from which they sought freedom (p. 184). The schemas and resources were perceived as overriding their individual capacity to maintain distance from formal legal rules (p. 49). Legal rules were 'palpably present', limiting movement, curtailing choices, meaning

and action (p. 184). Within this group, participants described much resistance towards legal rules and processes. Their narratives revealed forms of practical opposition – acts of defiance and disruption – sometimes in the form of delays and foot dragging. However, participants also described opposition in the form of silences, refusals and absences – resistance did not always require overt action (p. 188). This group identified a self-defining and arbitrary power of the law and were particularly critical of the unrestrained power of legal actors such as the judiciary, police, and public officials (p. 190). For this group of individuals, engagement with formal laws and legal actors was to be avoided. The law was perceived as capricious, a product of arbitrary power, and therefore dangerous to invoke (p. 192). For those who could not avoid legal encounters, they were accepted with a resignation and deference (p. 194).

Ewick and Silbey's legal consciousness framework has not been without its critics. For example, Nielsen (2000) and McCann (1999) criticised Ewick and Silbey's typologies for overlooking the importance of social status. Nielsen (2000) suggested that members of marginalised or disenfranchised groups would more likely be 'against the law' and employ variable methods to 'resist' the law. However, Ewick and Silbey failed to acknowledge the impact of such variable social status. Nielsen (2000) also suggested that Ewick and Silbey took for granted the numerous problems and contexts in which 'legal consciousness' arises. There was homogeneity to their case examples, which failed to adequately consider how one's experience with law may translate across into other areas of law, which involve different issues, institutions and individual actors (Nielsen, 2000). Moreover, their concept of 'legal consciousness', which conceives law as embedded *within* society, rather than as external and autonomous from it, was also criticised by Mezey (2001). For Mezey (2001), their work revealed both the 'strengths' and 'shortcomings' (p. 145) of legal consciousness as an intellectual influence. Ewick and Silbey theorise that law is paradoxical: law is both 'constituting and being constituted by social relations and cultural practices' (Mezey, 2001, p. 148). Law exists through the formal invocations of law, legal concepts and terminology as well as through its informal (and extra-legal) associations with social structures: it becomes constituted through everyday actions and practices (Ewick & Silbey, 1998, p. 43). This analysis therefore positions law as 'everywhere, so much so that it is nowhere' (Mezey, 2001, p. 153). The 'law' becomes lost in this constitutive approach: 'once law is reconceptualised as all forms of power and authority, legal consciousness is no longer meaningfully legal' (Mezey, 2001, p. 165). In a similar manner, Levine and Mellema (2001) suggest that Ewick and Silbey falter in their assumption of the permeation of law in every day life; that Ewick

and Silbey artificially transplant law into everyday interactions, ones which have little to do with law.

It is clear that a balance needs to be struck. There will undoubtedly be instances in which law is more present, and its impact felt directly. The prison institution is a good example of this. Departing from the critiques of Levine and Mellema's (2001) and Mezey (2001), prison is a place in which law is *everywhere*. There is a complex framework of prison rules, processes and procedures which govern the daily lives of prisoners. Formal legal rules function to control, constrain and inhibit behaviour (of both staff and prisoners). Albeit there are also complex non-legal rules, complicated social relations and cultural practices (as Ewick and Silbey would suggest) which constrain, reimagine and mould the influence and function of law in *this* environment.[39] In fact, during fieldwork, I observed how much of the way law functioned, and was understood, was embedded within the prison institution and its individual actors. It became apparent that law could not be understood simply as a system of formal rules and processes, nor could it be conceived purely as the product of judicial interpretation. The 'law' was a fluid construction. Sometimes it functioned as a system of rules, those contained in legislation and PSOs/PSIs, which were enforced by prison staff. At other times, the law was subordinated below established cultural norms and customs (see Chapter Five). Staff culture, and their exercise of discretion, was sometimes more relevant for shaping the 'lived experience' of prisoners, rather than strict legal processes. Accordingly, the value of a socio-legal approach, and more specifically legal consciousness, lies in bridging the gap between the pragmatism associated with law in action and the transcendental nature of law in the books (Silbey, 2005). As Silbey asserts, legal consciousness is a mechanism through which the 'mutually constitutive relationship between these two' can be examined (p. 359). As a research tradition, legal consciousness helps us understand how institutions can create cultural meaning, social norms, influence individual behaviour and perceptions. It allows us to explore how law might affect relationships, values and shape people's understanding of their 'social reality'(Cotterrell, 1998, p. 182). Thus, there is substantial value to legal consciousness, as a framework of analysis, and a theory to which I return in Chapter Six.

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[39] Emphasis is placed on the environment; prisons, as institutions, are complex and unique. They are criminal justice institutions, given life trand authority through the law. It is only to be expected that the law would, on the surface, be prominent. Although, as the rest of this thesis demonstrates, there are other factors (staff culture, staff-prisoner relationships, prisoners' perceptions and understanding of the law) which all influence the extent to which law penetrates the unit (and the effects of such).

# 5. Conclusion

This chapter sought to explore the legal framework which applies to segregation in prisons. However, it became clear that there is no neat, tidy, legal framework. Instead, there is a complex and fragmented web of legal and non-legal rules which govern the use of segregation. This chapter also analysed the ways in which segregation has been challenged in the English courts. The broader socio-political context is important: changes to legal aid had a substantial impact on the volume of prison law cases. Legal funding and resources have a substantial impact on when, how and why prisoners resort to litigation; and this represents one of the barriers, or limits, to the rule of law. Limited legal funding is a hindrance to the adequacy of the 'means' provided for the resolution of disputes (rule of law principle v). The public funding arrangements, discussed above, meant that fewer people had access to legal advice and representation and, by implication, fewer prisoners would have been able to access the courts to resolve their segregation complaints.

Moreover, the case law review importantly identified the common legal complaints associated with segregation. Legal complaints concerning the conditions and experience of segregation – substantive justice type complaints, grounded in Article 3 – often failed. In contrast, process complaints – procedural justice ones – had greater chances of success. I argued that this reflects the orientation of the English courts and their preference for procedural justice. Importantly, it represents another limitation to the reach of law. To succeed, prisoners will need to recast their complaints as procedural failures. In doing so, the law fails to legitimate their claims: their lived experiences are denied, their realities are lost and the extent of their suffering is overlooked. Prisoners' rights were narrowly construed: notably, they were constrained by the behaviour of the individual but also by the very fact of imprisonment (and its preoccupation with risk, security and control). I suggested that the courts were overly deferential towards prison authorities, they were especially cynical of prisoners and overlooked the ways in which imprisonment, itself, contributed towards prisoners' risks and violence. In this context, the law may not be an adequate mechanism for protecting human rights, as required by 'rule of law' principle iv.

The case law review also revealed how litigation may, at times, result in unforeseen (and unintended) consequences. I relied on Bourgass to show how court decisions may not always translate into progressive changes in law. Bourgass proffers a warning: prison litigation can be politicised and one cannot be too sure of its outcome.

Whilst the case law review was important and informative, it only offers a partial understanding of segregation. Case law helps us explore how legal rules are interpreted and applied by the courts, but cannot provide insights into how rules (both legal and non-legal) mould practices, culture and experiences in the Unit. Therefore, in the final part of the chapter, I made the case for a socio-legal research study, one which considers the relationship between law, rules and experiences. I hoped to demonstrate how there is more to the experience of segregation than legal commentary, or sociological empiricism, can reveal in isolation. I highlighted the value of legal consciousness as a means for understanding the broader context in which our perspectives on, and engagement with, law takes place. This is where this research becomes valuable. By adopting a multi-disciplinary approach, I was able to explore how law 'works' in the segregation unit and how it might impact decision-making, operations (like the daily regime) and individual perspectives in the Unit. In the following chapters, I consider how legal and non-legal rules can be instrumental in shaping the experiences of staff and prisoners; how they can influence decisions and practices (Chapter Four); interact with culture (Chapter Five); and influence perspectives on the utility of law in the Unit (Chapter Six).

# Chapter Three – Methods: At the Margins, Without Trust and the Fragmented Self

> Little Alice fell down
> the hole,
> bumped her head
> and bruised her soul.[40]

It may seem odd to begin a methods chapter with a quote from Alice in Wonderland but it is a quote to which I have returned throughout this research. It was prompted by the words of one participant, who said 'you're like Alice in Wonderland here, how can you ever understand my world?'. He is right, to a degree, and I have reflected on the extent to which I am able to understand 'his world'; how any such understanding is shaped by my race, my gender, my experiences and my ideological beliefs; and how it is influenced by the narratives I assign to the stories I am told. Like Alice, I entered a world of unfamiliarity, where I discovered trust was a precious commodity. It was an environment where acting on intuition and developing relationships was crucial. Importantly, I entered with a choice. I chose to do this study because of my concerns about the use of segregation in prison. Segregation units have historically been sites of abuse, where power has been exploited and prisoners mistreated. They also have the potential to inflict real harm on those confined within (Gendreau & Bonta, 1984; Jackson, 1983; Scharff-Smith, 2006b); and are a part of the prison where self-harm and suicide occur at disproportionate rates (Kaba et al., 2014; Toch & Kupers, 2007). As a lawyer, I found myself asking how can abuse happen? Why do complaints of torture, inhuman or degrading treatment arise in segregation units?[41] Why are there such high incidents of violence, self-harm and suicide? And what is the law achieving in these units, if not constraining harm?

When I embarked on the PhD I was sceptical about the utility of segregation. The scepticism remained during fieldwork, although I gained a better appreciation of the complexities of the Unit: its contrasting functions; the difficult experiences of staff and prisoners; and the broader social, political and economic environment in which it functioned. Whilst those views were

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[40] These words have been attributed to Lewis Carroll, however, the original source is unknown. The words did not feature in Lewis Carroll's 'Alice's Adventures in Wonderland' (1865) but were inspired by Alice's reflections: 'I almost wish I hadn't gone down that rabbit-hole – and yet – and yet – it's rather curious' (p. 27).

[41] A number of human rights complaints have been made by prisoners in segregation units. See *R (Bary) v Secretary of State for Justice* [2010] EWHC 587 (Admin*), R (AB) v Secretary of State for Justice* [2019] EWCA 9 and *R (Bourgass and another) (Appellants) v Secretary of State for Justice (Respondent)* (2015) UKSC 54.

shaped, challenged and tempered during fieldwork, they raise important questions about the extent to which we, as researchers, can ever truly be neutral in our research. As Liebling reflected 'personal and political sympathies contaminate (or less judgmentally, inform) our research. But do they distort it?' (2001c, p. 472). I kept the question of distortion in mind during my research, and particularly my fieldwork. I intended to undertake my research in an impartial manner – as an objective observer – but this was not always easy. The research was contingent on relationships. It was so very human. I was asking people to reveal their most vulnerable selves, to allow me access into their worlds, through their stories and experiences. It demanded a level of openness and trust – both *of me* and *from me* – which was not always easily reconcilable with the role of bounded researcher.

In the first part of this chapter, I outline the research design, research site, and the methods. The second part follows with a discussion focused on the main challenges of researching two polarised groups – staff and prisoners. I worked at the margins of both their worlds. As such, I faced difficulties with: (i) maintaining trust and navigating suspicion; (ii) truly understanding *their worlds*; (iii) retaining my sense of 'self'; and (iv) grappling with the ethnographic loneliness which ensued as a result.

## 1. Research design

My research design was, in large part, influenced by my preference for socio-legal methods, the benefits of which I explored in Chapter Two. Socio-legal research offers the lens through which the lived experiences of law can be understood. It prioritises empirical research and emphasises the value of first-hand accounts and observational research methods. I hoped to use empirical methods to bridge the gap, as identified in Chapter Two, between law in the books and law in reality. I also hoped to synthesise criminology and law – to bring ideas, methods and understanding from the former, to the latter, and vice versa. I hoped to understand how law functioned in segregation units, what it achieved (and perhaps failed at), whether it influenced the use of segregation and the experiences of those within. To best achieve this, I adopted an ethnographic approach, which I deemed to be the most appropriate method for understanding the lived experiences of the participants, through their stories and narratives.

Ethnography, at its most basic, is about understanding the way people make sense of their world, to 'generate intellectual insight' (Liebling, 2001c, p. 475). It has special value in understanding societies and cultures, as well as the discovery and remaking of realities

(Liebling, 2001c, p. 475). Fieldwork is the foundation of ethnography, which broadly includes observation, participation and interviews (Wolcott, 2008, p. 44). Ethnography is both a way of *looking* and a way of *seeing*. Through participant observation, and a presence in the field, we can *experience, enquire* and *examine* the worlds of our participants (Wolcott, 2008, p. 48). We are effectively 'living one's way' into an environment and its culture (Wolcott, 2008, p. 45). Our *experience* is largely influenced by what we *hear* and what we *see*, but also through less tangible observations, such as body language, smell and our own intuition (Troman, Jeffrey, & Walford, 2005). We can *enquire* into the lives and experiences of participants, by taking an active role in asking questions, rather than simply being a passive observer. However, enquiring creates a dilemma: how far do we intrude into the field, to ask questions, and therefore risk influencing the behaviour and responses of participants? Is it better to remain silent and hope that some phenomenon will be revealed in a naturally occurring way? (Wolcott, 2008, p. 49). I grappled with these questions throughout fieldwork. I chose to be inquisitive, and asked questions, but I tried to frame them in ways which were open-ended, neutral and not leading. However, there were times, as explained below when I intervened in the field and felt my role shifted beyond being a *passive observer* to become an *active participant*. The third element, for Wolcott, is the *examination* of environments, documents and behaviours. Taken together, *experiencing, enquiring* and *examining*, allow us to gain holistic insights into the people and the places they inhabit.

Ethnographic research is interactive. It is valuable not because it necessarily guarantees certain knowledge but because it brings us 'into direct dialogue with others', allowing us to explore knowledge as a shared experience, exchanging ideas and finding common ground (Jackson, 1996, p. 8). As a method, it emphasises the role of the researcher, who is the primary research instrument. As such 'our social gumption and social skills, as much as our scientific methodology, become [the] measures of the limits and value of our understanding' (Jackson, 1996, p. 8). I was acutely aware of my role in the research and how I – through the questions I asked, the places I went, the people I spoke to and the way I interpreted the experiences – would shape the research. It was therefore important to maintain a level of neutrality and open-mindedness in the research; something which I deemed best achieved by becoming *appreciatively informed* ('Appreciative Inquiry'; see below) about the participants and the site during fieldwork.

Appreciative Inquiry focuses on the ideas people have about what matters to them most. It allows for broader conversations about – and a more neutral 'appreciation' of – experiences. It

can facilitate the exploration of the full range of accounts, emotions and experiences of individuals (Liebling, 2015a, p. 253). It avoids some of the pitfalls of existing research by framing questions in a generative or positive way (Ludema, Cooperrider, & Barrett, 2001), rather than focusing exclusively on the problems or negative aspects of segregation, which some researchers have tended to do (Grassian, 2006; Haney, 2003; Jackson, 1983; Reiter, 2016). Appreciative inquiry avoids starting from a wholly critical perspective and therefore looks beyond the failures, limitations and detriments, to fully explore the complex nature of segregation (Liebling, 2001b). After all, experiences of segregation are not universally negative (O'Keefe et al., 2013; O'Donnell, 2014).

We know from existing research (Elliott, Liebling, & Arnold, 2001; Liebling, 2001b, 2015a) that Appreciative Inquiry can be useful in prison to move conversations beyond negative descriptions, starting from a process of building on 'what is best' rather than what is failing (Reed, 2007). It can provide a more balanced approach by: (i) adopting an engaged rather than a disengaged stance, founded in the active input of those involved in the study; (ii) bringing people together from different backgrounds and levels within an institution, to share and explore their experiences; (iii) focusing on the stories and language that people use to express their ideas and experiences (Reed, 2007). I therefore hoped that appreciatively informed findings would reveal more about the segregation unit than the 'single (and partially sighted) preoccupation with failure' (Liebling, 2015a, p. 264).

There was an additional benefit to adopting an appreciatively informed perspective. Certain gatekeepers to the research – senior individuals within HMPPS, as well as the Senior Management team ('SMT') and Governing Governor of HMP Whitemoor – were exploring alternatives to segregation and avenues for reform. There was a policy agenda which aligned with my research, which sought constructive suggestions, rather than a reiteration of the old criticisms of segregation. Appreciative Inquiry was therefore an important tool for understanding what worked, and what required improvement, and this aligned particularly well with the agendas of certain decision-makers within HMPPS. Most notably, I had the support of Richard Vince, the Executive Director of the LTHSE in HMPPS. Richard had aspirations of creating a 'new norm' in segregation. He voiced his proposals in the Perrie Lectures in 2017, later published in a special edition of the Prison Service Journal: *Can Any Good Come of Segregation?* He articulated an aspiration to reduce the 'over reliance on segregation' (2018, p. 26) and suggested that bespoke actions, alternative locations on the wing, smaller discrete units, and the training of staff, could all be reviewed and updated to

allow for a more considered use of segregation. His ambitions were clear: 'can we aspire to a future that concentrates not on punishment and compliance but integration based on meaning, purpose and hope?' (Vince, 2018, p. 26). This context was important for granting me access to HMP Whitemoor. The support of Richard Vince meant, by extension, I had the support of the Governing Governor (Will Styles at the time) and, in turn, the SMT. For some members of the SMT, the study presented hope and was a chance to confront the culture of segregation:

> I'd like to see your completed project because hopefully you'll get some insights into what might work and what might not work because we are tearing our hair out… to make the seg an exception rather than a go to area for prisoners.

This support undoubtedly allowed me to obtain privileged access. I was given the keys to the prison, both in a literal and metaphorical sense. I had the keys (physically) to explore the prison, to come and go, and was relatively unrestricted. Moreover, having the trust and support of the Governing Governor[42] meant my presence had an element of legitimacy and I was able to ask my questions (sometimes personal, sometimes probing), bring in my dictaphone and make notes without hindrance – in theory at least. I return to this in the latter part of the chapter. For now, it is enough to mention that this support – although in many ways beneficial – was not without its problems. It raised questions for staff and prisoners about my allegiance and my impartiality: was I acting for the Prison Service? Was my independence compromised? Was I a conduit for other people's agendas?

## 2. Research questions

I started the study with one main research question in mind: What is the function and impact of law in segregation units? Within this question, I considered:

a) How is segregation used and why?
b) How is segregation experienced?
c) How, if at all, does the law impact that use and experience?

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[42] With thanks to my supervisor, Alison Liebling, for helping cultivate this support. Her reputation and previous work at HMP Whitemoor, along with her introductions to the Governor, were instrumental in fostering trust and confidence from the SMT.

# 3. The site

*HMP Whitemoor*

HMP Whitemoor opened in 1991. It is one of eight men's prisons in the LTHSE. It holds Category A (including high risk Category A) and Category B offenders, and has an operational capacity of 458. During fieldwork, prison occupancy remained close to this. For example, on the 8th May 2019, there were 453 prisoners, comprising 14 High Risk Category A, 132 Category A and 307 Category B offenders.

Whitemoor is situated outside March, a Fenland town in Cambridgeshire. Whitemoor has three wings, A, B and C, each with three spurs, and approximately 40 men on each spur. One spur, on A wing, was a Psychologically Informed Planned Environment (PIPE). There was a fourth wing, D Wing, which was a Dangerous and Severe Personality Disorder Unit with capacity for 70 prisoners. There was also a CSC (capacity up to 10), a segregation unit (capacity of 30) and a healthcare wing (capacity of 7). All prisoners were accommodated in single cells with integrated sanitation facilities but showers were separate.

Whitemoor has a turbulent history. In September 1994, six Category A prisoners briefly escaped from Whitemoor's Special Security Unit ('SSU') (five IRA members and one with an armed robbery conviction). Two of the men had pistols which had been smuggled into the prison and subsequent searches revealed one pound of semtex, fuses and three detonators concealed in a prisoner's paint box (Barker, 1998; Woodcock, 1994, p. 3). The escapees were recaptured a short distance from the prison, but one prison officer was shot and wounded during the escape.

The escapes attracted substantial attention: 'the media, prison management, the Government and the public all demanded to know how such an outrage could have happened, and in particular at a flagship top-security prison' (Woodcock, 1994, p. 2). There was an urgent inquiry, led by Sir John Woodcock (1994), intended to investigate the escapes and prevent any reoccurrence. The escapes were particularly inexcusable for Whitemoor, which was a 'new and high tech prison' and 'virtually escape proof' (Woodcock, 1994, p. 1). Woodcock criticised Whitemoor for numerous failings: that prisoners in the SSU could not be observed – officer views were obscured by curtains hung by prisoners (p. 23); insufficient use of CCTV – staff were reluctant to reposition the CCTV because 'prisoners apparently did not like it' (p. 54) and 'played up' for the cameras (p. 56); inadequate searching processes (of both staff and

visitors); poor management of the visitation process – prisoners and visitors were left alone, unmonitored, in visit rooms and prisoners could take all property received during their visit back to their cells, unchecked (p. 44); staff did not accompany prisoners out to the yard (p. 56); prisoners had excessive amounts of personal property (p. 64); and staff would go shopping for prisoners in the SSU, to obtain food items from Peterborough and King's Lynn (some 20 and 25 miles away), which caused particular tensions in the prison and gave rise to the impression, held by staff, that the prisoners in the SSU controlled the regime (p. 65). These practices were a far cry from the Whitemoor I observed during fieldwork. The security breach went to the heart of Whitemoor, it was woven into the fabric of the prison (see Liebling, 2000, p. 340; Liebling & Price, 1998), and a number of interviewees mentioned the escapes, without prompting, even those who were far too young to bear witness.

The escapes at Whitemoor form an important part of the institution's memory and its identity. The Woodcock report made 62 recommendations. It set out prescriptive procedures for searching staff and prisoners, called for more dog patrols and the increased use of CCTV. Nearly all were implemented at Whitemoor and signalled a significant change for the institution (Drake, 2011, p. 374; Resodihardjo, 2009). The escapes were also the catalyst for a new era in prison administration, heralded as 'defining moments in the Prison Service' (Drake, 2011, p. 372; Sparks, 2000) the consequences of which sparked 'one of the most dramatic transformations of the inner life of prisons witnessed to date' (Liebling, 2008, p. 28). As Drake describes, the escapes were 'attributed to the 'liberal' and 'permissive' dispersal prison policy' (2011, p. 373). They provided the impetus to move away from the more liberal parts of prison management, towards more punitive policies (Dunbar & Langdon, 1998; King, 2010), ones marked by 'penal and security discourses' (Drake, 2011, p. 372), with a focus on 'decent but austere' prison conditions and practices (Liebling, 2008, p. 28). The new approach – securitisation of the prison – saw a 'harshening of the emotional tone of penal policy' where there was a 'deepening of the prison experience – so that prisoners felt the depth, weight, or psychological burden of prison life more acutely' (Liebling, 2008, p. 28).

The changing of the penal tide had a long-lasting impact at HMP Whitemoor. Most notable was the effect on staff-prisoner relationships. In 2008, Anne Owers, then HM Chief Inspector of Prisons ('HMCIP'), reported that staff-prisoner relationships were 'distant and distrustful' and a fundamental problem (2008, p. 6). She raised concerns, particularly for Muslim prisoners: 'staff appeared to have little idea of, and …given no support in, how to relate to this group, except as suspected national security risks or extremists – even though only 8 of the

120 Muslims had been convicted of terrorist offences' (2008, p. 5). The inspection 'charted a growing disaffection and distances between those [Muslim] prisoners and the prison system: a gap which urgently needs to be abridged' (2008, p. 6). The findings of HMCIP were echoed in Liebling, Arnold and Straub's (2011) second study in which they revisited Whitemoor in 2009-10. Like HMCIP, they found staff-prisoner relationships were generally distant and were characterised by low levels of trust and high levels of suspicion (p. ii–iii). Staff were less confident and less 'professional' than in the earlier study, and were especially hesitant in building relationships, and policing the boundaries, with Muslim prisoners (p. iii). These issues remained a prominent feature of Whitemoor, with similar findings reported by subsequent Inspectorate visits and IMB reports (IMB, 2014; IMB, 2018; HMCIP, 2011). All criticised Whitemoor for its high proportion of prisoners who reported feeling unsafe (60%), which was 'significantly more than in other high security prisons' (HMCIP, 2011, p. 6). HMCIP and the IMB have routinely expressed concerns about the discriminatory practices, racist incidents and the tensions between Muslim and non-Muslim prisoners. The impact of staff–prisoner relationships, and the divisions between certain groups of prisoners, was also felt in the Unit. Although not a focus of this study, a striking number of participants were in the segregation unit to avoid the broader 'Muslim dynamics' on the wing (see Chapter Four).

*The segregation unit*

Prisons are, at times, an impenetrable part of our criminal justice system, and this is even more pronounced in the segregation unit, which is the 'deepest' part of the prison. Conceived this way, it is a part of the prison which is both physically and metaphorically distant from the outside world (Crewe, 2015, p. 54). It is where authority is wielded to achieve upmost security and control, where practices are oppressive and psychologically invasive, where freedoms and bodily autonomy are the most restricted (Crewe, 2011, p. 521).

The segregation unit is a separate and distinct unit in HMP Whitemoor. It had, at the time of my research, capacity for 30 prisoners although the occupancy fluctuated between 25 and 30 whilst I was there.[43] The Unit had its own facilities: a small kitchen,[44] three phone booths, five

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[43] During fieldwork, the Unit was in a state of transition. Part of the Unit was being repurposed to become 'The Bridge', a special unit designed to support prisoners progressing out of segregated conditions and back to the main wings. The Bridge opened in April 2019 with six prisoners, and had capacity for 12 prisoners. Prisoners in the Bridge had greater association and could be out of their cells. The Bridge caused a few challenges for staff. For example, staff had to take prisoners from the Unit through the Bridge to access the yards, meaning all prisoners in the Bridge had to be locked up during this movement. Also, there were undercurrents of animosity towards the staff members who moved from the Unit to the Bridge: they were perceived as abandoning the Unit (Fieldwork notes, p. 91).

showers and exercise yards (five yards at the back, divided by metal mesh, and two at the side of the Unit). It also had a meeting room used for adjudications, reviews, and staff briefings. There was a room colloquially known as the 'Bubble'. The Bubble was divided into two smaller rooms, separated by Perspex glass. The prisoner would be taken in first and locked into one part, ready for meetings with individuals from psychology, education and offender management. The majority of my interviews took place in the Bubble.

The main office was in the centre of the Unit ('Centre Office') – where staff congregated and where the cell bells would ring. There was a glass window which looked out from the Centre Office to the landing of the Unit, and it had the message #Segboys4life written on the window. Staff also had their private space – the staff room – where they would eat lunch, play video games and take their breaks. The staff room was adorned with crude and explicit images, some poking fun at staff members, others at prisoners. It was described by one member of staff as the 'wall of shame' (Fieldwork notes, p. 59).

The Unit spanned two levels. It was painted yellow but paint was peeling from the walls and corridors were often dirty, with food scraps, tissue paper, broken furniture, shredded clothes and general rubbish on the floor. The ceiling had large vented windows which staff tended to keep open. Whilst it meant the Unit felt very cold, it had an important function when prisoners were on dirty protest: allowing air to circulate. The Unit felt cold in more ways than one. It felt punitive and austere. Other parts of the prison had fresher paint, large colourful prints on the wall, whereas the Unit was bare.

The Unit had a number of special cells. There were two cells which the staff called 'the Box', appropriately named because they were, quite literally, concrete boxes. They had a basic interior, without a bed, furnishings, toilet or window. There was a concrete slab on which prisoners could sleep and a cardboard bedpan. There was a small circular observation panel in the side and one in the ceiling (Fieldwork notes, p. 56). There were two 'dry cells' which had a bed but no toilet or sink. They were designed for prisoners who were in possession of contraband (e.g. a mobile phone) and intended to prevent items being flushed away. There was one 'gated cell' which had a Perspex front, allowing officers a view into the cell at all times. This was used for prisoners on suicide watch. It had a bed, with ligature proof bedding,

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[44] The kitchen was staffed by a prisoner from the wing and one member of staff. Some prisoners could come out of their cells to collect their meals. However, this was not a consistent practice: it depended on the behaviour of the prisoner, the number of staff available and whether the regime (i.e. showers, phonecalls, yard time etc) was running on time. If the regime was delayed, there was no time for prisoners to collect their own meals.

but nothing else. It had two CSC cells, for prisoners subject to the Rule 46 prison regime.[45] These cells had flaps through which food could be passed. Staff did not need to open the door for these prisoners.

Ordinary cells in the Unit were 8 x 6 feet. They had a sink, a toilet and a window. During fieldwork, the windows were being upgraded to 'safer custody windows'. Some of the cells with older style windows were unable to close and therefore very cold. One participant had placed paper over the window to keep the wind and snow out (Fieldwork notes, p. 75). The older windows had metal cages on the outside but, as a member of staff described, prisoners were able to swing lines of string, with contraband, between the windows (Fieldwork notes, p 26). Prisoners had also, in the past, made weapons by tearing off the metal bars. The new windows had no metal cage and could only open a small way. They were designed to prevent the passing of objects and to remove ligature points. The new windows kept the heat in better during winter but, on warmer days, they were stifling.

The cells had a bed, a cupboard, a nightstand and a kettle. Some prisoners were innovative – one participant showed me how to make scrambled eggs, mushrooms and baked beans in his kettle. Some cells had electric sockets, whilst a smaller number (5 cells) did not (meaning they had no kettles, no radios or TVs). The extent to which prisoners were allowed a radio, stereo, television or games console, depended on their Incentives and Earned Privilege ('IEP') status. Most prisoners, when first arriving in the Unit, were assigned the 'basic' status, except if they were transferred to the Unit from a different prison, where they would retain their pre-transfer IEP level. 'Basic' prisoners were eligible for very little. Through good behaviour, their status could be changed to 'standard' or 'enhanced' and therefore they were entitled to have extra items (like a radio, TV, stereo) in their cells. IEP status also influenced the amount of money prisoners received through in-cell education: per session, they were eligible for 0.28p (basic), £1.41 (standard), £1.52 (enhanced).

Most prisoners had *some* property which they had brought from their cells on the wings, such as books and clothing. Officially, prisoners were only allowed two sets of clothes: the set they were wearing and a spare set for visits. However, in practice, some prisoners had their own boxers, shoes and jumpers, whereas others had to wear prison issue clothing. For staff, this

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[45] Whitemoor had a separate CSC designed to hold a small number of prisoners which, in many ways, resembled the Unit. However, the prisoners in the CSC were allowed supervised association, they could use the kitchen and take part in group activities (such as education). There were two CSC cells in the Unit, which operated on a more enhanced regime (access to the showers everyday and a phonecall everyday) but otherwise had little difference in their regime and conditions.

practice was an inconsistency in the application of the rules. For prisoners, it represented unfair and discriminatory practices. Prisoners did not like the idea of wearing prison issue boxers which they deemed unhygienic (transcript with officer (Phil) and prisoner (Billy)). They resented other prisoners for having additional clothing 'privileges'. Issues with clothing often arose during fieldwork. Clean clothing was supposed to be provided on Tuesdays and Fridays, with socks and boxers every other day. However, the shortage of clothing and bedding in the Unit prevented staff from always adhering to these requirements (Fieldwork notes, p. 109).

Each cell had a 'call bell' which prisoners could use to signal for staff attention. The bell would ring in the Centre Office and a staff member would answer by visiting the cell. Some members of staff were quick to respond, whereas others let the bell ring for 15 or 20 minutes (Fieldwork notes, p. 36). Each cell had an observation panel in the door, with a metal flap (on the staff side) to cover it. Some items of property (knife, fork, spoon, extra books, deodorant, razors) were hung outside the door of each cell. They were provided to prisoners when needed and swiftly removed when no longer required.

In terms of the regime, there was a morning briefing for the staff team at 8am, every day. Then the 'rounds' would start, where a member of staff would visit every cell door and collect written 'applications'. Prisoners were required to make applications for a shower, exercise or phone call, and to make requests for property, visits or a legal call. After the applications were collected, staff would then commence 'movements' for exercise i.e. moving prisoners to the yards. Usually prisoners would be given an hour outside, one in each yard. The yards were not covered and therefore open to the elements but often, I observed, prisoners would readily go outside. They reported craving fresh air, as well as the opportunity to talk to others on the yards, regardless of the weather (Fieldwork notes, p. 15). After exercise, staff then moved prisoners to the shower or for a phone call. The Unit was working to a 'split regime' during fieldwork. This meant prisoners were allowed an hour of exercise each day, but only a shower or phone call every other day (Fieldwork notes, p. 16).[46] Prisoners had the opportunity to leave their cells for at least an hour each day, for exercise, but only if they chose to do so. Some prisoners refused exercise, their shower and their phone call and therefore remained in their cells for days. Lunch would be delivered to each cell between 11.15am and 12.00pm.

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[46] This regime applied to everyone except the Rule 46 prisoners who were able to have a shower, a phone call and exercise every day (Fieldwork notes, p. 106). One member of staff noted how 'in an ideal world, if we had less prisoners, we would do that for everyone…[but] we haven't done that in 3 or 4 years' (Fieldwork notes, p. 106).

Dinner would be provided between 4.00pm and 5.00pm. The dinner tray would include extra bread or cereal for breakfast the next morning. During the remainder of the day, prisoners would be visited by a member of the healthcare team, Chaplaincy and a governor level manager. These visits took place every day. A representative of the IMB visited each prisoner once a week and the Governing Governor, or deputy, visited every Friday.

Some men passed the time with books, watching TV, listening to the radio or doing activities such as paint by numbers and Sudoku. Some were engaged with in cell-education (e.g. English or Maths work packs) and two undertook paid employment. These two prisoners were trusted by staff and had been in the Unit for a long time. For example, Aiden would put together 'tea packs', which contained tea bags, milk and sugar and would be distributed to other prisoners. Keith was paid to clean the yards, which had become littered with torn clothing, bedding, excrement and rubbish thrown out of the windows (Fieldwork notes, p. 103).

A prisoner's transfer to segregation was reviewed within the first 72 hours. Segregation review meetings occurred every 14 days thereafter. Prisoners would be invited to the meeting and, typically, about half would attend.[47] The meetings took place every Tuesday afternoon. They were chaired by a governor grade manager and attended by members from the IMB, the mental health team ('MHT'), offender management team ('OMT'), the supervising officer ('SO') and the administrative assistant from the Unit. The meetings were intended to review a prisoner's health and well-being and to try to understand avenues for progression (e.g. referrals to other prisons and strategies for returning to the wing) (as required by PSO 1700, pp. 11-12).

The Unit was mostly run by specific segregation staff. There was a core team of 10 officers, however, the Unit required 15 staff to function properly and 'guests' (staff from the wings) would be drafted in to make up numbers. Staff were required to work every other weekend, as well as night shifts.

The Unit had a turbulent history. Concerns about the conditions and regime in the Unit were frequently raised in HMCIP and IMB reports,[48] as well as by major media outlets. For

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[47] The numbers fluctuated between 8 and 12 (Fieldwork notes, p.3. p. 31 – 34, p. 42 - 46).
[48] The concerns of both the IMB and HMCIP, about the impoverished regime and inhumane conditions, were raised at least six years ago and have persisted at HMP Whitemoor. Their objections had a limited (ineffectual) impact on changing the standards of the Unit (see Sutherland, 2018, pp. 50, 51).

example, more recent HMCIP reports, (2014, 2017) found that staff-prisoner relationships on the wings had generally improved. However, in the Unit, relationships were described as especially 'disappointing' and HMCIP criticised the 'particularly poor' regime on offer and the lack of care, from the prison, which did little to prevent the 'inevitable psychological deterioration that results' from segregation (2014, p. 5). These concerns were reiterated in the more recent, HMCIP 2017 report, which made a particularly damning assessment:

> At this inspection, we were still seriously concerned about some aspects of segregation. Some men with persistently challenging behaviour were held for long periods in the Unit and others who were not segregated under prison rules were refusing to relocate back to the normal location. Some men in the latter group had been segregated for many months. The Unit was full and the regime offered was poor, consisting at best of a telephone call or shower every other day (2017, p. 5).

HMCIP also raised concerns regarding the poor, dirty conditions of the Unit:

> Although some communal areas in the large Unit were reasonably clean, some cells were dirty and poorly furnished. The secure room used to interview prisoners was grubby, and paint was flaking from the ceilings in the showers. The caged exercise yards were grim (2017, p. 26).

Similar accounts were provided by the IMB who, in its 2018 report (reiterated in its report of 2019), criticised the prison for routinely failing to provide clean clothing, bedding and cleaning materials and therefore failed to satisfy even the most basic human needs (2018, p. 10, 12):

> Residents had to choose between a daily shower or a phone call. TVs were frequently not available for all entitled to them. If radios could be provided, batteries often could not. Men were locked up in excess of 23 hours a day, with little meaningful human contact, breaching the UN's Optional Protocol to the Convention Against Torture (OPCAT). Men segregated for their own protection were usually treated no better than those there for bad behaviour (2018, p. 10).

Not only has the Unit received extensive criticism from HMCIP and the IMB but has also been in the media spotlight, attracting headlines such as: 'HMP Whitemoor: Prison 'breaching UN torture protocol'' (BBC, 2018); 'Segregation concerns at HMP Whitemoor after unannounced inspection' (Cox, 2017); 'HMP Whitemoor inmate kept in segregation for two-and-a-half years, report finds' (Guardian, 2015). Much like the broader prison, the Unit's

difficult and chequered history proved influential for the identity and culture of the Unit (see Chapter Five).

## 4. Research methods

I visited HMP Whitemoor in October and December 2018 to meet with the Governing Governor, as well as the head of special accommodation (which includes the Unit) and other staff. These meetings were useful opportunities for me to discuss the research with, and gain support from, senior management. They helped orient me to the prison – I was given a full tour of HMP Whitemoor and introduced to members of staff. I started fieldwork on 4 February 2019, which continued for nearly 4 months, until 30 May 2019. In this sense, the senior managers at Whitemoor, and the senior staff who worked in the relevant areas, were very supportive. During this period, I spent at least 3 days a week in the Unit. I arrived early for 7.30am and often did not leave before 7pm. The majority of my time was spent in the Unit. However, there were times when I went to the wings to follow up with prisoners who had been transferred back from the Unit. During the first 6 weeks, I did not have keys (because I was waiting for my security clearance to come through). This meant that I was reliant on staff to collect me at the gate, walk me to the Unit, and I had very little freedom once there. Staff had to unlock the toilet for me, and the kitchen when I needed a glass of water, and they escorted me to the exit at the end of the day. Without keys, I felt burdensome and conflicted about treading the fine line between *being there* and *being in the way* (Fieldwork notes, p. 14).

Once I received keys, I had greater freedom in the Unit, and the rest of the prison, which was a substantial benefit for both my physical and psychological agency. However, this also created complications. Some prisoners saw me as a member of staff, some called me 'miss', and others assumed I had a level of authority which I felt was gravely misplaced. The perception that I had power, as someone staff might listen to and by extension was part of the establishment, did little to help my message that I was an external researcher, affiliated with a University and not representing the SMT.

I spent the first few weeks trying to overcome a recruitment problem. Staff were suspicious of me and extremely reluctant to engage. During the early weeks, I attended staff briefings in the Unit (at 8.00am and 1.30pm), initially to observe but later to explain the research study and my intentions for the fieldwork. I hoped to encourage staff participation although, as described below, obtaining staff support was one of the most challenging aspects of the

project. I also suffered a recruitment problem with prisoners. Due to the restrictive nature of the Unit, I was not able to engage in 'deep hanging out', the cornerstone of ethnographic studies and an approach favoured by prison researchers (Browne & McBride, 2015; Geertz, 1998; Matfin, 2000). Prisoners were locked in their cells for at least 23 hours a day. The regime was tightly monitored and controlled, meaning there was little opportunity for organic interaction with prisoners. Instead, I would talk to people on the yards, attend segregation review meetings, talk to people who were waiting to be moved from the telephone booth back to their cells and speak to people through the flaps in their doors. This was time-consuming and meant, for the first few weeks, my days were dedicated to these intentional interactions, in the hope of garnering trust from staff and prisoners.

## 5. Interviews, document reviews and observations

The aim of the study was to understand how law functioned in the segregation unit. I was keen to understand this from participants' perspectives during interviews, and was particularly interested in how they conceived law and their legal rights. However, I also hoped to examine the implicit functioning of law, its indirect consequences and manifestations (for example, its relationship with discretion, power and authority), which required an analysis beyond that which could be evidenced in the explicit narratives of participants. Therefore, the interviews were complemented with document reviews and observational data.

*Interviews*

Before commencing fieldwork, I designed an interview schedule, one for staff and one for prisoners (Annex Three). The questions were informed by existing research (Shalev & Edgar, 2015) and Appreciative Inquiry (Liebling, 2001b, 2015a). The interviews were semi-structured – I had key questions but would deviate from the schedule when the circumstances required. This approach was valuable: it meant conversations felt natural, better resembling a conversation between equal participants, and participants were able to share their stories and experiences, in their words and without being overly constrained by a rigid interview schedule (Hammersley, 2006; Mason, 2002; Wilson & Sapsford, 2006).

The interview schedule evolved during fieldwork – I realised that some questions were less successful than others. When I asked the more positively framed questions of prisoners, such as 'what makes a good day for you?', 'can you give me an example of a time when something

good has happened in the Unit?', they were sometimes answered with scepticism and incredulity, or examples were provided which were outside the Unit:

R:        What is good? What is good about segregation? You kidding? Segregation's not good for no one. (Shawn, prisoner).

R:        Nothin good happens here. It just makes you appreciate the wing a bit more. (Billy, prisoner).

R:        Something good that's happened?
I:        Yeah so if you had to think of the best thing…
R:        That's happened since I've come to seg? [long pause]…Ah, I had a visit the other day…That's the best thing by far. (Ricky, prisoner).

The positive framing of the questions did not work well for some prisoners in the segregation unit. Limited staff interactions, constrained agency and very few freedoms, meant there were limited opportunities, in their eyes, for positive experiences. It meant I had to adapt the interviews. Rather than presuming that something 'good' had happened in the Unit, I framed the question more neutrally 'have you had any positive experiences here? If so, please explain?'.

Other questions proved unexpectedly challenging. The questions designed to ease people into the interaction, such as 'what are you most proud of in your life?', were often emotional and difficult for both staff and prisoners. Their responses commonly focused on family and children, and both groups of participants described pride but also regret and loss. Both sets of participants also struggled with the question 'what is law for in prison?'. Typically this was met with responses asking for clarification:

I: So then given those kind of limitations that you talked about, what do you think the law is for in seg?
R: What law? (Nazeer, prisoner).

I: What do you think the law is for down here?
R: The what, sorry?
I: The law.
R: The law? What do you mean? (Tony, staff).

When I was asked to explain what I meant, I referred to the PR 1999, but also to the non-legal rules contained in the PSO 1700 (such as the need for segregation review meetings). But, for many, law was too broad and intangible as a concept.

Despite the challenges of some questions, I managed to get through all questions in the schedule with the participants. Both groups of participants were willing to share their perspectives once the interview started, and some even described how the interview itself was a positive experience. For staff, it offered an opportunity to be heard:

> R: It's really strange...I don't know how I got on to that, sorry…you'll have to tell me off for rambling.  I don't get a chance to talk very often, it's quite nice to just…
> I: Do you find this therapeutic? Some people have said, staff and prisoners, that afterwards they feel much better.
> R: Yeah we should do it more often in terms of giving people an opportunity to talk. Not just about thoughts and ideas but about how they feel as well. (Jeff, staff).

For prisoners, it was an opportunity for time out of their cells – a novelty in an otherwise monotonous and uneventful day.

> I'm out of my cell...I'm interacting! You see with this, this makes my day better because I'm interacting with someone. Normally we are just stuck in our cell not doing anything. Literally. Apart from that work I have to do, there's nothing. (Henry, prisoner).

Staff interviews took place either in the meeting room or the staff room. For prisoner interviews, I asked staff to unlock prisoners and bring them to either the meeting room or the Bubble for interview. The meeting room was usually my preference because the sound quality was poor in the Bubble and audio recordings were not always clear. The location of the interview depended on the level of trust afforded to the prisoner. I interviewed three prisoners in the meeting room, the rest took place in the Bubble. Sometimes the trust from staff appeared misplaced[49]: it was rooted in familiarity and I had one experience in the meeting room which felt uncomfortably risky. Joe was a prolific self-harmer and he revealed that he

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[49] I tended to reach different conclusions about those who I deemed trustworthy. Staff seemed to trust prisoners who had been in the Unit for longer periods, often those who were mentally unwell and, as a consequence, were unable to return to the wings. For me, those individuals were often more volatile, unpredictable and I found the interviews much more difficult to navigate and less safe. In contrast, individuals who had been transferred to the Unit for possession of contraband or engaging in violence were often closer in age to me, charismatic and welcoming, and those interviews felt more straightforward, were easier to establish a rapport and felt 'safer' i.e. more predictable (although not all were).

had two razor blades in his mouth. During the interview, in the meeting room, he was volatile and went to great lengths to describe previous violence in prison:

> I nearly killed a man with a pool ball, a snooker ball in a sock – I nearly killed him. I smashed the back of his head in with it, and I wouldn't have stopped. The only reason why I stopped [was] because the snooker ball popped out of the sock; if it wasn't for that, I would have killed him…And there's blood all in his hair – he's got long hair... He's actually screaming. And I'm smashing and smashing and there's no expression on my face, I don't have a care for the world or nothing…I can smash a man's head in and have no feelings, no regrets, no remorse, nothing. (Joe, prisoner).

He then reflected how it would be easy for him to become violent 'it would just take that [click of his fingers] and I'd be off on one'. He then described how he could smash the table 'to bits right now' and no one would be able to stop him, and it would be too late for me because staff would not get there in time. Just as he said that, staff locked the door to the meeting room. I felt trapped with Joe, and a little panicked. I stood up and explained I would see what staff were doing. I caught the attention of an officer through the observation window in the door. I mouthed 'what's going on?', to which he replied 'two minutes'. Later, I found out, they had locked me in with Joe because another prisoner was being moved past our room, to the phone booth. The other prisoner apparently had a vendetta against Joe and staff were concerned that he would come into the room and harm Joe and potentially me. I used the interruption as an excuse to change the direction of the conversation. This was one of the few occasions where I felt fearful for my own safety. The interview felt unmanageable and I sensed that Joe enjoyed talking about his past violence and made attempts to make me feel uncomfortable (in which he succeeded, although I tried not to show that).

Time felt precious in the Unit. Staff would often describe feeling busy and stressed, so I was conscious about the burden of the interview. We had to schedule the interviews around staff commitments and the Unit's regime. Three staff kindly agreed to be interviewed over their lunch breaks or at the end of their shifts.

Time felt no less precious for interviews with prisoners. I had to schedule their interviews into the regime, after their exercise, before staff left for lunch (at which point only two officers would be left on duty and prisoners would not be unlocked), and around their phone calls or showers. It sometimes felt hurried and staff, on several occasions, interrupted the interviews to request that a prisoner be taken back to his cell. This tended to occur near lunch or

dinnertime although, on a small number of occasions, staff would do this even though it was an hour or two before a mealtime and there seemed to be little legitimate basis for this. Staff would also look through the windows, into the meeting room or Bubble, and it was hard to distinguish whether they were doing this to ensure safety or out of suspicion and distrust.

In total, I carried out forty-four interviews with nineteen staff and twenty-five prisoners. All participants, except one, agreed to be recorded. I took extensive notes during each interview, which were important for assisting with transcription, as the sound quality varied in the Bubble. On average, staff interviews lasted 1 hour and 7 minutes, with the longest being 1 hour and 51 minutes, and the shortest being 37 minutes. On average, prisoner interviews lasted 1 hour and 16 minutes, with the longest being 2 hours and 53 minutes (over two parts), and the shortest being 38 minutes. Five of the prisoner interviews took place over two sessions and one took place over three sessions. It is not surprising that staff interviews were slightly shorter – I had fewer questions for staff, and the interviews were subject to time constraints and work pressures.

It was more difficult to recruit staff to participate: some said they were too busy, others said they did not understand the study and some met me with a general suspicion and distrust. The lack of trust was related to several things, somewhat beyond my control. Firstly, staff complained to me that they felt 'burned' by the recent IMB report (2018), which described the Unit as breaching human rights standards. Secondly, some staff were frustrated by previous studies undertaken at Whitemoor, which they felt did not accurately represent officers' attitudes and behaviours. One manager recalled how staff were suspicious because researchers have 'come in before with agendas and motives' (Fieldwork notes, p. 34). Thirdly, when I explained the study to staff, along with my interest in law and background as a lawyer, responses would take the form of 'are you checking we are complying with the law?', 'do you not think we do everything by the book?' (Fieldwork notes p. 8, 9 and 56). Fourthly, my status as a researcher, as a 'civilian', attracted suspicion and some disdain: an officer said to me 'you civvies hold up the security check' and another said to the manager of the Unit, in front of me, 'you have too many civvies on the Unit today' (Fieldwork notes, p. 30). The distrust and suspicion manifested in several ways and is discussed more fully in the latter part of this chapter.

It was considerably easier to recruit prisoner participants. In my first week I attended the segregation review meetings, where my role was explained to prisoners and several offered to

speak to me. I followed up on those offers and soon word spread in the Unit about my presence and my study. Prisoners would talk to me on their walk to the exercise yard or to the phone booth or showers. Most prisoners welcomed the opportunity to speak to me. They also provided me with names of others in the Unit (and on the wing) who they thought I should interview (snowballing). Only one participant, on my asking, chose not to speak to me. He explained he had taken part in research before and, for him, it achieved very little.

In terms of participant profiles, I recruited staff participants from a range of roles including officers, SOs, senior management and those with administrative functions in the Unit. I kept a full breakdown of the participants and their roles but, due to the small number of staff in the Unit, I have not included specific data here, in order to protect participant identities. All staff participants were white. Four participants were female (21%), and the remainder were male (79%). The average age was 37 years, ranging from 22 to 58 years. The staff participants had, on average, spent nine years at HMP Whitemoor, ranging from 2.5 years to 26 years; and on average 3 years in the Unit; and segregation experience ranged from 1 to 5 years.

Most of the prisoner participants were recruited from the Unit (22). Three were interviewed on the wing, a few weeks (between two and six weeks) after their segregation experience. The majority of prisoner participants were Black Caribbean (12), followed by white British (8), Asian Pakistani (2), not stated (2), mixed white and Black Caribbean (1), mixed white and Black African (1), Asian Indian (1). The average age of prisoner participants was 31 years, ranging from 22 to 51. On average, they had spent 118 days (3.8 months) in the segregation unit, but time in the Unit ranged from 3 to 605 days (nearly 20 months).

The majority of prisoner participants were serving life sentences for murder (16), attempted murder (4), or manslaughter (1). Others were in prison for a fixed term, for crimes of GBH (2) and armed robbery with a firearm (2). Their average sentence length was twenty years, ranging from six years to thirty-five years. Most of the men had a substantial amount of time remaining.[50] The majority (14) had at least ten years of their sentence remaining. Five prisoner participants had one to five years, three had six to ten years, seven had eleven to fifteen years, and seven had sixteen+ years remaining. One was high-risk category A, nine were category A, and fifteen category B. The majority of prisoners had been received into the Unit from the wing (17), four were segregation-to-segregation transfers (from other prisons), one was received from a secure hospital and three were unknown. In terms of religion, Islam

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[50] For those with life sentences, this was calculated according to the minimum term i.e. up to the parole eligibility date.

dominated the participant group: fourteen of the twenty-five were Muslim, two Roman Catholic, one was Spiritualist, six were unknown and two reported no religion. Nine of the participants had known mental illnesses, including anxiety (1), personality disorder (6), schizophrenia (1), PTSD (1).

*Document reviews and observational data*

I supplemented the interviews with reviews of the following Whitemoor documentation:

- the Local Site Rules;
- local adjudication and punishment policies;
- the induction procedure for those entering segregation;
- application forms (to request showers, phone calls, visits etc);
- complaint forms;
- the log book in the Centre Office, where incidents like self-harm, attempted suicides or violence were recorded;
- the white board in Centre Office, where all prisoners were listed with their cell number, offence type, security category, segregation rule (Rule 45 or 46), unlock level and review date; and
- segregation review forms.

I requested access, from each prisoner participant, to their prison files (stored in the offices in the Unit). All consented and I reviewed the hard copy files which contained information on their offence, sentence length, adjudication history, reason and dates for transfers to the Unit, security classification, IEP status, age, ethnicity and religion. I also reviewed (if available, some were missing) for each participant prisoner:

- Form OTO27 – the initial authority for segregation. This is required for each prisoner on transfer to the Unit. It sets out the reasons for segregation and contains a health screening form;
- Form OTO25 – the authority for continued segregation. This is required within 72 hours of a transfer to the Unit. It contains the reasons for, and approval of, continued imprisonment in the Unit. It is also accompanied by a 'prisoner representation' form, which prisoners can complete with further information (sometimes explaining the reasons for their behaviour resulting in segregation, or behind a refusal to return to the wing) or the form can be used to dispute a placement into segregation; and

- any authorisation(s) from the Deputy Director of Custody ('DDC'), required for prisoners held in segregation for 42 days or more. This is a one-page form, signed by the DDC, approving the extension of time in the Unit.

I also supplemented the interviews and document reviews with observational data. I filled four A4 100-page notebooks. I had informal conversations with staff in the Centre Office, administrative staff, prisoners on the yard or in the phone booth, the Chaplain, the IMB, doctors and nurses from MHT and representatives from the OMT who attended the segregation review meetings. I accompanied staff 'on the doors', whose duties were to open the doors and escort prisoners to the yard, shower or phone booth. I spent time out on the yards, and in the kitchen on the Unit. I attended staff briefings, both morning and afternoon, and those which took place before a planned 'use of force' incident. I observed all 'control and restraints' that took place in the Unit during my fieldwork.[51] I spent much of my time on the landing of the Unit, observing interactions between staff, prisoners and visitors (e.g. the governor and IMB). I made detailed notes of segregation meetings and attended some adjudication hearings. My observations were not limited to the Unit. I spent time on each wing, informally talking to staff and prisoners about their perceptions, and experiences, of the Unit. I went to almost every part of the prison, including the kitchens, visits, the control room, the management block, workshops, gym, laundry and outside yard spaces.

*Ethics*

Before an interview, each participant was given a consent form and participant information sheet, attached at Annex Four. I explained the study, format of the interview, and that all data would be anonymised and remain confidential. I made clear there were limits to my promise of confidentiality: where prisoners posed a risk to themselves or others. These limits were tested and two instances raised particularly difficult ethical questions for me.

Segregation units hold a complex population: those who have violated a prison rule, those who are at risk of harm from others and those who are at risk of harm from themselves. Whilst the numbers varied somewhat – between five and ten prisoners – it was common for the Unit to hold a number of prisoners on ACCTs (Assessment, Care in Custody and Teamwork plans designed for those at risk of suicide or self-harm) (Fieldwork notes, p. 87

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[51] I observed eight incidents where staff were kitted up in their protective clothing, including helmets and shields. Sometimes a dog would be brought to stand outside the cell. Control and restraint practices were used on prisoners who were deemed violent, volatile or non-compliant.

and 113). It was therefore not surprising, during interviews, to hear accounts of self-harm and suicide ideation. Whilst these accounts were sometimes graphic and disturbing, they tended to be reported by those on an ACCT and therefore I did not disclose those conversations. However, there was one individual who spoke about suicide, who was not on an ACCT and caused me some concerns. Daniel's interview was devoid of hope and he described how he spent his time in his cell ruminating on past decisions. He did not go out to the yard and he had no family members to call. He had a very isolating experience in the Unit. The next morning, I interviewed Nazeer, a participant from the cell next to Daniel's. Nazeer described how he 'talked Daniel down' from a ligature because he 'wasn't in a good headspace' and that he, Daniel, wanted to be placed into the dry cell – the safety cell without ligature points (Fieldwork notes, p. 39). Before disclosing my concerns to staff, I decided, with the advice from a colleague[52], to speak to Daniel the next day. I went to his cell over lunch time, knowing there would be fewer staff to overhear the conversation, and asked how he was. I explained how the interview gave me some concerns. I said I was worried about his well-being and if he wanted, I could raise it with a member of staff, someone who he trusted or liked, on his behalf. He said he would not do 'that', implying suicide, but expressed feeling lost and deflated. We agreed, together, that I would not disclose our conversation to staff. This felt like the correct approach at the time: I did not want to violate his trust and I wanted to preserve some level of autonomy for Daniel. I signposted help and suggested he talk to a Listener or raise it with a member of staff himself (Fieldwork notes, p. 41). I am unsure of the outcome of this advice as, three days later, Daniel was transferred to another prison.

The second case was rather different and placed me in another difficult ethical position. During an interview with Wayne, he made explicit threats towards staff. I reminded him of the limits to my confidentiality:

> I: I do have a duty of disclosure if someone says something that suggests they're a risk to themselves or to somebody else.
> R: But I haven't said that though have I?
> I: Well…You made one comment –what did you say– when I said 'if you're not using the law, how would you resolve it?'. And you said 'well you'll have to wait and see'.
> R: Yeah because I don't know how it's gonna go.
> I: Yes but in some ways that does sound like a bit of a threat.
> R: I don't think that's a threat. That's me saying I don't know how it's gonna go. It's different from when I told you 'I'm gonna slash Jason'.

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[52] With thanks to Dr. Amy Ludlow for her advice and support.

I: So, in your mind, saying 'I'm gonna slash Jason', do you think that sounds like a threat?

R: Well… that's not what I'm saying. Ah, I can't trust you now…That's the thing with me now. I don't know. I don't know why I've done this now. I regret doing this now. Cos I don't know where it's gonna go…What I'm saying is like, I ain't doing this interview for you to go back to the officer and just fuck me completely over. Because…I said today, the threats are done…I'm just saying, if they come tonight or tomorrow and they put me in kit, then obviously I'll know you've had something to do with it. And if you fuck me over, I'll make fucking sure that everyone in this block knows it was you, and that you speak to staff. (Wayne, prisoner).

I left that interview feeling uneasy. Staff had, a few days earlier, found a weapon in Wayne's cell. It was a large piece of wood, with ragged ends, which he had fashioned out of the cabinet in his cell. I was conflicted between disclosing our conversation and preserving my research. On the one hand, there was a strong possibility that, by disclosing the threats to staff, Wayne's unlock level would be increased (meaning more staff would be present, possibly in their 'kit' with shields and helmets, to escort him to the yards or showers etc); I would become known as a confider in staff and could lose the trust I had spent weeks working hard to gain. On the other hand, if I failed to disclose the information and Wayne acted on his threat, there was a real potential that someone (staff or him) could be seriously harmed. I deliberated a while and eventually decided not to disclose this to staff for two reasons. Firstly, the day before, Wayne sent a letter to staff which contained similar and explicit threats. His letter said, 'I promise I will cut Jason and Tony. I promise you won't get the weapon. I'm coming for your staff…their kit won't keep them safe' (Fieldwork notes, p. 71). This was one of many letters he had sent, all containing clear threats of violence towards staff. Secondly, he had a list of staff names, on his wall, which staff jokingly called the 'hit list'. He shouted out his threats on a daily basis. I gently probed staff – to explore their level of knowledge about his threats – and found his threats, anger and frustration were known by staff. I therefore decided that, if I disclosed our conversation, I would not be revealing anything new. Staff were aware of his risk, he was already on a high unlock level, albeit he was not at the level requiring personal protective equipment (including masks, shields, vests etc) ('PPE').

I was relieved that, as far as I knew, nothing violent arose from either Daniel's suicide comments or Wayne's threats of violence. However, both cases were difficult to navigate. I had to make judgments about suicide ideation and violence, whether the threats seemed genuine, whether the risks were already known, and the extent of the risk posed. They were not judgments I felt well equipped to make.

Ethical questions arose beyond the interview context, particularly in deciding whether and how to intervene in certain circumstances. I had to decide whether to accede to prisoners' requests to hand in their complaint forms, or to relay messages from staff to prisoners, including information about transfers out of the wing. In both cases, I complied, perceiving these as minor decisions and marginal involvement in an otherwise busy segregation Unit. However, my marginal role was challenged in two major incidents. Firstly, during one lunchtime, a prisoner started a fire in his cell. Smoke was billowing out into the landing. Given the timing, there were only two members of staff on duty, and both were sat in Centre Office. I quickly went and reported it to staff. On a second occasion, I observed a prisoner assault one of the officers – he punched him in the face. I ran up the stairs and alerted staff to the incident. I watched from the landing as one officer pressed the emergency alarm and others tackled the prisoner to the ground.[53]

These judgments, decisions and interventions positioned me out of passive bystander towards active participant in the research field. They are examples of the difficult decisions researchers have to make, and the extent to which we allow ourselves, not to exactly penetrate our research environment, but to put ourselves 'in its way', permitting it to embody and 'enmesh' us (Geertz, 1995, p. 44). They are also examples of the deeply paradoxical nature of qualitative research. We are urged to understand the participant's point of view – the 'native' – without actually 'going native'. They reveal how 'participant observation' is inherently contradictory. It is 'split at the root', by demanding we 'act as a participant' but not too much, not to distort the field, and all the while ensuring we keep our eyes open and our gaze neutral (Behar, 1996, p. 5).

*Analysis*

As I promised my participants, I kept the data confidential and secure. I transferred every audio-recording to my personal computer and password protected every file. I transcribed twenty-eight of the interviews. The remaining sixteen were completed by an external transcriber, subject to a comprehensive confidentiality agreement.

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[53] This was an incident which I observed to be an excessive use of force on the prisoner (Fieldwork notes, p. 93). Six members of staff had him pinned to the ground, including one who jumped on his back and said in the briefing later 'I was okay, he's not – did you see me get him right in the back?' (Fieldwork notes, p. 93).

Keeping interviewees anonymous was fraught with difficulties. It was a small Unit, with a low turnover of staff and prisoners. It was obvious when I spoke to prisoners – staff would have to unlock them and escort them to the meeting room or Bubble. It was just as obvious when I interviewed staff. Interviews were sometimes interrupted and staff were not discreet about being interviewed. To maintain anonymity, I have assigned aliases to all participants, and amended or removed words or identifiers from quotes and descriptions[54].

I uploaded all transcripts to *Atlas Ti*, a qualitative data analysis tool. It assists in coding and organising the data. I had a list of general concepts – themes – I was interested in. For example: segregation usage, segregation experience, law and implications for methods. However, these were very broad. To help narrow the categories, and assign more precise codes, I deployed an inductive technique characteristic of grounded theory, developed by Glaser and Strauss (1967) and later refined by Strauss and Corbin (1990). I first approached my data by *open coding*, to identify concepts related to my research questions. These developed organically, as I went through my data. I created codes such as: Experience – Control, Experience – Frustration, Experience – Respite, Law – Lack of faith in, Law – Lack of Access, Law – Self-Informed, Law – Protection, Methods – Trust, Methods – Ethics, Purpose – Discipline, Purpose – Mental Illness and so forth. During the process, I created new codes, amended existing ones and removed those which seemed less relevant. It was an iterative process and culminated in a list of codes which were specific and lengthy. I then proceeded with the second phase of coding – to create more focused codes (Charmaz, 2002) and to identify relationships and patterns in the concepts. Atlas Ti was a useful tool for this: its 'concept mapping' function created graphical representations of the most commonly occurring concepts and relationships between them.

I typed up all my fieldwork notes. Although they were analysed less systematically, they informed my codes and supplemented my analysis. Notes from the document reviews were inputted into a password protected Excel spreadsheet. It includes information on prisoners such as: age, date in/out segregation, rule for segregation, reasons in the OTO25 and OTO27, sentence start date, tariff expiry/parole eligibility date, security classification, IEP level, unlock level, received from wing or other prison, nationality, religion and existence of mental illness. For staff, it included: age, sex, ethnicity, experience at Whitemoor and in the segregation unit.

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[54] I do not distinguish between different staff grades (e.g. CM, SO, officer) for staff participants; the same, small number of staff worked in the Unit and this would have made anonymity difficult.

# 6. Research at the margins

> Moving between such contrasting worlds required tuning into different frames of reference and constantly shifting between diverse views. It also had an impact on my vacillating feelings towards each of the groups involved. (Foster, 1999, p. 2).

I opened the chapter contemplating the extent to which our personal and political sympathies can contaminate, or distort, our research. During fieldwork, it was impossible to fully set them aside; they are fundamental aspects of being human. Part of being human is having the capacity to feel, to show emotions, to forge relationships and to sympathise and identify with our participants (Dickson-Swift, James, Kippen, & Liamputtong, 2009; Gilbert, 2001). During fieldwork, I was conscious of my tendency to side with the underdog and kept Howard Becker's (1967, p. 244) work in mind. For Becker, there was no question of whether we can set our values and sympathies aside. He suggested 'the question is not whether we should take sides, since we inevitably will, but rather whose side we are on' (1967, p. 240). On starting the PhD, I would have answered that with conviction: the side of prisoners, those who I perceived to be in particularly vulnerable positions in the segregation unit. At times, my initial sympathies were validated. Prisoners described (and sometimes I witnessed) torments by staff, both psychological and physical. For example, some prisoners described being beaten, having their 'heads stamped on', or being 'smacked in the face with the shield'. Others relayed being put in a body belt, a mechanism that goes around the stomach and pins the arms to the side, and being kept in the 'Box' for days. I observed a particularly distressing scene where one prisoner, in cold February, was marched through the Unit, only in his boxers, with the body belt around him. Head hanging low, he looked ashamed and broken. I witnessed use of force, where six members of staff went into a small cell, I heard the bang of the shield and a small prisoner came out with a bloody nose. But my eyes were also opened to the challenging, unrelenting, and often unreported aspects of working in the Unit for staff.

Staff recounted horrifying experiences. One recalled being taken hostage and a bladed weapon held to her neck, another described working for weeks in the Unit, with six prisoners on dirty protest, where he had to 'wade' through faeces and urine to do his duties. One member of staff described the distressing impact of a prisoner obtaining his home address and making threats to his partner and children. Physical assaults on staff were common. I witnessed three serious incidents whilst I was there, and one officer was so badly attacked that he was signed off work on the grounds of ill health. Not only did staff have to deal with their

own safety, and see colleagues harmed, but they also faced harrowing encounters with prisoners that left their mark. In December 2017, two prisoners set fire to themselves (on separate occasions) after taking large doses of the drug 'spice'. One of these prisoners died. Members of staff described the sights, the smells and their despair from trying to prevent someone being burned alive, but failing. Another member of staff provided a vivid account of cutting someone down from a ligature, trying to resuscitate him with CPR but being too late, having to cover the body and return to work. All staff made reference to the commonality of self-harm and suicide, and some were forthcoming on how they dealt with the psychological difficulties which ensued:

> R:     Yes I've been in cells where people have tried to kill me, I've cut people down, I've been in cells painted red, cells covered in shit, and taken hostage.
> I:      How do you deal with all of that?
> R:     You put it in a box and shove it to the back of your head…And…well… you hope that box never opens. (Jessica, staff).

The accounts provided by staff and prisoners divided my sympathies. There was no obvious answer to Becker's question 'whose side are we on?'. Prisoners provided compelling descriptions of terrible staff abuse and violence that should not have happened. However, staff also recounted distressing incidents which, as I observed, were all too common. I witnessed, often on a weekly basis, dirty protest, self-harm, and attempted suicides. Staff undoubtedly work in a difficult environment, which is physically and psychologically demanding, and which takes its toll. I was only there for a few months and it began to feel too much for me. I can only imagine the impact it might have on staff after years of working in the Unit. I felt compassion and empathy for both groups.

Liebling recounts how, in her experience, it was possible to 'take more than one side seriously' (2001c, p. 473). By including dual perspectives, from staff and prisoners, we can 'appreciate the prison world with more of those who shape it present', can 'synthesise' competing accounts (2001c, pp. 478, 482) and avoid colluding with pre-existing social and political power structures. Taken together, it means we can better attempt to achieve a position of neutrality through adopting, as Liebling denotes, a 'side' view (2001c, p. 478). However, including perspectives from two groups meant, as Foster (1999) described, I straddled two contrasting worlds. I was sometimes an outsider, pulled between groups and had to transition between the two. I had to navigate the 'complex relationship' between

myself, as field researcher, and my participants (Spradley, 1970, p. 18), and this created a host of problems.

*Suspicion and trust*

Attempts to embed myself with both staff and prisoners created suspicion from both groups. They questioned my motives and sympathies, and there was often an undercurrent of distrust. This distrust was representative of broader cultural dynamics within the Unit (discussed in Chapter Five). I would sometimes sit in Centre Office, the central hub of the Unit, where most staff congregated. This presented a problem for some prisoners who saw me there, engaging with officers. One prisoner said: 'I see you go in the office and talk to the officers quite a lot… what do you say to them, after the interviews?' (Wayne), and the suspicion was clear in the question of another: 'Do you just report all this stuff back to staff?' (Ricky). My replies were careful. I reiterated my role as an external researcher, stressed the confidential nature of our interviews, but highlighted the limits of that duty.

Similarly, I faced difficult questions from staff. Some displayed a natural curiosity, asking how the research would be used and what I hoped to achieve afterwards. Others were more suspicious and asked what I talked to prisoners about and what I was 'busy doing in the Bubble' (Fieldwork notes, pp. 24, 69). I caused friction when I postponed an interview with an officer, to prioritise one with a prisoner (intended for transfer the next day). I was the subject of comments, said jovially, but which betrayed the officer's irritation and the stark 'us and them' attitudes which characterised the Unit:

> R: She cancels on us but as soon as a prisoner will speak to her she goes running. We have jobs to do Ellie. It's not really on is it? You expecting us to talk to you in our own time. You need to speak to detail to get us relieved.
> I: I know, I know. I'm sorry...It's been hard to fix them in because you are all so busy.
> R: And then you ditch us for prisoners anyway. (Fieldwork notes, p. 91).

Staff suspicion was experienced in several ways. For example, an officer left a room saying 'I'm going to go because Ellie's got her pen out again' (Fieldwork notes, p. 97), others made comments like 'watch yourself boys, she's writing it down again' (Fieldwork notes, p. 28) and one senior officer said 'from now on, the Centre Office is a no pen zone' (Fieldwork notes, p. 34). Whilst most of these comments were said without malice, they were accompanied by behaviour, from staff, that bordered on hostile. Staff would stop talking when I entered rooms,

they would close doors on me, communicating how my presence was not always welcome. Whilst I was mostly able to tolerate the hostility, there were times when the Unit felt like a hard and unwelcoming place. This was not helped by some staff who made inappropriate comments. For example, when confirming an interview with one officer, another approached and said loudly, 'I'm sure he'll do an interview with you if you unbutton your shirt more' (Fieldwork notes, p. 109). Managing relationships with staff was one of the most challenging aspects of fieldwork. I was mindful of the necessity to maintain positive relationships with staff: they were the gatekeepers to my research. They were gatekeepers for formal access, the ones who initially escorted me to the Unit and who would unlock prisoners and facilitate interviews. They were also the gatekeepers for informal access: without them, I would only have one group of research participants. So I would brush off remarks which bordered on sexual harassment and tolerated treatment which I would not otherwise tolerate.

Remaining on the 'edge' had implications for trust, rapport and acceptance. It was difficult to achieve the position of 'acceptable marginal member' (Hammersley & Atkinson, 2007). I was pulled between two polarised groups – staff and prisoners – who, at times, subtly demanded my allegiance, support and trust. Of course, there was a symmetry, as I demanded much the same from them.

## Their worlds

I had questions about whether I could ever truly understand their 'worlds'. Transitioning between both groups, sometimes on the 'outside', being on the edge, whilst at other times being on the 'inside', made me question whether I adequately managed to understand the culture and dynamics of either group. This was brought to the fore in a number of interviews:

> R: You have to walk in a prisoner's shoes to understand the madness of segregation. (Joe, prisoner).

> R: You are oblivious, and you actually try to see the best in everything…You just bounce in and you're happy… I call it living in a bubble. You're just in your own zone…You live in a totally different world than I do. (Johnny, prisoner).

> R: … [I]t's easy for research…so you breeze in for example and you haven't got to lock that guy up at lunch… you're not the one telling him [to] 'get off exercise' and 'no you're not having extra butter' and 'get behind your door'. You're not having to do that all day, every day. So you breeze in, you're someone new, you ask some questions… and you know, it's

really easy to think, 'this is really sad, this is a really good guy and if people had done things differently and if the officers had done A and the managers had done B and the governor had done C, he wouldn't be in the seg now'… and the relationship you'll have with prisoners is different to the relationship you would have if you had to exercise authority over them. (Jeff, staff).

I was an outsider coming into the prison. I was also a relatively young, white, woman, from a socially advantaged background. There were aspects of my own circumstances and experiences that made it difficult, at times, for me to intuitively understand participants' accounts. This manifested in minor ways, like having to ask for clarification when a certain word – slang – was used. For example, asking prisoners to define 'Pad spins' (cell searches), 'lines' (of cotton or material that allowed contraband to be thrown outside cell windows and passed to other prisoners) or what staff meant by the word 'fraggle' (a term used by staff – for both prisoners and staff – who could no longer tolerate the Unit, those who were 'burnt out'). It also manifested in more substantial ways. For example, asking probing questions to understand how a prisoner kept blades in his mouth, how another concealed a mobile phone in his anus for hours, and having the invasive strip search process explained to me in detail. The latter, for one participant, sadly triggered memories of his childhood abuse. There were aspects to the experiences – both from life inside and outside the prison – that felt alien to me.

I was conscious of the impact that my personal characteristics might have on the field. I received a small number of comments from both prisoners and staff, although more common from the latter, about my appearance, my relationship status and sometimes my sex life. It made for awkward conversations and raised questions, for me, about how best to maintain boundaries. However, I suspect that my gender, youth and character (as 'light', 'bouncy' and 'happy') were more of a help than a hindrance. I got the sense that staff perceived me as a naïve student and therefore mostly acceded to my requests to review documents and were forthcoming with information. Whereas prisoners, although sometimes suspicious of my intentions and whether I would share the information with staff, saw me as a confidante and someone they enjoyed talking to, but also as someone who had their best interests in mind, who might advocate for changing their circumstances:[55]

R: I could sit down and talk to you all day... Like you're calm, you get me…You're good people, man. You're my type of person, and I could sit down and talk to you on the road. (Johnny, prisoner).

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[55] Some prisoners gave me the nickname 'rebel with a cause'.

R: I just find it hard to be engaged in anything. Like, take this for instance, this I can do because it's like interacting with a person that I've never met…know what I mean…but at certain times I find it hard. And don't take this the wrong way miss, but because you're a pretty young lady as well…it makes it easier.

I: You're saying if I was an old man you wouldn't want to talk to me?

R: It does make it easier…it's nice when there's you there smiling like that…and it just makes it easier. It makes it easier to be engaging, know what I mean? (Mark, prisoner).

R: You are one of these people that think you can change the world…you think you can use this [the research] to make it better. Well that makes it a stressful world for you, mate…because you see it's wrong and there's nothing you can do about it. (Johnny, prisoner).

There was also a corresponding risk of whether I understood – or perhaps penetrated – their worlds too well. On my last day, I had a long discussion with a senior manager:

R: How do you think you've done?

I: I think I've done alright.

R: Yeah you have. You've woven your way through really well. I don't know whether that's compromised your research or not but staff don't moan about you, they speak very positively, they're really interested in what you're doing. You haven't upset anyone, which is really hard when you're a civvie, who's only here from time to time. And you've been here long enough now that you've kind of been accepted into the seg staff gang have you?

I: Yes but I have some unease about that because erm…should I have been better at maintaining those boundaries because…you don't want to be considered too much like a friend. That wasn't what I was trying to do but, then again, you don't want to be too distant that people think you're hostile…it's a really fine line to tread.

R: Yeah. Well if you haven't got relationships you're not gonna do any research are you…so sometimes you have to compromise. (Jeff, staff).

This conversation caused me to reflect on my relationships with staff, whether I fitted in *too* well, in a way which undermined the integrity and impartiality of my research. I concluded that was not the case. For, it was difficult always to get the boundaries right, and the study undoubtedly demanded the forming of relationships (both with staff and prisoners) some – although not all – of which lacked authenticity. The relationships, the 'fitting in', had a degree of intention behind them which allowed for a level of neutrality. I was guarded with my

emotions and my 'self' something which, although beneficial for the research, felt compromising to me as a researcher, and as a human, and led to the third challenge.

## *Sense of self*

Straddling two worlds meant, at times, it was difficult to retain a firm sense of self (Atkinson, Coffey, & Delamont, 2003). I was in a situation where friendships sometimes felt instrumental (both with staff and prisoners), not as a result of shared likes and interests, but instead to facilitate access and encourage participation. I made statements that were intended to be encouraging and supportive, I laughed at jokes, I outwardly projected openness and friendship – behaviour with which I was not entirely comfortable. In many ways, I sensed that participants opened up to me because I was sympathetic, perceived as being on 'their side', but this undermined my attempts at outward neutrality. The research required a level of 'emotional management', monitoring and adapting my own feelings and outward displays of emotions (Hochschild, 1998, p. 9). Managing my 'self' and emotions felt essential for remaining detached, to prevent me becoming emotional during fieldwork, and was intended partly to preserve the research and partly to protect my own mental well-being.

This *fragmentation of self* felt necessary because access to the field was rarely one-dimensional. In many ways, both staff and prisoners held the keys to my research. My study depended on their participation and acceptance. I felt, at times, revealing my own perspectives, or true feelings, would have done little for the study. For example, feelings of anger, anxiety and fear were not uncommon. I was particularly outraged by staff behaviour, when they told a prisoner that he would be transferred 'imminently'. The prisoner interpreted this as a matter of days, but the staff knew it would be weeks. They took pleasure in watching him hurriedly eat all his food, in his cell, making fun of him 'stuffing his face' and expressed little intention to correct his understanding of 'imminently' (Fieldwork notes, p. 96). I felt unable to reveal my discomfort at one prisoner's account of his crime of drugging and raping two women, murdering one and leaving the other paralysed. I felt unable to show my distress when I stood at the entrance to a cell containing a prisoner who had self-harmed, and both he and his cell were covered in blood. I concealed my discomfort, as well as my frustrations, and my anger, at witnessing incidents which felt unjust. I masked my feelings of powerlessness – all I could do was write them down – but took some comfort in knowing I had a permanent account of them.

Actively managing outward displays of emotions is common in qualitative research, which has been described by Dickson-Swift et al. (2009, p. 68) as an 'embodied experience', naturally requiring emotional work (and see Shaffir, Stebbins, & Turowetz, 1980). Yet, in part, it felt deceitful and disingenuous. Whilst a prisoner cautioned me to the risks of dishonesty:

> It must be hard for you, miss, because prisoners don't like being truthful. It's hard for you to know what's a lie and what isn't. We find it hard to open up and be honest. (Mark, prisoner).

I felt, at times, that I was the one being dishonest. Perhaps my comments and behaviour were manipulative and I exploited friendship and trust to further my research. How, during research, do you balance integrity with access? Can you truly gather data, in environments like prisons, without being duplicitous? Or does deception come with the territory? There is clearly a balance to be struck. Being entirely honest about my views and emotions would have risked alienating (and perhaps even caused emotional harm to) my participants and undermining my research. However, there is something to be said for revealing parts of ourselves and being the 'vulnerable observer' during our research (Behar, 1996). Research is a reciprocal process and by making ourselves vulnerable we implicitly invite our participants to be vulnerable. We can therefore establish a better rapport, trust and create a more equal position for participants (Brannen, 1988; Dickson-Swift, James, Kippen, & Liamputtong, 2007; Liamputtong, 2007).

*Ethnographic loneliness*

I was not able to get the balance right all the time and by concealing my emotions, presenting a different version of the 'self', I created a final, and related, challenge: an associated isolation and ethnographic loneliness that came from burying parts of myself and straddling two worlds, alone. The Unit was challenging, for staff and prisoners, but also for me as a researcher. I had difficult conversations and witnessed distressing incidents. One example is particularly vivid for me. One of my prisoner participants was in the gated cell. He had no clothes on, was on dirty protest and had created a ligature out of his boxer shorts. He was distressed and called me over. I pleaded with him to remove the ligature from around his neck, 'there are other ways to be heard, please don't… I don't want to see this and I don't want you to do it' (Fieldwork notes, p. 92). The pleadings were futile, he became

unconscious, a code blue[56] was called and healthcare arrived and resuscitated him. At times, I left the Unit feeling burdened. I feared that prisoners, with some of whom I had started to build friendships, would not be there the next day.

Participants confided in me. Some relayed their fears about opening the cell door, their worries that segregation was making them 'go insane' or that they were losing their grip on reality – common in narratives from both staff and prisoners. Staff sometimes shared extremely personal information. Some described how the stress and pressure from the Unit followed them home, to their partners and children (Fieldwork notes, pp. 4, 25). Some participants cried, they expressed anger, they revealed insecurities and vulnerabilities which were not obvious from the selves they projected elsewhere in the Unit.

After hard interviews or witnessing traumatic incidents, I had no one in whom to confide. My duties of confidentiality meant there were few people I could turn to for support. When faced with ethical questions, I had to largely resolve them alone. At times, I questioned my own judgment and often hoped that confessions of self-harm, suicide attempts, or threats of violence would not be executed. During fieldwork I felt isolated and withdrawn. I did not want to talk to anyone about the research, I felt that no one could understand or, more accurately, I did not want to make them understand. I found some events so harrowing that I did not want to repeat them, not to anyone, not ever.

Fieldwork was, like Behar described, a lone voyage through a tunnel:

> Loss, mourning, the longing for memory, the desire to enter into the world around you and having no idea how to do it, the fear of observing too coldly or too distractedly or too raggedly, the rage of cowardice, the insight that is always arriving late, as defiant hindsight, a sense of the utter uselessness of writing anything and yet the burning desire to write something, are the stopping places along the way. (1996, p. 2).

I went to great lengths to ensure my participants did not leave the interviews feeling too dejected or disempowered, yet made very little effort to protect myself and own well-being. Being alone in the field, I sometimes struggled with resolving ethical questions, of knowing when to breach confidentiality, or how to reconcile feelings of deceit and exploitation. I did not know where to put the anger and the frustration that would surface when witnessing

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[56] 'Code blue' is for more serious breathing/collapses. 'Code red' is for less serious blood/burns (see PSI 03/2013) .

someone else's pain, distress and injustice. Nor did I know how to reconcile feeling powerless: having little recourse for injustices, other than the ability to write them down. Fieldwork was about 'confronting, without our contemporaries' my own morality, humanity and true 'self' (Behar, 1996, p. 172). I learned much through the practice of fieldwork – about methods, ethics and not least about myself – as most ethnographers do (Behar, 1996; Bourgois & Schonberg, 2009; Gilbert, 2001; Hamm & Ferrell, 1998; Liebling, 2014; Rowe, 2014). Fieldwork was an experience, like Behar's voyage, which was a journey characterised by detours of despair, junctures of joy, where the path was sometimes lost, but hope sometimes found. It was undoubtedly an experience that left a mark and one, which like Alice, resulted in a metaphorical bump to the head and bruise to the soul.

# Chapter Four – Law and Contradiction: Use of Segregation

R: Well, segregation's not a destination is it? Segregation is like something that appears on different journeys, so some people make choices that inevitably result in being segregated but no one has a preference to be segregated. The choice you make: 'is that less bad than what I'm being segregated from'. So if you know you're gonna get killed on B Wing, being segregated is a less bad option. In some ways, if you go on the netting to get down the seg, that is your choice, but it's not really a choice is it, it's the lesser of some quite evil evils, isn't it?

I: What do you think segregation is for?

R: Refuge for some men. Some people need to be on their own for a period of time, so refuge and respite. Sometimes it's an opportunity for us to stabilise people and it's an intervention…you know where we've got someone that's escalating in some bad ways; substance abuse issues, behaviour or violence. It's an opportunity for us to intervene and re-steer them, re-influence them in the right way. Sometimes it's just a straight punishment, CC [R55 cellular confinement] is a punishment, you know? There's no rosy way of getting around that. And, although you wouldn't read this in a manual, there are times when it's about sending a message. (Jeff, staff).

A multitude of reasons, I mean, for some of them, they wind up here because they think they'll get a progressive move quicker, or they'll get moved to another prison. Some of them are here because they are genuinely scared of what it'll mean for them if they stay on location, whether it be a debt to someone, or if they're being expected to do something they don't want to do. For some… especially some of the ones who have got quite bad mental health problems, the seg can almost be a safe place…Because it is very structured and very regime-driven. They know that the only person coming to their door is a member of staff and, in the vast majority of cases, a member of staff is not going to hurt them. So they know that in the morning they'll go out for their exercise, and then they'll come back and they know that they'll go out for their shower, and then they'll come back. And they know that the meal will come through at lunchtime. That level of structure and regime is quite safe and quite containing for them. Whereas, obviously, being on a main wing amongst all of those different people, the noise, the goings on with drugs and phones and violence; this can almost seem like a safe place to be for some of them. (Richard, staff).

Segregation has the potential to cause real harm for the individuals confined there (see Chapter One, Part Three). It is also a severe sanction. In fact, after the death penalty, it is the most extreme sanction a state can impose (Jeffreys, 2013, p. 106). It subjects individuals to almost total staff control, and erodes their bodily autonomy and personal agency. Staff determine if, and when, an individual is able to leave his cell, attend the exercise yard, take a shower or use

the phone. Staff also set the parameters of human contact – choosing when and how to respond to a 'cell bell', how to manage complaints and how to engage with prisoners. Staff also determine, to a degree, whether a prisoner can leave the Unit and return to the wing (although, as discussed below, some decisions are negotiated, for example when prisoners refuse to return to the wings).

Thus, the Unit is an area of the prison characterised by a high concentration of power. The power is distinct from the 'softer' forms of power that Crewe (2009, p. 81) describes. The almost total isolation and almost complete reliance on staff are more indicative of the coercive form of power identified by King (2005) in 'super-max' prisons. The Unit is also, as this chapter explains, a part of the prison where there is flexibility in the rules, considerable staff discretion, and a vulnerable prisoner population. 'Vulnerability' is interpreted broadly to include prisoners rendered vulnerable due to mental illness or threats faced on the wing, but also due to their almost total reliance on staff. Power is unequally distributed in the Unit; concentrated in the hands of the institution and its staff actors. It is a situation in which the law is fundamentally important. Law recognises the absence (or unequal distribution) of power and introduces safeguards to protect rights, constrain discretion and protect the vulnerable (Steiner & Wooldredge, 2018; van Zyl Smit & Snacken, 2009). In the Unit, legal safeguards can take various forms. As Chapter Two described, external approval from the Secretary of State is required for any prisoner detained in segregation beyond 42 days; a doctor, nurse and governor must review and authorise the initial segregation decision; segregation review boards monitor and authorise continued segregation; and bodies, like the IMB, have a safeguarding role in overseeing segregation (PR 1999 and PSO 1700).

In the segregation unit, at its best, the law (and non-legal rules like PSO 1700 and the Local Site Rules) should be setting the parameters of how segregation is used and why, and how such use is monitored and constrained. However, as this chapter argues, the current law of segregation is not an effective mechanism for controlling and constraining the *use* of segregation. There are three arguments to support this, which form the three main parts of this chapter.

Firstly, the concept of 'removal from association' contained in the PR 1999 is vague. Does it, for example, apply to those released on 'single unlock'? Whole wing lock-downs? Or those subject to substantially reduced association? These are questions which have been asked in, and considered by, the English courts. As argued, the broad and ill-defined nature of the PR 1999,

which apply to segregation, make it difficult to foresee when the rule applies in the first instance. This creates problems for legal certainty and undermines, as Lord Bingham described (detailed in Chapter One), some of our most fundamental rule of law principles. This creates a problem which is more than an abstract concern; it exposes prisoners to the risk of abuse and unfair treatment.

Secondly, the concepts of 'good order or discipline' and 'own interests', within the PR 1999, are also broad and opaque. It means Rule 45 – and segregation – is used to address a multitude of functions. Jeff and Richard, at the start of this chapter, describe a complex reality: the segregation unit is used as a form of punishment, but also as a deterrent, it can be a preventative mechanism, as well as a place intended for care and rehabilitation. These aims are contradictory and broader than those set out in the PR 1999.[57] Moreover, examples from my fieldwork reveal how the use of segregation is contextualised within the broader prison – situated in the prison's culture, its actors, and reflects their attitudes towards risk, safety and punishment. The prison, as an institution, has an important role in setting the parameters of how segregation is used. Such use challenges the existing paradigm that segregation is reserved for only the most violent individuals and is intended to be a last resort. It raises further questions about the purpose and function of the Unit. The Unit attempts to manage a range of individuals, with a multitude of needs; in doing so, its primary aims and intentions become lost, muddied and confounded.

Thirdly, the PR 1999 are characterised by a substantial amount of discretion, which culminates in a lack of certainty and precision in the rules. This is not overcome by supplementary guidance in the form of PSO 1700 or in the Local Site Rules created by Whitemoor's SMT. They create a void in which local practice and custom steps in to shape how segregation is used and why.

Taken together, these factors make it difficult for the rules (both legal and non-legal) to be an effective force in setting the parameters of how segregation is used. I identify how the rules are imprecise, ill-defined and contain substantial discretion for the prison authorities. I suggest that, even if the rules could be improved – made clearer, more precise and specific – there would be a limit to what they can achieve. I suggest that the rules are bounded: by the individual actors responsible for their implementation, by the institution and the broader penal system. Therefore, reform efforts which focus primarily on law or policy change are unlikely to lead to a reform of behaviour, or to encourage a more constrained use of segregation.

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[57] They mirror the contradictions and inconsistencies found in imprisonment more broadly (care versus custody, rehabilitation versus deterrence, punishment versus reform).

# 1. Prison Rules – removal from association

As described in Chapter Two, Rule 45 of the PR 1999 (and Rule 49(1) YOI Rules 2000) provides for 'removal from association', where it appears 'desirable, for the maintenance of *good order or discipline* or in his *own interests*…the governor *may* arrange for the prisoner's removal from association' (R45(1)).

Both the PR 1999 and the YOI Rules omit a definition of 'removal from association'. The omission has caused a problem for some prison decision-makers who, in the past, tried to implement confinement regimes which did not fit within Rule 45. Consequently, it was left to the courts to interpret the scope and applicability of Rule 45. In *R (AB) v Secretary of State for Justice* [2017] EWHC 1694 ('AB'), AB was sentenced to 12 months in Feltham YOI. When he arrived at Feltham, due to previous disruptive behaviour at Cookham Wood YOI, AB was placed on 'single unlock'. He was therefore unable to leave his cell when any other detainees were out of theirs. AB complained, as a consequence, he was only allowed out of his cell for between 30 minutes and 2 hours each day. He alleged that the restrictions breached Rule 49 of the YOI Rules, Article 3 and Article 8 of the ECHR. The High Court considered whether the practice of single unlock constituted 'removal from association' for the purposes of Rule 49 of the YOI Rules. The court concluded that single unlock had the *effect of* removal from association and therefore had to be in accordance with the YOI Rules [10, 17]. This was reaffirmed by the Court of Appeal ([2019] EWCA Civ 9), which reconsidered the human rights complaints. However, the breach of Rule 49 was not in dispute. The Secretary of State acknowledged, and issued an apology for, failing to follow the process for removing AB from association, and failing to implement the process of regular reviews required by Rule 49.

Similarly, *R (Syed) v Secretary of State for Justice* [2017] EWHC 727 ('Syed') concerned an individual who had been sentenced to life imprisonment for performing an act preparatory to an act of terrorism. In 2016, Syed was transferred to a 'specialist unit' for the management of prisoners with particularly difficult and disruptive behaviour. Syed complained that he was only allowed out of his cell for less than 2 to 2 ¼ hours each day. Syed submitted that his restricted association, when compared with the general prison regime which allowed up to 8 hours association a day, represented 'removal from association' pursuant to Rule 45 [39]. The High Court recognised that one of the fundamental issues was the 'proper construction of Rule 45' and consequently engaged in a lengthy consideration of how this rule, and 'removal from association', should be interpreted [40]. The High Court concluded that Syed was provided

with the *possibility* of association with other prisoners – albeit such association varied in the number of hours and his association operated on a reduced regime compared to the wider prison – he was therefore able to 'enjoy association with other prisoners' and this did not constitute removal from association for the purposes of Rule 45 [51]. The court was clear: Rule 45 meant 'removal from' not 'limitation' or 'reduction' of association with other detainees [41].

*R (KB, a child, by his litigation friend LW) v Secretary of State for Justice* [2010] EWHC 15 ('KB') concerned a 17 year old boy detained at Wetherby YOI. Wetherby YOI operated an IEP scheme which, according to the claimant, curtailed the opportunity for association with others. Due to poor behaviour, KB lost a series of 'awards' under the IEP policy, namely the loss of association in the evenings. KB alleged that the restriction on his association constituted 'removal from association' for the purposes of YOI Rule 49 and the protections contained therein. The judge firmly eschewed any attempt to define association which was not, as the judge stated, defined in the rules or any other document to which he was referred [73]. The judge reasoned that association 'conveys the idea of being in the company of, and interacting with, fellow human beings' [73] and, as KB was able to participate in work and educational programmes, KB had not therefore been removed from association for the purpose of the YOI Rules.

Finally, in *R (MA and others) v Independent Adjudicator and Director of HMYOI Ashfield* [2013] EWHC 43 ('MA') the High Court considered whether an informal scheme of restricting MA and others to their wing, outside the usual procedural safeguards, created a 'shadow segregation regime' in Ashfield YOI [9]. The seven claimants entered the sports pitch at Ashfield and commenced a protest against the removal of toilet seats from a housing block. The young detainees were armed with pieces of a broken football goal and made threats to the staff. A team of custody officers entered the pitch, but the seven claimants failed to surrender and were consequently restrained by staff. MB and AB were detained in the segregation unit (Brunel Unit), whilst five other young persons were detained on Phoenix Wing – all seven were held under restricted conditions pending adjudication. For three days, the five individuals held in Phoenix Wing were confined to their cells and were only permitted to leave their cells alone, for very limited periods, in order to take exercise, make a phone call or take a shower [27, 36]. Mrs Justice Davies found the practice on Phoenix Wing constituted 'removal from association' for the purposes of YOI Rule 49 and declared it was 'segregation by another name' [36]. The practice on Phoenix Wing operated outside the scope of the YOI Rules and PSO 1700 i.e.

outside the procedures which governed assessment, monitoring and review and was therefore held to be unlawful [27, 80].

*Syed*, *AB*, *KB* and *MA* demonstrate the limits of Rule 45 and YOI R49. The lack of a precise definition of 'removal from association' means the legal rules potentially capture a host of different practices and restrictions. It creates a corresponding risk of substantial uncertainty in the interpretation and application of the rules. It raises questions about the circumstances and scenarios which constitute removal from association, and when the procedural protections contained within Rule 45/ YOI R49 are engaged. Of course, most legal rules contain a *degree* of uncertainty: it may be difficult to foresee exactly when and how a particular rule will apply, in every possible scenario (Waddams, 2015, p. 59). However, the above cases demonstrate how the rules, as currently apply, create substantial legal uncertainty and considerable scope for judicial interpretation. Taken together, it may be difficult to foresee whether the rule, in the first instance, will be engaged (as illustrated in *Syed*) and this has corresponding implications for fundamental rule of law principles, as described by Lord Bingham and set out in Chapter One. The uncertainty in the rule itself (and a lack of clarity as to the scenarios and circumstances pursuant to which it will be engaged) carries the risk that the rule is applied inconsistently, unfairly, is exposed to abuse and that any eventual legal outcomes will be inherently fact specific.

I observed this impact during fieldwork. The prison did not dispute the application of Rule 45 in the Unit. However, on the wings, I observed the practice of 'total wing lockdown'. When imposed, prisoners were unable to leave their cells, sometimes for a whole day or consecutive days. They were prohibited from social association and from attending classes or workshops. In effect, they were detained in isolation on the wing. This is a practice which may engage Rule 45 and be the 'segregation by another name' identified by Mrs Justice Davies in *MA*.

## 2. Prison Rules – GOoD

As discussed above, the concept of 'removal from association' has caused problems for prison decision-makers, as well as judges, in understanding when and how the rule applies in the first instance. Moreover, Rule 45 creates an additional problem: it is narrow in focus yet broad in its application.

To reiterate, pursuant to Rule 45(1) of the PR 1999 (YOI Rule 49) a prison governor *may* decide whether segregation is necessary, and this decision may be taken to satisfy a range of

purposes: *good order or discipline* or for the individual's *own interests*. The rule has a deliberate discretionary character. The initial segregation decision is reserved for the governor (and contingent upon the exercise of his discretion); and the justification for segregation (*good order or discipline)* is incredibly broad and ambiguous. It means that segregation can be imposed as a response to a range of behaviour or issues that arise in prison. This is evident from the case law, for example, *Syed, AB, KB* and *MA*, are all examples of the wide-ranging circumstances in which segregation (or alleged segregation) can be imposed. It was also clear from my fieldwork that segregation was imposed for a multitude of reasons and was intended to fulfil a multitude of functions. Annex Two demonstrates how *good order* or *discipline* was interpreted broadly. It applied to twenty prisoners, including those who had taken drugs on the wings or 'jumped on the netting', who were in possession of a mobile phone or who had taken part in a 'riot'. *Own interests* was interpreted just as broadly and applied to five prisoners: some were at risk of self-harm or suicide and others who faced threats on the wings.

When considering the imposition of segregation, for *good order or discipline*, the courts have a wide discretion to decide case-by-case whether segregation is a justifiable response. As Lord Reed explains, in *R (Bourgass and another) v Secretary of State for Justice* [2015] UKSC 54, courts must consider all the relevant circumstances, including the 'reasonableness of any apprehension that association with other prisoners might lead to a breakdown in good order and discipline, and the consequences to the prisoner and to other prisoners of segregating or not segregating him' [125, 126]. By undertaking a broad approach to the assessment of segregation, the courts have upheld its use as a preventative mechanism,[58] as traditional punishment[59] and even where the regime was particularly severe in nature.[60] The prison institution is given considerable latitude to make operational decisions, and determinations, about the necessity for segregation.

This latitude was translated into practice. During fieldwork, I observed how Rule 45 varied in its interpretation and application by staff. Segregation was imposed to achieve a range of ancillary functions. Segregation was used for prevention, to prevent those who were deemed

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[58] *R (AN) v Secretary of State for Justice* [2009] EWHC 1921. AN and X were each detained in single cells due to security concerns that they were persuading others to adopt a particularly violent strand of Islam and were contemplating disruption in the prison. A preventative decision was taken at HMP Belmarsh to remove them from association due to the potential threat they posed to the order of the prison. The judge supported the pre-emptive approach and stated 'It cannot be right that the authorities are required to await the actual outbreak of disorder before any decisive intervention takes place' [113].

[59] See *Dennehy v Secretary of State for Justice and Sodexo Limited* [2016] EWHC 1219; and *R (AB) v Secretary of State for Justice* [2019] EWCA 9.

[60] In *R (Bary and Others) v Secretary of State for Justice and the Governor of HMP Long Lartin* [2010] EWHC 587, the High Court reasoned 'even harsh regimes…may be justified by the particular risks presented by the prisoner' [32].

'risky' from engaging in violence or misconduct. Segregation was also used by prisoners who 'engineered' a move to the Unit with the hope of securing a transfer out of the prison (instrumental reasons). At times, segregation was used for more traditional punishment purposes, but also as a means for the prison management to communicate disapproval, censorship and for 'sending a message to the rest of the prison'. Each of these is discussed further below. Together, they demonstrate how segregation, at any one time, is intended to fulfil a multitude of functions; its use is complex and outside the short and simple provision of the PR 1999 which, as suggested below, are deliberately vague and ambiguous.

*Prevention*

To some, Rule 45 was applied pre-emptively, either in response to historic violence at a previous prison (in the case of 'seg to seg transfers') or for those who had allegedly been involved in misconduct and the prison was undertaking further investigations. Segregation was imposed to manage their perceived risks, to prevent any future misconduct or violence.

Three individuals arrived at the Unit as 'seg to seg transfers'; transferred from a segregation unit in another prison because of their involvement in previous violence (Wayne and Mark) or, in the case of Imran, because of his offence (a terrorism offence) which provoked staff concern about his 'influence' over other prisoners. Wayne, Mark and Imran were initially deemed too high risk to move to the wings. Imran went to the wing after five weeks; he adhered to the rules of the Unit, was 'well-behaved' and able to satisfy staff that he could safely (as far as the institution was concerned) survive on the wing. However, Wayne and Mark decided they did not want to 'locate' on the wing and wanted to remain in the Unit. Both were transferred to a segregation unit in another prison (Wayne, after 109 days in the Unit; Mark after 249 days).

Four were held in the segregation unit before their wrongdoing had been established. All were told they were in segregation 'pending the outcome' of the prison's investigations. For example, Johnny was held in segregation whilst 'the facts of a serious incident were established' (held for 3 days) (personal file). Patrick was segregated due to there being 'some intelligence' that he had access to mobile phones, so was held on 'GOoD in the seg whilst this is being investigated' (personal file). Ali and Kelvin were both segregated for being involved in a 'serious incident on the exercise yard' (personal file). The incident was, at the time of their placement into the Unit 'still being investigated' and their 'risk to GOoD' was 'unknown' at the time of their segregation decision (personal files). For those four individuals segregation was imposed because they represented a risk, although the extent of that risk was not known

nor established – they were held in segregation 'pending investigation'. At the end of my fieldwork, all (except Johnny) were still in segregation, held there for 98, 49 and 49 days respectively and the investigations were still 'on-going' at the time my fieldwork ended.

When segregation is imposed preventively, or as a pre-emptive measure whilst investigations are on-going, it challenges the paradigm that segregation is there as a 'last resort', as set forth in the PSO 1700 (p. 4) and the Mandela Rules.[61] This was especially true for those subjected to segregation, who were awaiting the outcome of the prison's investigations. Segregation was imposed before any wrongdoing was established, in which case, it was very much a 'first resort'. This was not unique to Whitemoor. Shalev and Edgar found that prison administrators were sometimes quick to send people to segregation – it was not consistently used as a last resort across the prison estate (2015, p. 25).

The ways in which officers make and impose their decisions, and wield their power, can influence prisoners' perceptions about the legitimacy of their authority and the legitimacy of the prison institution (Bottoms, 1999; Steiner & Wooldredge, 2018; Wooldredge & Steiner, 2016). In turn, it can impact on prisoners' willingness to comply with the prison regime, prison rules, and on prison order (Hepburn, 1985; Sparks et al., 1996). When segregation is used pre-emptively, as Patrick and Ali describe, it can result in frustration, anger and a sense of injustice:

> Yeah I was pissed off because another prisoner got nicked a few weeks ago with a phone, an actual phone, a handset and he got brought down here but, two days later, he was back on the wing. Whereas they're saying to me that they *think* I've got access to one, they weren't saying I had one, they were saying I had access. If I had access to a phone, the rest of the wing's got access to it, hasn't it? So I felt like I was getting hard done by... I am a bit pissed off. (Patrick, prisoner).

> I tried to put my version across and I said not guilty, but I'm already being punished. They've got me on basic for a month now. And nothing has been proven against me. Basic is a form of punishment isn't it. I was an enhanced prisoner. I was doing well, I was staying out of trouble, working on the servery. I had a lot of roles…I was doing quite a few different things and then obviously this has happened, and everything has come crashing down. Without any formal proper procedures being followed. So, I'm on basic for a month now. Later on, if I get found guilty, I'll be punished again. Double punishment. It don't make sense. (Ali, prisoner).

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[61] Rule 45 of the Mandela Rules provides that: solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorisation by a competent authority.

Ali and Patrick described how segregation, when experienced as lacking a legitimate justification, can lead to a sense of frustration, indignation and injustice. These are responses which may lead to greater resistance, defiance and may undermine principles of safety and order in the prison (Kauffman, 1988; Liebling, 2004; Sparks et al., 1996) and go against the aims of Rule 45. Of course, frustration and indignation do not always result in behaviour and actions which threaten the order of the prison, and sometimes the coercive use of power is necessary to maintain order and safety. The point is, if segregation is frequently used pre-emptively, and commonly experienced as lacking a legitimate foundation, the Unit will be releasing (most likely back to the wings) a number of angry and frustrated individuals, who may feel their rights have been violated, and segregation will have done little to mitigate their risks.

*Instrumental reasons*

Five participants were in segregation for relatively minor, non-violent infractions. For example, Marcus, Kamil and Jamal explained how they 'jumped on the netting' with the intention of trying to secure a transfer out of the prison. For them, the Unit was the only place in the prison where they could talk to a governor, weekly. They felt their concerns were not being heard, so were left with 'no other choice':

> Where progress isn't being made on the wings, I'm basically trying to use this time to get myself out of here. (Kamil, prisoner).

> I jumped on the netting to make a peaceful protest, and that resulted in me being down the block. Obviously, I know there could have been other ways, but I feel like I've exhausted those avenues, and I felt like this was the only way for me to be heard. It seems like when everyone goes down here, everything gets sorted out. It doesn't make sense. This is what I'm saying, this is backwards, this is how this jail works and it's backwards like that. (Marcus, prisoner).

Engaging in non-violent conduct, to bring about a transfer, is also not unique to Whitemoor. Shalev and Edgar found that 38% of their participants, recruited from fifteen prisons, were in segregation because they had 'engineered' moves to the unit, with the aim of pressurising the prison to transfer them to another prison (2015, p. vi). Whilst only three of my participants expressed this initial intention, as time went by, a substantial number of participants (15 out of

20) refused to go back to the wings and were effectively using the Unit as a means to enforce a transfer. Those fifteen were brought to the Unit for a range of reasons, as set out in Annex Two. Most were initially willing to return to the wings. Over time, their views changed. For some, this resulted in a prolonged period of time in segregation. For example, George and Norman were originally transferred to the Unit because of their drug dependencies (and related issues on the wing) but, after time, refused to return to the wing. They were in segregation for 605 and 326 days respectively. For others, it meant there was a 'stand-off' with the prison:

> There was a kick off on C Wing and they needed space. I'd been down here about a week. So I said I'm happy to go back up if you want, if you need the space. And they said no. But a week or so later they came and said 'do you wanna go back to the wing?' and I said 'no, I'm alright'. They could have sent me back the week before but they didn't. So, that's when I made my mind up that I'm just gonna stay down here. I'll just sit down here, even if it takes 6 months, to sit down here and wait to go to my next jail. I'd happily just sit here and wait. (Patrick, prisoner).

> I had another nickin, and came down here, and I just decided I'm not going back to the wing. I'll stay down here until they ship me out to another prison. (Theo, prisoner) [although he later decided to return to the wing].

Such comments reveal some prisoners' need to claim a degree of agency and control, in a place where there was very little autonomy and opportunity for individual decision-making. They represent the active negotiation of power, one of the few ways in which prisoners in the Unit could assert themselves as human agents (Giddens, 1982, 1987; Sparks et al., 1996). They also reflect a perception, commonly described to me by prisoner participants, that Whitemoor was not a 'good prison for progression'. Some participants described their frustration at the lack of opportunities in Whitemoor to undertake the mandatory courses needed for their sentence plan, those which were necessary for reducing their risk status. As George explained 'I have been to 11 prisons in 5 years…one of my courses is 12 months, I've never been in a prison longer than 12 months, how am I supposed to do that course to progress?'. Others criticised Whitemoor for being slow to 'downgrade' prisoners to a lower risk category or to move them to a different prison, perhaps one closer to home. Taken together, they contributed to a culture whereby prisoners (and staff) perceived misbehaviour, and 'acting out', as the only way to transfer out of the prison:

About 4 weeks ago, a guy was down and he smashed up his flap and started shittin up, shit in the showers, and he was gone three weeks later. It looks like bad behaviour pays in this place. I suppose if I do that, I'll get out of here quicker but I can't be arsed. It's disgusting. I'd rather sit behind the door and wait. But yeah there are things you could do. I can see why some people do that because they've got nothing to lose. You're in a cell doing nothing, you just do whatever you can to get a transfer; but I just think 'keep your head down', it's probably the best way. And hopefully you'll go but we'll see. But I've heard prisoners say that 'if they're not gone by this date, they're gonna start acting up', so it could be a quicker way of getting out of here. (Patrick, prisoner).

When you're well behaved, you try do all the courses and try keep your head down, you don't get anywhere. But if you act up and start being like a bad man, cause trouble, they kick you out because they don't want you anymore. (Ricky, prisoner).

We do send the message that the bigger fucking problem you are the more chance you've got of going out. (Trevor, staff).

There was a problematic culture in Whitemoor whereby rule violations were strategic and there was a utility to violence and disorder. Rule 45 was used by prisoners to further their own aims, for instrumental reasons (transfer, downgrade etc). It was a tool which could be used for illegitimate means, and fulfilled a purpose beyond that explicitly contained in the PR 1999. The prison's rules and procedures could be turned against it (Crewe, 2009, p. 218). It also illustrates the undercurrent of dysfunction in the way the law (specifically Rule 45) was implemented and operated, but also spoke to a greater dysfunction in Whitemoor, as an institution. There was a common perception, amongst staff and prisoners, that the most problematic prisoners were most likely to obtain a transfer. I saw this borne out for a number of prisoners. For example, Jed was transferred to the Unit for jumping on the netting, he wanted to move to a prison where his son was located. He smashed his observation panel and started a dirty protest. He was transferred two weeks later, to the prison where his son was located. Both staff and prisoners were critical of his transfer, commenting that his 'bad behaviour was rewarded' by the prison management. It fuelled the perception that the only way to obtain a transfer was through violence and disorder. Thus, Rule 45 had unintended consequences, and sometimes brought about behaviour or actions which went against the 'good order' of the prison.

*Punishment*

Eight participants were in the Unit for punishment, although the seriousness of their misconduct varied substantially.

Theo was in segregation for having possession of a mobile phone. Daniel was in the Unit for kissing an officer and Leroy was in for pinching an officer. Daniel and Leroy acknowledged their behaviour was inappropriate but explained how it occurred in the context of their relationships with specific members of staff. A conflicting narrative was constructed by some officers. For example, Jeff was critical of their actions and expressed a counter narrative in warning that their actions were 'offence paralleling behaviour' (Jeff, staff member). This was more relevant for Daniel, who was in prison for a sex offence, but less so for Leroy, who was convicted of murder. Jeff's comment shows how risks are constructed in prison. We know, from existing research, that the judgments officers make about behaviour – determining whether it is a security risk or dismissed as something minor – are influenced by staff attitudes towards safety and security. Perceptions of risk and dangerousness are related to officer characteristics, such as personal demographics, job satisfaction, stress and attitudes towards their own power (Armstrong & Griffin, 2004; Britton, 1997; Stichman & Gordon, 2015). Staff assessments of risk can also be bound up with the prisoner. Liebling and Williams (2018, p. 1210) found that race (black or mixed race), physique (muscular, 'walking with swagger') and prisoner charisma (if 'influential', having confidence) affected prisoners' risk status. Constructions of risk are also embedded within local prison culture (Liebling & Williams, 2018, p. 1211) and the degree to which senior managers respect officers, and perceptions of procedural justice in the prison institution as a whole (Gordon, Proulx, & Grant, 2013; Taxman & Gordon, 2009).

Perceptions of risk, and the determinations made by staff towards behaviour, particularly whether such behaviour warranted a punishment like segregation, were also borne out in the cases of Billy, Henry, Shawn and Ricky. They were segregated for their involvement in a 'serious incident on C Wing' (personal files). This was an incident on one of the spurs, where violence ensued between a group of eight prisoners and staff. It was labelled a 'riot' by some staff and newspapers. However, other members of staff, particularly those in the Unit, dismissed it as a 'violent eruption' which was quickly quelled and lacked the requisite challenge to authority to constitute a 'riot' (Terry, staff member). A similar narrative was offered by others involved in the incident. For example, Billy explained how it occurred as a

result of a disagreement with an officer. He described how the officer was 'rude' and made a 'racist remark' when instructing him and others to go into their cells. As a result, Ricky and Billy confronted the officer, challenged him on his remarks, and the officer pressed the emergency alarm. Staff responded to the alarm and entered the spur. The situation escalated, officers took out their batons, 'punches were thrown' by both staff and prisoners, but the prisoners then returned to their cells, of their own accord (explained by Terry and Phil (staff), and in the accounts of Billy, Henry, Shawn and Ricky). Violence ensued in response to a dispute between two prisoners and an officer. It was an impulsive reaction by those involved and, in the accounts provided to me, lacked the components of a riot. For example, there was no 'significant breakdown' in the social order of the institution (Bottoms, 1999, p. 206; Useem & Kimball, 1989). Instead, the violence took place within the 'everyday framework of the prison's social order' (Bottoms, 1999, p. 206), it was a form of 'interpersonal violence' (Braswell, Montgomery, & Lombardo, 1994), intended to settle a disagreement between Ricky, Billy and the officer, but lacked the shared aims or collective resistance, identified by Carrabine (2005), commonly associated with prison riots.

The cases of Daniel, Leroy, Billy, Henry, Shawn and Ricky, illustrate the varying ways in which staff interpret violence. They show how staff make different assessments and reach different outcomes regarding behaviour which warrants punishment and, if so, the type of punishment that should be imposed. Staff make human judgments about segregation and whether it is a proportionate and reasonable response. The broad language of Rule 45 allows staff to make broad assessments about behaviour which infringes the Good Order or Discipline of the institution. However, as the preceding paragraphs demonstrate, this behaviour is wide-ranging. The rule functions in a fact-specific way, the outcome of which is dependent on the individuals making the assessment, and those being assessed. Judgments are grounded in staff discretion (Crewe, 2009; Liebling, 2000, p. 343), staff assessments of risk and their perceptions about punishment. Staff have a very active role in determining when segregation is used, for whom, and its duration (Poole & Regoli, 1980). Importantly, staff discretion and judgment are exercised within the wider culture – the social and moral climate (Liebling & Kant, 2018) – of the prison. Consequently, to understand the use of segregation, we need to also understand the broader institutional context in which it is used (see Chapter Five).

## *Censure and deterrence*

Those involved in the 'riot' caused a problem for the prison's managers. The head of the wing, where the incident took place, strongly opposed their return, whereas the manager of the Unit

voiced concerns about their indefinite detention in segregation, instead advocating for them to return to the wings or be transferred to a different prison. This led to a series of seemingly inconsistent decisions by the management team. Ricky was transferred to a different prison after 21 days in the Unit. Henry was allowed back on the wing after 68 days, but Shawn and Billy were still in the Unit, at the end of my fieldwork, and had been there for 93 days. This caused frustration for Shawn and Billy, and their mental health deteriorated. They both described their increasing impatience, anger and frustration. Both attempted suicide, by creating ligatures in their cells. Some staff were critical of and frustrated by the decisions, which they perceived as inconsistent and poor-decision making by the SMT:

> They probably need to be transferred, they should be transferred but clearly that's not happening, which is exactly the same as what happened last January [when there was a stand-off between prisoners and management and a lengthy period of dirty protest by six prisoners]. (Jessica, staff).

> There's quite a lot of management decisions that get made and you think 'ah that's really gonna affect us'… They should have been gone quite a while ago, if not, then put them back on the wing. Move their wings, split them up, fine whatever; but why are they still down here? They've done their time, they've done their punishment, and now at some point you're just segregating people unfairly. (Holly, staff).

> I don't get it because in any other prison, they'd be back to the wing as soon as they could, as soon as their punishment is done, get rid of them. Whereas here it takes forever. That wouldn't happen at another prison, they'd be down here, serve their punishment and go back to a wing. Whether it's the same wing or not, it doesn't matter, they just go back to the wing but it doesn't seem to be that way here. They seem to keep people in seg for the sake of it sometimes. (Phil, staff).

Jessica, Holly and Phil were critical of the way segregation was used and expressed concerns that segregation was imposed for too long. I observed, during fieldwork, how segregation was not always imposed for as short a time as possible, in contradiction with PSO 1700[62] (p. 17) and Rule 45 of the Mandela Rules. For prisoner participants, their time in segregation ranged from 3 days to 605 days, with an average of 108 days (3.5 months). There were a number of explanations for these lengthy periods. Firstly, operational constraints across the prison estate made it difficult to transfer prisoners to other locations. Most other segregation units in the

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[62] Segregation under Rule 45 (YOI Rule 49) (for GOoD) is, according to the PSO 1700, to be imposed for the 'shortest period of time consistent with the reason for separation in the first place' (p. 17).

LTHSE, at the time, were either full or unwilling to accept prisoners who were deemed disruptive (Fieldwork notes, p. 40, 52). Attempts were made to find another prison for Billy, Shawn and Patrick. However, due to their prison histories – Billy and Shawn's alleged involvement in the 'riot', and Patrick's history of violence and possession of contraband (phone and drugs) – other prisons were reluctant to accept them. The OMT had to negotiate with, and persuade other prisons, to accept prisoners from the Unit. This led to an informal procedure, colloquially known in the prison as 'sale or return', which operated between the segregation units of the LTHSE (Fieldwork notes, pp. 1, 52). If a prisoner was transferred elsewhere, but did not locate on the wings or proved troublesome, he would be transferred back to Whitemoor. There was an implicit system of negotiations and trades for prisoners in the segregation units across the estate. Secondly, as discussed above, some individuals were detained in the Unit longer than intended, because of their refusal to return to the wings. Thirdly, there was a tendency to use segregation as a means to send the message that staff were in control and that there would be repercussions for those who did not abide by the rules:

> The only thing I can say.. not in my defence, or our defence.. is that jumping on the netting is at least a non-violent way of saying 'I wanna move', but what we try and avoid doing is moving them straight away. So we kinda get our pound of flesh in a way, or try and highlight the fact that 'yes you may get a move but you will spend months in the segregation before you get a move'. Of course we are shooting ourselves in the foot by doing that, because we've got them stuck in our seg. (Tim, staff).

> Although you wouldn't read this in a manual, there are times when it's about sending a message. So if A Wing refused to lock up tonight, after they do go away, tomorrow I will find out who the ring leaders were and everyone will be locked up and whoever the four were or three or six or whatever, who led that, they will be segregated. Do they need to be segregated? Is that absolutely necessary.. Well, in terms of them individually, maybe not. But in terms of maintaining order and control in the whole community, I'm really reluctant to use the phrase 'sometimes you need to make an example' but sometimes you do. Or maybe sometimes you don't – I dunno. That's what we always do, that's our culture. (Jeff, staff).

> I am quite quick to use segregation because it's a quick, firm, clear, unambiguous intervention, which sends a message to everybody else about what we will accept and what we won't accept and it sends a message to individuals that 'you crossed the line', and when you cross the line, the choices you make – when they're bad – there'll be bad consequences for you. (Jeff, staff).

It [segregation] is used sometimes…sometimes just to demonstrate we are in control. (Trevor, staff).

What they like to do, if you've assaulted a member of staff or something like that, when you come down segregation, they're gonna hold you down here for a number of months, to send a message to the other people on the normal location, 'don't do this because this is what you will go through'. (Shawn, prisoner).

As these accounts reveal, the use of segregation was rarely one-dimensional. It was sometimes imposed as a preventative mechanism, sometimes as punishment, or sometimes used as a means to secure a transfer. Jeff's description highlights an additional function – segregation can be used to communicate a message of authority, that the staff wielded power and that bad behaviour would not be tolerated. [63] Punishing certain offenders was an 'exemplary demonstration of power' of the kind identified by Sparks et al (1996, pp. 287, 293), to signal to the rest of the prison to keep in line. Segregation, as a response, was also connected to managerial philosophy and style: some managers saw substantial value in the utility of segregation. Segregation was used as a mechanism for control, aimed at censoring and shaming those deemed deviant and to deter others from engaging in similar behaviour. Despite the overt justifications of 'deterrence', or its perceived instrumentality for 'maintaining order', segregation was used punitively. When segregation was used to send a message, it was a deliberate and 'heavy' exertion of power, one which can have important implications for the prison experience (see Crewe, Liebling, and Hulley (2011) who found the over-use of power undermined assessments of trust, safety, fairness and professionalism; and Liebling (2007) who concluded that the way in which power is used and experienced can have important implications for the prison experience).

The comments from Jeff and Shawn expose the presumption, not just in prison but entrenched in society, that punishment controls crime – it deters individuals from rule-breaking (Morris, 1966, p. 631; Sherman, 1993, p. 445). Much like crime control in the community, where prison is a reaction to rule-breaking, segregation is the prison's response to deviance and non-compliance. Segregation has some of the same components as punishment in society – shaming and censorship – which, as Jeff and Shawn described, were deemed necessary for order and control. Academics have warned, for decades, of the risks of 'disintegrative' rather than 'reintegrative' shaming (Braithwaite, 1989). The former relies on punishment, exclusion and

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[63] Like the 'functions' of punishment generally which Garland (1990) suggests 'reaffirms specific forms of authority and belief' (p. 80).

stigma for social control (Braithwaite, 1989, p. 18). It is experienced as 'stigmatic shaming' (Sherman, 1993, p. 446), creates a 'class of outcasts' and pushes individuals towards criminal subcultures and further delinquency (Braithwaite, 1989, pp. 4, 55). On the other hand, 'reintegrative shaming' involves a process of initial community disapproval, ranging from 'mild rebuke to degradation ceremonies', followed by gestures of reacceptance (such as forgiveness) which integrates individuals back into the community (Braithwaite, 1989, pp. 4, 55). Segregation is a severe punishment, one that is characterised by social exclusion and isolation. It carries the risk, to use Braithwaite's terminology, of 'disintegrative shaming'. This risk was justified by Trevor and Jeff (and in many other staff accounts) as necessary for the order and stability of the prison. They perceived segregation as an important mechanism for deterrence, to deter prisoners from breaking prison rules and to encourage compliance with the institution and its regime. This logic is firmly rooted in a 'utilitarian calculus' (Bennett, Crewe, & Wahidin, 2008, p. 185), that prisoners are active, rational decision makers who respond to incentives and deterrents (Clarke & Cornish, 1985, pp. 155-156). Yet we know that humans are not always rational, and are not always receptive to a system of rewards and punishments (Cohen, 1996; Scheff, 1992; Zafirovski, 1999). As Levine suggests, there are 'customary, habitual, emotional…and serendipitous dimensions of human action' (1997, p. 7), which influence the way we evaluate decisions and the conduct we engage in. Our actions, responses and decisions will all be influenced by our histories, ideologies and experiences (Rawls, 1992). We cannot be reduced to rational decision-makers who only behave according to cost-benefits analyses. Moreover, there is a danger that 'segregation as a strategy of deterrence' might overstate the extent to which deviance or disorder (or as Sparks et al. (1996, p. 296) define, 'control problems') are the product of difficult individuals, and obscures the social and situational context in which such problems arise (like the lack of legitimate opportunities for progression which, for some, gave rise to wing violence).

Many studies have explored the (in)effectiveness of general deterrence theory. Its main premise is that sanctions (or the threat thereof) will deter crime (Dölling, Entorf, Hermann, & Rupp, 2009; Nagin, 2013; Paternoster, 2010; Tonry, 2008). Sanctions may have a role in deterring law-breaking, but there are many other factors which influence human behaviour and decision-making. Thus, Sherman (1993) provides a comprehensive explanation of how individual demographic differences (including age, previous offending history, employment and sex), as well as ideological differences (whether people believe the rules, and their administration, are fair and legitimate) and situational factors (an individual's relationship, or 'bond', to the community, which may be evidenced by close family ties), can impact the way someone

responds to the threat of sanction. A small number of scholars specifically explored whether segregation deters 'rational actors' from rule-breaking, and therefore maintains the order of the prison. Most studies found little deterrent effect on prisoners (Barak-Glantz, 1983; Briggs, Sundt, & Castellano, 2003; Lucas & Jones, 2019; Morris, 2016) and some even reported an increased risk of subsequent institutional misconduct and post-release offending (Mears & Bales, 2009; Medrano et al., 2017; Motiuk & Blanchette, 2001).

The use of segregation at Whitemoor was partly justified by the perception that sanctions led (incorrectly) to deterrence and, more importantly, that segregation was an effective means for maintaining order and security of the prison. When used in this way, it created, as Tim (staff) suggests, operational pressures. There was a conflict between: (i) the operational need to transfer individuals out of the Unit, to make space for incoming transfers; and (ii) the use of segregation as a method for communication, to signal to the rest of the prison that bad behaviour would not be rewarded, and that jumping on the netting or engaging in violence will not immediately bring about a transfer. Not only that, when segregation is used to 'send a message', there is risk that segregation loses its legitimacy and soon descends into something which is deemed unfair or excessive. There is a suggestion that segregation is the punishment of the few, to ensure the order of the many. Some may feel 'wronged by the system', causing a loss of legitimacy for the rules and the institution (Anderson, 1978, p. 130). A loss of legitimacy can have important ramifications: eroding order and control, and ultimately leading to defiance and increased rule-breaking (Sherman, 1993). This raises questions about the utility of segregation, its legitimacy and efficacy.

## 3. Prison Rules – own interests

Five participants were in segregation for their *own interests*. They are examples of how the broader prison context can have an impact on the need for, and use of, the segregation unit. This limb was reserved for two groups of prisoners, those rendered vulnerable because of: (i) complex mental health issues; or (ii) threats from other prisoners on the wings.

*Mental health*

Across the prison estate, mental health problems and substance abuse are more common than in the community (National Audit Office, 2017, p. 13). For example, Light, Grant, and Hopkins (2013, p. 19) found that 49% of 1,300 prisoners, who had recently arrived into prison, reported anxiety and depression – triple the rate of mental illness in the general population (16%). The

Committee of Public Accounts, relying on evidence from the Institute of Psychiatry, concluded that over 50% of prisoners have common mental disorders including depression, post-traumatic stress disorder and anxiety (2017, p. 9). The Institute of Psychiatry also estimated that around 15% of prisoners have specialist mental health needs and 2% have acute and serious mental health problems (2017, p. 9).

Self-harm and suicide are also more common in prison than the general population (and both have increased over the last 10 years). For example, Hawston et al. (2013, p. 1152) found that self-harm was prevalent in 5-6% of men in custody, representing a much higher proportion than the 0.6% of the UK population who reported self-harming in the previous year. There has been an increase in the number of self-harm incidents in prisons over the last decade. Between December 2018 and 2019, there were 63,328 incidents of self-harm (746 incidents per 1,000 prisoners). This was a record high. It was a 14% increase from the previous 12 months and an increase of almost 150% from 2009 (in 2009 there were 299 incidents per 1,000 prisoners) (Ministry of Justice, 2020d, p. 3).

As far as suicide rates are concerned, the National Audit Office reported that men in prison are six times more likely to take their own life than men in the community, and women in prison are 24 times more likely to die by suicide (2017, p. 15). These findings were corroborated by Fazel et al (2017). More recently, the Ministry of Justice reported that, in the period March 2019 to 2020, 286 deaths occurred in prison custody, 80 of which were self-inflicted (2020d, p. 2). This was a small decrease from the previous year (87 self-inflicted deaths) but was still within a general upwards trajectory. For example, since 2010, self-inflicted deaths have risen by almost 38% (from 58 self-inflicted deaths, occurring at a rate of 0.7 per 1,000 prisoners, to 80, a rate of 1.0 per 1,000 prisoners) (Ministry of Justice, 2020d, p. 2).

Prison populations are complex – characterised by high rates of mental illness, self-harm and suicide – and such complexity is especially evident in the segregation unit. Segregation may exacerbate pre-existing mental health conditions and/or cause the development of new mental illness in prisoners admitted to segregation units (see Brown, 2020; Shalev & Edgar, 2015). Danish researchers found a significantly higher incidence of psychiatric morbidity in segregated prisoners (28%) than non-segregated prisoners (15%) (Andersen et al., 2000; Andersen, Sestoft, Lilleboek, Gabrielsen, & Hemmingsen, 2003). Others found greater psychological distress in more restrictive environments, like segregation units (Miller, 1994; Miller & Young, 1997) and a significant association between segregation and post-traumatic

stress disorder (Hagan et al., 2017), as well as anxiety and depression (Haney, 2003, p. 133), paranoia, withdrawal and anger (Gallagher, 2014, p. 4). Moreover, the risks of self-harm and suicide may be greater in segregation units. For example, Lanes found that segregation was a significant risk factor for self-harm incidents (Lanes, 2009; Lanes, 2011), findings which were corroborated by Kaba et al. (2014, p. 444), who found that prisoners assigned to segregation units were twice as likely to self-harm when in segregation and six times more likely to self-harm during the days when outside segregation, relative to prisoners who had never been assigned to segregation.

There has been some disagreement, in existing literature, about the relationship between segregation and mental illness although most scholars and policy-makers recognise that segregation can be psychologically harmful to those confined, and there is some level of consistency in the symptomology of segregated prisoners (Brown, 2020). There are broader questions about whether mental illness, self-harm and suicide are more common in segregation units because they: (i) hold people who are already suffering from some form of mental illness and are therefore likely to end up in the segregation unit (whether because it manifests as a disciplinary issue or self-harm/suicide attempts on the wings); (ii) make existing conditions worse; and/or (iii) cause new mental health problems. During fieldwork, I found support for all three explanations.

Joe and Aiden had complex mental health issues, and/or were at risk of self-harm and suicide, and were not able to cope on the wings. Joe was transferred to the Unit directly from segregation at another prison because of the risk he posed to himself. Joe had a complex drug addiction and was a prolific self-harmer: neither could be adequately managed on the wings (personal file and interview transcript). Aiden returned to the Unit after a period of treatment at a psychiatric hospital. He returned to the wing but struggled to cope with his depression and anxiety. He attempted suicide and self-harmed and was taken to the Unit for his own safety (personal file and interview transcript). Both Joe and Aiden described how they felt segregation was the only place in the prison that could support their mental health conditions. For example, Aiden explained how he could not cope in the secure hospital, he asked to be transferred back to Whitemoor, he then struggled on the wings, and described how the Unit was the only place in the prison where he felt his mental health could be managed:

> R: I have anxiety and paranoia and I can't be around people, so they can't put me on normal location.
> I: You don't want to go back on the wing?

R: I can't, because of my anxiety, it won't let me. It's a mental disorder so they can't force me. I came here [to segregation] to do some work with mental health about my anxiety. I've told them, I'll never go out there, on a normal wing, that will never happen.

I: Mentally, how do you feel in seg?

R: I feel safer.

I: Do you think there are any other options for you?

R: What? Beside seg? For me? No. (Aiden, prisoner).

Joe explained how he had a long history of self-harm, including severe suicide attempts. He described how he forced a piece of sharp steel through his neck, was taken to hospital, and returned to the segregation unit. A few days later, he went out to the exercise yard, found another piece of steel, 'sharpened it up' and 'shoved it straight through the chest into my heart' (Joe, transcript). I asked whether he wanted to return to the wing at some point and he replied:

No, they've got to basically keep me in the seg. They've offered me the healthcare unit but I've refused and I've said no. I don't really want to go anywhere else at the moment. I think this has to be the only place for me because I still don't feel right. I don't know why. I don't understand myself. Deep down I don't want to play the computer, I don't want to listen to the radio, I don't want to paint anymore, I want to fuck off and die. Curl up and die somewhere, because deep down I'm worried. My life has been turned upside down. The shit and the misery that I've had to put up with, everything. And if I'm totally honest, it wouldn't take much for me to sharpen up my paintbrush and stick it through my chest again. It wouldn't take much. And I say to myself every day: how comes I ain't doing it? Why am I not doing it? (Joe, prisoner).

Aiden and Joe were firm in their perspectives that the Unit was the only place for them and their mental health needs. In their accounts, they did not recognise how segregation might be contributing to their deteriorating mental health. Nor did they recognise how their repeated attempts to self-injure might be construed by the institution as 'risks to be managed' (Hannah-Moffat & Klassen, 2015, p. 146) and might legitimate the use of austere forms of control, like segregation. Mental health needs (along with security and deterrence) can create a 'state of necessity' in which separation and containment become necessary tools to maintain order, and become the institutional foundations for the continued use of segregation (Hannah-Moffat & Klassen, 2015, p. 147).

Some prisoners were acutely aware of the impact that segregation was having on them:

I'll watch some TV but it's hard because you lose concentration quickly. I stopped going out on the yard. I had my regime – like shower and phone call – less and less. My anxiety and mental health got worse because I wasn't going out and being around people. That's why I find it so hard now to come out of my cell. (George, prisoner).

When I used to be on the wing with my mates, I was fine. I came to the seg and I used to see people who had completely lost the plot. I used to laugh. I used to think it was funny that they'd lost the plot. You'd hear them chatting to themselves in their cell and I used to laugh. I'd say 'that would never happen to me'. But two years down the line, I now realise what those other people were going through. I don't think it's nice. I can't sleep…I over think everything…I'll have little conversations with myself in my cell. I don't know why. I guess that's because of doing so long in segregation. (George, prisoner).

I suffer from depression. Obviously being in a cell, like in seg, where there's nothing really to do, all I've got is time to think about all the pain that I've been through in life; especially the fact that I've got life and banged up as a young kid; a lot of my mates are dying and especially the one that died in my arms. So, those are the things, they get to you after a while; especially in this space, where you're just by yourself for 23 hours a day. (Henry, prisoner).

You have nothing to do but think. What else is there to do? And the thing about thinking – because people might think 'oh, you think about your behaviour' – [but] you're not thinking about that, you're thinking about certain things that are traumatic. I wake up in cold sweats sometimes and I think about when I got stabbed. And, obviously, I'm not shouting out loud but it's just, sometimes, I get up and I start pacing up and down my cell like a madman. (Nazeer, prisoner).

Whilst studying the impact of segregation on mental health was not an explicit aim of this study, during fieldwork, it was an area of inquiry that could not be avoided. Nine of the twenty-five prisoner participants had been diagnosed with a mental illness (nearly 40%) ranging from anxiety, personality disorder, schizophrenia and PTSD. During interviews, it was clear how segregation was used as a mechanism to manage those with complex mental health needs. Some suggested they came to the Unit with pre-existing mental illness, but others suggested it was segregation which caused their mental health to deteriorate. Many prisoners described the isolating nature of segregation, how this gave them too much time alone, too much time to think and ruminate on past traumas, how it exacerbated depression and anxiety, and how their emotions oscillated between feeling happy and content, to feeling angry, frustrated and powerless, on an hourly basis.

*Wing dynamics*

'Own interests' was not limited to those who suffered from mental illness. It also applied to Sam, Nazeer and Eric, who described feeling unsafe on the wings. They primarily felt unsafe because of the power wielded by certain Muslim groups (personal files and transcripts). Nazeer named them the 'Muslim brotherhood' and, from his perspective, they controlled the prison. He described how the group put pressure on people to join, how they had a system of rules which, if broken, would be met with violent repercussions. Nazeer was a practising Muslim and he took issue with how the religion was being used in prison, to effectively mask what was, in his mind, 'a gang issue' (transcript). The tensions relating to faith and power, as well as fears of extremism and radicalisation, were evident from several prisoner and staff accounts. Their narratives were not new, and echo the findings of Liebling, Arnold, et al. (2011) who studied the prison in 2009-10. They reported that faith and conversion played an important role in Whitemoor. They identified how participation in Islamic practices afforded a much-needed opportunity for individuals to find belonging, support, trust and friendship (p. iii). However, there were darker undercurrents to 'faith identities'. They observed how there was considerable ignorance and confusion about Islam, which enabled extremist views to creep in, to fill the knowledge gap with 'misinformation and misinterpretation' (p. iv). They noted, as my participants also described, how some 'heavy players' in the Muslim population were able to amass power, by re-establishing their outside identities as leaders inside the prison (p. 95). Some used their faith status to exert authority, to influence and control others, resulting in fear and the real risk of violence (p. 101). These descriptions were reflected in the accounts of my prisoner participants, including those who were not in segregation for 'own interests'. Many spoke about the dynamics and culture on the wing, about the pressure it brought and how segregation could, at times, be a place of solitude, to avoid the 'wing dynamics' (Fieldwork notes, p. 18 – 19, and interviews with Patrick, Joe, Imran, George, Sam, Nazeer, Billy):

> I'm actually alright. You see, when you're on the wing, all the bollocks and what's going on, all the shit, when I come down here, it's cleared my mind a bit, it's made me reassess what I want and what I've got to do. I'm feeling good. I feel better than what I did on the wing. It might just be because of this jail, know what I mean? A lot of shit goes on up there. (Patrick, prisoner).

> The whole Muslim situation on the wings is crazy. It's hard to explain. It's like they're trying to set up an Islamic State, or something, but on the wings. They go round telling you that you have to go chapel, you can't listen to music, you can't smoke on the landing, you can't cook

bacon in the kitchen. You know, certain things that you can and can't do. But then, when people don't do it, people are getting cut and beat up. It's crazy. (Sam, prisoner).

It's a place of safety. If you can switch off and read your book, do your art, listen to the radio, and don't care or have any concerns [about] what's outside that door of yours, and live in your own little world, I suppose it's bliss. It's calm and peaceful. You switch off and you do your own thing, and you get yourself in a little routine. (Joe, prisoner).

Their accounts allude to the relationship between the Unit and the rest of the prison. If the wings are volatile and perceived as unsafe, the Unit can be an important place of respite; a chance to escape the complex and challenging dynamics of the wings. This important inter-relationship was identified by O'Donnell, in his exploration of *Prisoners, Solitude* and *Time* (2014). O'Donnell argued that whilst there is a constellation of negative reactions to segregation, there are also positive (less documented) adaptations to isolation. He refers to prisoner accounts which describe segregation as a place of sanctuary, which affords a sense of safety, as well as somewhere which provides the time and space to reflect, to 'consolidate the self' (p. 68), to awaken intellectual, artistic and spiritual sensibilities (p. 78). He, like Martel (2006, p. 608) acknowledges how segregation is a dual place – one which can save, as well as punish – which depended on the characteristics of the individual, the context in which the isolation was taking place, and the world (on the wing) being escaped from (O'Donnell, 2014, p. 85).

Throughout this chapter, I have explored how the broader prison context has a role in influencing when and why segregation is used. The culture on the wings was an important factor which led prisoners, like Nazeer, Sam and Eric, to seek safety in the Unit. Relationships with staff, which had deteriorated for Ricky and Billy, resulted in a confrontation and ultimately led to their transfer to the Unit. For others, like Marcus, Kamil and Jamal, it was the lack of progression in Whitemoor that led to their disruptive conduct.

Moreover, the response by the prison to the 'riot' reveals how the use of segregation is, in part, a product of the decisions made by the prison institution and its various actors. Construed this way, senior managers (and other staff members) have an important role in setting the parameters of *when* and *why* segregation is used. Not only that, but senior managers can also determine how long segregation is imposed for, whether an individual is returned to a wing or immediately transferred out. Their individual attitudes towards risk, safety and punishment, will influence whether they judge segregation to be a fair and proportionate response.

Importantly, the broad language of Rule 45 legitimises this discretion and, by extension, legitimises staff control. Rule 45 ensures that decisions of segregation, along with assessments of the reasonableness and proportionality of such, remain firmly with prison staff.

All of these examples suggest that Whitemoor – through its collective institutional response and individual actors – has an important function in directing prisoners' pathways to the segregation unit. Thus, segregation cannot be viewed in isolation, it needs to be considered within the broader context of the prison. Any assessment of segregation must be rooted in an understanding of the way the prison (and its staff) responds to disorder, attitudes towards risk and punishment, general culture, safety and security of both staff and prisoners. Therefore, the use of segregation must be contextualised within the prison and the broader penal system within which it functions.

When viewed this way, law (e.g. Rule 45, PR 1999) only has a marginal role in directing and constraining the use of segregation in prison. Instead, it is the culture of the institution, effected by staff (in their attitudes, customs and decisions), which sets the parameters for the use of segregation. Accordingly, Rule 45 was used to address a range of behaviour: from jumping on the netting, to possessing a mobile phone, engaging in a suspected 'riot' to attempting suicide. The implicit, unwritten functions of segregation go beyond those explicitly set out in the PR 1999. For example, in some cases it was used as a deterrent, to send a message to other prisoners about intolerable behaviour. For others, it was used as a substitute for a healthcare unit, to manage complex mental health problems. Thus, segregation serves conflicting aims: to support those in crisis, at risk of self-harm or suicide; and to punish others for wrongdoing.

This duality reflects the conflict between rehabilitation and punishment, care and coercion, that exists elsewhere in the criminal justice system[64] (Lynch, 2001). It is recognised in the distinction in Rule 45 of the PR 1999 between (i) *good order or discipline;* and (ii) *own interests.* For those in the Unit who had violated a prison rule and engaged in misconduct, there was a common rhetoric of punishment. Whereas for those in the Unit for 'own interests', to ensure their safety, there was a rhetoric of care. This rhetoric obscured the punishing nature of the Unit, and those aims –to care and punish– were contradictory and not often simultaneously achieved (Becker, 1968, p. 198).

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[64] For example, s142 of the Criminal Justice Act 2003 provides that the purpose of sentencing is to: (a) punish offenders; (b) reduce crime – deterrence; (c) reform and rehabilitate offenders; (d) protect the public; (e) allow offenders to make reparation to their victims.

Staff recognised the multiple functions which the Unit fulfilled. Most staff acknowledged how the Unit was not reserved for the most dangerous or difficult prisoners. Instead, it held prisoners who were mostly there for their own protection:

I think it's supposed to be somewhere for prisoners that are bad and volatile. They should be down here because they've caused destruction on the wings. But anyone who is bored of sitting on the wing or who wants a ship out, they'll just jump on the netting, then they'll refuse to locate, and they'll just sit down here until they go somewhere else. And we've got a lot with mental health issues, so it becomes more of a mental health unit. There's only a handful of prisoners down here who I'd say couldn't go on a wing, because they'd be too dangerous on a wing. Whereas the rest of them, they're either scared or won't locate because they want to ship out. (Oli, staff).

The actual ones that are segregated, not a lot of them are here for punishment, it's mostly for their own protection. It's strange because that's not what a seg should really be for. I think seg should be for punishment. They shouldn't be here just for their own protection. I think there should be other wings for that. If they're scared, they shouldn't be segregated. Segregation should be for the naughty boys, and not for the people that are just scared of the naughty boys…It should be more of a punishment wing; but you're punishing people that aren't here for that reason, which isn't fair, really. (Tony, staff).

Several staff commented on the need for a different wing, perhaps a 'vulnerable prisoner' wing, to house those who were under threat on the wings or a risk to themselves. This is another illustration of how the use of segregation is, in part, driven by institutional decisions. Whitemoor previously had a vulnerable prisoner wing but it closed in 2006. The Unit now has to fulfil this role but, as several staff acknowledged, this was far from ideal:

You've got people that come down on OP [own protection]. Sometimes it's because they've helped us out − given us information, prevented some horrific incidents − and they've come down here and they shouldn't − well I don't believe they should − be treated as a seg prisoner. They've still got to have the same regime but maybe some more entitlements, more benefits. They've helped us, they've stopped one of us having our throat cut which, at the end of the day, we should be grateful for. (Holly, staff).

I think staff used to see it as a punishment, if they're in the seg they should have the minimum…but, as things change, like Muslim gangs and stuff, that's a problem here, prisoners come down for their own protection. Then you think 'why should a prisoner who's

here on own protection not have a tele? or a radio?'. He's not here because he won't locate, he's here because if he goes to the wing he'll get beat up, or cut up, or taken hostage or something. So you try and meet in the middle somewhere but there's only one rulebook. There's not one for a prisoner on GOoD and one for a prisoner on own interests, which I think there should be. (Charlie, staff).

As Charlie (and several staff and prisoners) described, the Unit was not able to accommodate the duality of functions set out in Rule 45. The different pathways to segregation were not reflected in the conditions of the Unit nor its daily regime. There might be some variation in the activities provided, for example some prisoners might receive in-cell work, others might have a radio or television, but they depended on the prisoner's IEP status. Generally the regime and conditions applied rigidly, regardless of why a prisoner was there. Moreover, there was a real lack of opportunity to do rehabilitative work with those who needed it. As Tim (staff) explained, the Unit should be a short-to-medium term measure, to hold men in a time of crisis. For him, the Unit should be a place where rehabilitative work could be done. Instead, 'because the numbers are so high, we don't do the work; we just contain [prisoners] and try give them the regime and usually fail at the rehabilitation side. It's all just a bit chaotic' (Tim, staff).

Importantly, as staff recognised, the Unit was not reserved for the 'worst of the worst'. Most staff relayed how the majority of prisoners could return to the wings. As Oli, Phil and Tony said, there were only a handful of prisoners that were too volatile and violent to return to the wings. My fieldwork observations and participant accounts all challenge the perception that segregation is for punishment, reserved for the worst of the worst. From my experience of Whitemoor, the Unit was reserved primarily for those who were at risk on the wing or who were frustrated and saw the Unit as the only avenue leading to a transfer.

## 4. PSO 1700 and Local Site Rules

Rule 45 is short in length but expansive in application. Thus, additional guidance, in the form of PSO 1700 and the Local Site Rules, supplements the PR 1999. PSO 1700 is brief in its discussion of the 'use' of segregation. It states that segregation should only be used 'as a last resort' to manage behaviour and problems rather than strictly for punishment (p. 4). As the above discussion demonstrates, segregation was not reserved as a 'last resort', for some it was a 'first resort'. Little attempt is made in PSO 1700 to clearly describe the situations or circumstances in which segregation is an appropriate and proportionate response. The only prisoners for whom segregation should be 'avoided', according to PSO 1700, are those on an

ACCT plan. ACCTs are typically used to manage prisoners at risk of self-harm and/or suicide. Yet, segregation housed several prisoners on ACCTs (between five and ten prisoners, see Chapter Three). The healthcare unit was full so, for those prisoners, the Unit was the only option. There was a conflict between the PSO guidance and operational realities.

Moreover, as highlighted in Chapter Two, the Local Site Rules provide few additional requirements or obligations over and above those contained in PSO 1700. In fact, the Local Site Rules say very little about when, why and how segregation should be used. Together, PS0 1700 and the Local Site Rules, do little to set the parameters for the use of segregation. They create a void in how segregation should be used, and how the formal rules should be interpreted and applied. That void is, to a degree, occupied by local customs and practice. It allows segregation to be used to 'send a message' or as a 'preventative' function. It means the use of segregation is not constrained by law but, in many ways, is dictated by institutional culture. It is therefore rooted in local attitudes, customs and practices – some which may be beyond the scope of, or in direct contradiction with, the formal legal rules (of PR 1999) and non-legal rules (in PSO 1700 and the Local Site Rules). This is discussed in more depth in the next chapter but, for now, it is important to recognise the risks associated with broad, ill-defined legal frameworks: they function according to individual interpretation, contain a large amount of discretion, allow for uncertainty (and inconsistency) to creep in and, at the very worst, mean segregation can be used in illegitimate ways. This danger of uncertainty and inconsistency is seen across the prison estate. PSO 1700 requires each prison to create a site-specific policy for the management of segregation. Therefore, each prison has its own rules and procedures for the segregation unit. It means, as many staff and participants described to me, there is substantial variation in the conditions and regime offered in segregation units across our penal system. This is not conducive for creating consistency and certainty in punishment, aspects which are integral components of the rule of law.

## 5. Conclusion

The challenges I identified with the interpretation and application of Rule 45, (and, briefly, PSO 1700 and Local Site Rules) are not unique to Whitemoor. Since 1980 there have been twenty-four legal challenges to the use of segregation (see Annex One). The complaints, often similar, arose in a number of different prisons, such as HMP Exeter (*Keenan v UK* (2001) 33 EHRR 38*),* HMP New Hall (*R (P) v Secretary of State for the Home Department* [2004] EWHC 1418*),* HMP Leeds (*Racz v Home Office* [1994] 2 WLR 23*)* and, notably, HMP Whitemoor (*Russell v Home Office* [2001] 3 WLUK 43 and *R (Bourgass and another) v*

*Secretary of State for Justice* [2015] UKSC 54). Questions which related to the interpretation and application of the PR 1999 (and PSO 1700) have not been resolved in practice. My fieldwork revealed how the imprecise and poorly defined 'removal from association' was interpreted broadly and applied inconsistently. The prison authorities were given considerable latitude by Rule 45 to determine how, when and why segregation should be used; specifically, they had substantial scope to decide what was in the best interests for ensuring the 'good order' of the prison. At times, preserving the 'good order' of Whitemoor, saw the use of segregation as 'prevention', as 'punishment', as 'deterrence' – all are broader aims than currently set down by Rule 45.

Rule 45 was a mechanism for preserving the 'good order' of the prison: segregating an individual was intended to allow life on the wings to continue. However, my fieldwork revealed how a significant number of individuals sought out segregation to *avoid* the wings because life on the mainstream wings was hard. Segregation, for them, was a place which could support their mental health needs, mitigate their risks of harm on the wings, or result in a transfer.

The segregated population was rendered vulnerable in many ways – whether because of mental illness, or threats on the wing, or because of a near total reliance on staff. Alongside the vulnerability of the population, was the concentration of power in the hands of staff and a corresponding risk of abuse (Bittner, 1970). The context requires the law to be robust, to protect the rights of prisoners who, through their imprisonment had lost their general liberty and, through their segregation, had lost any residual liberty; and are arguably individuals who are most in need of legal protection. However, the legislation (PR 1999) is not robust. It is broad, imprecise, ill-defined, requires considerable interpretation and contains extensive discretion. This was intentional: segregation is valuable for prison managers because it is discretionary, expedient and without excessive formality. It means the rules, in their current form, are brief and limited. Moreover, the failings in the PR 1999 are not corrected by PSO 1700 or the Local Site Rules, which provide insufficient detail on the circumstances in which segregation is a proportionate or reasonable response.

Rule 45, along with PSO 1700 and Local Site Rules, could be updated. They could have clearer definitions, be more precise, could better articulate the purpose of segregation and limit the use of segregation to certain specific circumstances (with stringent timeframes) and could be drafted to prevent indefinite segregation detention. Thus, they could be redrafted to give greater

effect to the rule of law, which commands that the law must be (i) 'intelligible, clear and predictable' and that powers must be exercised (vi) 'reasonably, in good faith, and for the purpose in which they were conferred'. The latter, as the law currently stands, is difficult to satisfy. For what purpose is the power of segregation conferred? As the above suggests, the power to segregate is wielded to serve a multitude of purposes (some of which are conflicting and beyond the PR 1999). However, there would still be a limit to what the rules (if updated and improved) could achieve. Segregation is a reactionary measure, imposed to address particular tensions within the everyday relations of the prison (the tensions of mental health crises, wing relations, violence or disorder) but segregation, itself, is often the focus of contention. Segregation highlights the conflict between claims of utility and necessity and those of justice, fairness and consistency, which are 'chronically present' in prisons; and it is a place where the 'legitimacy deficit', routinely found in prisons, is revealed in an 'acute form' (see Sparks et al., 1996, p. 299). Amending the legal rules may not correct this 'legitimacy deficit', which is more closely related to the way in which the rules are implemented (Sparks et al., 1996). Moreover, 'better' (i.e. clearer, stricter, more precise) legal rules may not address the contextual issues, such as the turbulent and unsafe wings, high rates of mental illness and the lack of progression, which necessitate the use of segregation. In the interests of caution, I should make clear that I am not denying the importance of rules. The point is that the rules, pertaining to the use of segregation, are bounded. There are important operational, cultural, procedural and other variables, often well beyond the rules, which impact the use of segregation (Padfield & Gelsthorpe, 2013, p. 10). Importantly, within its usage, there is a huge amount of discretionary power and I expand, in the next chapter, on how that discretionary power is wielded. Whilst greater regulation, or the expansion of legal rules, may create *more* control of discretion, it may not result in *better* control of discretion (see Baldwin & Hawkins, 1984). Rather than improving statutory standards alone, efforts should be directed towards reforming the circumstances which necessitate the use of segregation. For example: (i) better support could be provided to those with mental health needs, on the wings or in other parts of the prison, to prevent segregation being used as a psychiatric unit; (ii) opportunities for progression could be reviewed and improved, so that the Unit is no longer a holding ground or site of containment for those seeking transfers; (iii) efforts should be directed towards making the wings safer and less volatile; (iv) the ideological commitment to segregation, from prison managers and staff, needs to be challenged. Entrenched perceptions, that segregation is *necessary* for deterrence and is fundamental for ensuring order (for which the evidence is unconvincing[65]), unless addressed, will undermine reform efforts.

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[65] Barak-Glantz (1983); Briggs et al. (2003); Labrecque (2016); Lucas and Jones (2019); Morris (2016) found

little deterrent effect; and Mears and Bales (2009); Medrano et al. (2017); Motiuk and Blanchette (2001) found segregation increased risks of institutional misconduct, disorder and reoffending.

# Chapter Five – Law and Discretion: Culture of Segregation

> We have the rules and I'll follow the rules because they are there. But if I like one prisoner more than I like another, I might apply the rules slightly differently. Take Arthur, he is a really difficult man to like, and he makes me want to apply the rules very strictly. But Wayne – he can be more threatening – but is quite likeable, in a childlike kind of way, so I'll bend the rules for him. (Terry, staff).

The previous chapter illustrates the broad way in which Rule 45 of the PR 1999 can be interpreted and applied in prison. It also highlights how supplementary guidance – PSO 1700 and Local Site Rules – may do little to constrain the ample discretion within the main legal rules. Whilst I identify opportunities for improving the rules of segregation, I suggest that law and policy change would only go so far. This is because no matter how precise, clear and well-drafted the law or policy might be, there will always be a 'certain flexibility, ambiguity or discretion in how it is applied in practice' (Padfield & Gelsthorpe, 2013, p. 3). i.e. there is a space between the formal position of the rules and actual practice. This 'space' is occupied by organisational, occupational and cultural factors which, as Padfield and Gelsthorpe (2013, p. 9) suggest, may be 'as important' as the rules and policies which guide action. It is, in this chapter, the 'organisational, occupational and cultural factors' to which I turn: specifically, the relationship between rules, policy and culture.

On the surface, there was the rhetoric of law, rules and rights in the Unit, yet this did not necessarily determine staff practices and conduct. Instead, as the first part of this chapter discusses, staff culture was a greater force in the Unit. The staff culture was characterised by staff who prioritised the regime over rehabilitation; who held mostly punitive or negative attitudes towards prisoners; developed especially close working relationships; and a suspicion and scepticism towards outsiders. Staff, in the Unit, formed a group characterised by solidarity, independence and close friendships. Such attributes mutually enforced staff attitudes towards law, their adherence to rules and staff practices (McConville, Sanders, & Leng, 1991). Importantly, staff culture was influenced by the fear and anxiety associated with working in the violent and unpredictable Unit. There was a strong correlation between staff culture and the context within which it was created and sustained.

The second part of the chapter discusses how the rules create a space in which discretion can thrive – sometimes for the benefit of prisoners, but sometimes to their detriment. The point is

not so much that staff discretionary judgments, and their decision-making, will always be 'inferior or more problematic' (Scott, 2006, p. 13). In fact, as demonstrated in the second part of this chapter, staff discretion clearly benefited certain prisoners. However, I observed a tendency for staff discretion to be exercised in ways which resulted in the selective enforcement of rules: rules (whether legal or not) were used to legitimate, or even rejected in favour of, practices which were sometimes punitive, discriminatory and unfair. Moreover, the dominant staff culture eroded the proper functioning of oversight and accountability mechanisms; it meant there were weak internal constraints on staff discretion. Importantly, the law and rules could be used in ways which protected the interests and ideologies of the more powerful staff group (Drake, 2012, p. 135). Thus, at times, the rules were subordinate to the cultural norms and customs of the Unit. When practices function according to social and organisational norms or informal rules, they become 'untied from the rule of law' and, consequently, 'untied' from principles of public scrutiny and the legal or democratic principles of fairness, transparency and accountability (Scott, 2006, p. 13). As a result, legal aims relating to natural justice, and rule of law principles (like consistency and predictability), can become subsumed within the organisational and occupational culture. Paradoxically, the Unit – a place which is created by law and whose authority to contain individuals is prescribed in law – becomes characterised by the avoidance, the manipulation and the negotiation of law (Scott, 2006).

## 1. Staff culture

Whilst the culture in the Unit was, in large part, shaped by staff members, it was also firmly embedded within and shaped by the broader prison institution and organisational decisions. The Unit was physically separate: it was treated as a discrete unit and operated mostly according to its own localised rules and procedures. Importantly, the same group of staff often implemented the rules and procedures. These operational decisions cultivated a culture in which staff were distant from the rest of the prison, absented from managerial oversight, and able to develop strong group solidarity. However, institutional decisions cannot fully account for other parts of the Unit's character, those which related to daily practices, attitudes, ways of working and the exercise of discretion. These are aspects in which staff, in the Unit, had an important role. Prison officers have a substantial role in shaping the institution's culture, particularly its 'social and moral climate' (Liebling & Kant, 2018). As Liebling and Kant (2018) suggest, just as 80% of prison costs are accounted for by staff, 80% of the 'moral climate' in prison 'can be accounted for by staff attitudes and practices' (p. 210).

Liebling and Kant (2018) comprehensively explored why officers tended to distrust managers, were cynical towards penal reform and removed from 'liberal humanitarian goals' (Liebling & Kant, 2018; Thomas, 1972 p. 209). They distinguished between two cultures in a prison: 'professional-supportive' and 'traditional-resistant'. 'Professionally-supportive' officers were characterised by a professional pride, had respect for the legal rules but used them carefully, and used 'well-judged discretion' to secure social order (p. 210). They were good-humoured, patient, honest and supportive. They were reliable and had an optimistic, but realistic, outlook. Importantly, they viewed offenders as people with futures, and saw themselves as having an important role in helping to bring about a better future. They valued human relationships, which they perceived as important for growth and development. However, these kind of officers were 'not typical' but existed in small numbers across the whole prison system (pp. 210, 211). In contrast, they identified a 'traditional-resistant' staff culture. This was characterised by staff who were 'trapped in the past' and believed in the 'romanticised relics of repression' (Morris & Morris, 1968, p. 161); who preferred control over care; were preoccupied with discipline; and characterised by distrust, cynicism and negative attitudes towards prisoners (pp. 211, 212).

When considering the two contrasting cultures, Liebling and Kant (2018, p. 217) drew on the work of William Muir (1977) who developed two typologies of police officers, the 'tragic' versus 'cynical' officer. Individuals who held a 'tragic' perspective were able to 'grasp the nature of human suffering' (1977, p. 3); and it was 'suffering' (human tragedy) which connected humanity. From the 'tragic' perspective, human nature was unitary: there was common ground between humans. This perspective acknowledged that cultural and environmental factors impacted personality, that behaviour and decision-making were rooted in context. Some individuals might become anxious, callous, irrational or remorseless, but these were exceptions which resulted from 'circumstantial abnormalities, to which all persons were susceptible' (1977, p. 225). The 'tragic' perspective refused to separate the world into 'Us and Them'; it 'saw weakness and strength as inextricably bound. It found the sources of evil and good in the same origins. And it respected the problems and complexities of individual life' (1977, p. 226). Applied to the prison officers in Liebling and Kant's study, it was a hopeful perspective, one which recognised that offenders shared similarities with staff, that they could be trusted and were able to change (2018, p. 218). Whereas the 'cynical' perspective was dualistic: it conceived human nature as 'consisting of warring camps' and the natures of those in the warring camps were perceived as fundamentally different (1977, p. 226). The 'cynical' perspective, for Muir, meant empathy and love could not cross 'enemy

lines' (p. 226). When applied to prisons, the 'cynical' officers perceived offending as a result of an individual's choice, the offender was 'othered', could not be trusted, and was perceived as dangerous and manipulative (Liebling & Kant, 2018, p. 217).

Whilst there were exceptions – and I am not suggesting that staff attitudes and behaviours were homogenous and unitary – but during fieldwork, I observed an identifiable, distinctive culture in the Unit. By 'culture', I mean the shared 'assumptions, values, beliefs, and attitudes that officers express, directly and indirectly' and which influence their action and daily practices to a greater or lesser degree (Liebling, 2007, p. 106). The culture was much closer to the 'traditional-resistant' typology than the 'professionally-supportive' one, identified by Liebling and Kant (2018). Staff tended to prioritise the regime over rehabilitation; were disengaged from prisoners; were extremely tight-knit; and hostile to other staff and visitors to the Unit. These are all aspects of the 'traditional-resistant' culture and each is discussed, in turn, below.

## *Prioritisation of the regime*

Generally, amongst staff, there was a preoccupation with 'getting the regime done'. As Charlie described 'whatever job you're on, you've just gotta get it finished. Just get it done. I don't think there's much more to it'. This culminated in a sense, described by several officers, of pressure to get through the regime – to provide all prisoners with access to the exercise yard, shower or phonecall, as well as meals. This is a prime example of what Liebling and Kant termed 'system maintenance', whereby the regime and its processes were prioritised over rehabilitation or other meaningful activities (2018, p. 212). This pressure was, for many staff, caused by the capacity of the Unit – often between 25 and 30 prisoners:

> When we've got such high numbers, we've got no time to have a decent conversation with any of them. You're literally at the door like yeah yeah yeah, walk away.. it's just about getting it done, rather than having a purposeful conversation with someone. That's only because we've got 26 seg prisoners. It dropped a little while ago to about 19, 22, something like that, and that was so much better. And it's only 4, 5, or 6 less prisoners, meaning you can actually have a conversation at the door and not be thinking 'come on, shut up, I need to get to the next door to move him on to the yard'. It's more about the regime than it is the people. (Charlie, staff).

The Unit operated a 'regimented regime' (James, staff), whereby prisoners were detained behind their doors for most of the day and staff controlled prisoner movements and

124

entitlements. The Unit was also close to, or at, operational capacity. Together, it meant there were limited opportunities for human interaction and, as staff described, it was not easy to establish relationships with prisoners, nor build a positive rapport. As such, there was little opportunity for rehabilitative work:

> There's no rehabilitative stuff down here. We *might* be able to do it with long-term seg dwellers, as we get to know them a bit more, it makes it easier to build a relationship, but generally we can't, we don't have the time. (Josh, staff).

> It's not rehabilitative really. They'd [senior management] like it to be. But it's so hard with the numbers and the behaviour of some of the individuals…we're just hanging on really. We're coping and providing a decent regime, we try treat them with respect but we're just battling every day with it, to keep it ticking over. To try and do rehabilitative, amazing, work is so difficult when our main priority is just to get the regime done, get the apps processed, get them in the showers and all the rest of it. That is a huge achievement every day. We get to the end of the day and think 'phew well we got through that', when all we've really done was give them the regime. That's the achievement, which is not that ambitious really. (Tim, staff).

Most staff, during interview, recognised the value of human relationships but felt, due to 'regime pressures', there was little opportunity for them to develop in practice. Staff had very little time to talk to prisoners. They rushed from cell door to cell door. Exchanges were short and staff described a reluctance to engage in longer conversations:

> Because we're so busy, we don't have time to do all that chatting bollocks, it's like …'do you want regime today?'...[prisoner replies] 'er er er'…'do you want exercise or a shower?'...and then they want to discuss it with you. I'm like 'look, do you want it or not?' cos I've fucking got shit loads to do and I need to get it done. Whereas if there's a bit more time, then maybe I could stand at the door for a few more minutes. (Charlie, staff).

> I don't talk to them on the yards, at their doors…or take them in the Bubble and speak to them for 20 minutes. I haven't got time for that and, to be honest, I'm just not interested in that, because you're here to do a different kind of job, really, and just give them their regime and that's it. Not really a lot else, not really time to do anything else. (James, staff).

Sometimes their feelings of pressure and stress manifested in an impatient and dismissive attitude towards prisoners. For most, this was the product of a pressured and hectic regime, but for a small handful, like James, there was a disinterest and ambivalence in forming

relationships with prisoners. The Unit had not always been like that. Staff recalled a period during which there were fewer prisoners and more staff, when they felt able to dedicate more time and resources to relationship building and rehabilitation. Staff used to, for example, unlock prisoners and talk to them in the Bubble:

> During the day you can give them five, ten minutes of your time…We used to, say if it's something a bit sensitive, we'd get them in the Bubble and sit in there and talk, just talk over things. You could give them your undivided attention, and it was quality, and they would appreciate it. And it could stop them getting angry about something daft. We don't do it now like we used to. Before, you could chat with prisoners, and build relationships, all that sort of stuff. But, unfortunately, a lot of that's gone because we've cut, cut, cuts. That's the detriment of cuts. (Alan, staff).

Most staff suggested it was the current context – a Unit which was often full and short staffed – which meant it was hard for staff to commit time and energy to engaging meaningfully with prisoners. As a result, staff were often slow to answer cell bells, which were sometimes ignored for 20 or 30 minutes. They were slow to move prisoners from the showers or the phone booth – again, sometimes resulting in a 15 or 20-minute wait – and were unresponsive to prisoners' requests (to check their property or financial balances). However, the 'busy' and 'pressured' regime only partly explains the limited interactions with prisoners. As suggested below, staff avoided committing time and energy to relationship building, sometimes because of their cynical and distrusting attitudes, but sometimes because of high levels of fear.

## *Staff and prisoners*

During fieldwork, I observed a toughness to some staff: they held an unsympathetic vision of prisoners, whereby prisoners were 'othered' and denigrated, and which created considerable distance between the two groups.

Staff gave the impression that they did not recognise the human dignity of prisoners (Drake, 2012, p. 97), in their boastful remarks about use of force; language which belittled prisoners, such as 'chunts' (childish cunts) or 'knobheads' (Fieldwork notes, p. 75); and statements about prisoners' failed suicide attempts, including, 'I wouldn't care if he lived or died, he's one of those that causes bother for everyone'; 'just let the bugger hang' (Fieldwork notes, pp. 23, 49). Jokes were often made at prisoners' expense. For example, in the kitchen, the whiteboard containing prisoners' dietary requirements was titled 'Fussy Sod Board'; and meal

times were referred to as 'feeding times', the inference being that the Unit was equivalent to a zoo (Fieldwork notes, p. 59). Staff made attempts at 'banter' with prisoners, but they tended to be insulting and condescending, rather than kind-hearted joviality. These 'jokes' and comments, predicated on 'power differentials', illustrated a careless use of power (Crewe, 2009, p. 62).

There was 'moral distance' between staff and prisoners (Crewe, 2009, p. 63), which placed prisoners in the other 'warring camp' of Muir's (1977, p. 226) 'cynical' perspective and had the effect of 'othering' prisoners. Some staff described prisoners as 'shitbags', the 'worst of the worst' (James, staff), and in terms which distinguished them on grounds of humanity: 'I think there's a difference between officers and prisoners…We seem to, I dunno, have a bit more humanity about us' (Holly). Prisoners were distanced as lesser human beings, 'constructed as essentially different and beyond the realms of prison officers' understandings of humanity' (Scott, 2008, p. 176). It was easier to 'other' prisoners when staff-prisoner interactions were so limited. Prisoners were detained in their cells for at least 23 hours a day. This produced both a physical and psychological distance between prisoners and staff. One member of staff suggested this was a coping mechanism:

> You keep prisoners very much at arm's length, and you dehumanise because it's easy if you dehumanise somebody. It's easier to lock them up and easier to not think about them…but the result is you dehumanise yourself, you take the personal element out of the relationships. (Terry, staff).

There was an emotional and relational distance in the Unit. Importantly, the distance brought a sense of safety, that 'arm's length' relationships made it easier for staff to do their jobs. Distance, as Arnold (2005) suggests, can be an important self-protection mechanism to help officers cope with the stresses of their work and the perceived dangers and risks associated with their roles. However, one downside of distance is that it creates a space in which it is harder for any, let alone the 'right', staff-prisoner relationships to thrive (Liebling, 2008; Liebling, Price, et al., 2011).

Staff perspectives on 'choice' i.e. prisoners were in the Unit as a result of their choices, reinforced this distance. This was an important perspective held by 'traditional-resistant' prison officers (Liebling & Kant, 2018, p. 217) and by Muir's 'cynical' police officers (1977, p. 226). Staff adopted a 'distinct criminology' of the segregated prisoner, one which perceived

offending, or in this case prison rule-breaking, as a direct result of individual choice and rationality:

> It seems to be a very easy choice for a lot of people, just go jump on the netting, get them down the seg…Then they come down and refuse to go back. So I do think it's a choice for a lot of people. (Holly, staff).

> The majority of them choose to go there. How they do that is on them. (Josh, staff).

> It is a choice because people make choices, if they do something to be punished for, they've made that choice to do that. If they've got themselves in a position where they're under threat, they've made those choices to do that. If they've said 'fuck you, I want a ship out', they've made that choice to do that. And they made the choice to commit crime to be put in prison in the first place. So, yeah, I suppose it is. Everything's a choice isn't it? (Charlie, staff).

A small number of staff recognised the complexity of wing dynamics and the threats prisoners faced there. However, for the most part, staff perceived prisoners as directly responsible for their transfer to the Unit. Prisoners were viewed as rule-breaking agents, who made choices that staff would never make. No special account was taken of the 'bounded' nature of choice; that decisions were not always freely made (Cornish & Clarke, 1986, 1987; Wikström, 2017). Staff overlooked the context for prisoner decision-making, such as the impact of the prison environment, turbulent wings, or role of staff decision-making. This perspective furthered the 'moral distance' between staff and prisoners: staff remained at arm's length, removed from 'their worlds', and disconnected from the prisoner.

A tendency to 'other' prisoners, and to overlook the complexities of their 'choices', are characteristic of Liebling and Kant's (2018) 'traditional-resistant' prison officer, and dominated much of the culture of the Unit. However, it was not universal. Some staff dissented from the 'traditional-resistant' type perspectives. There was a small number (3 or 4) who were much closer to Liebling and Kant's (2018) 'professional-supportive' officers. They were more patient and invested in their relationships with prisoners. They prided themselves on being reliable and 'seeing things through for prisoners'. They recognised the importance of meaningful human contact. They understood how frustrating it could be for prisoners in the Unit who felt utterly powerless, and acknowledged how many of the prisoners in the Unit (and across the prison) tended to be young and struggling to make sense of very long (30 years+) sentences. The staff who went against the dominant culture (characterised by

negativity, hostility and punitiveness) felt they had to conceal their actions or attitudes. They represented the 'Lonely Braves' identified by Klofas and Toch (1982, p. 247) (and later expanded by Liebling (2007)); they were officers who, by enthusiastically providing 'human services to prisoners' went against the grain of the established culture (Liebling, 2007, p. 116). For example, one morning Wayne smashed his observation panel and urinated over the inside of his door. He was moved to a different cell, to allow his to be cleaned. His new cell was without electricity. Throughout the day he became increasingly agitated and angry. He wanted a cell with electricity. He shouted at staff, became upset and distressed. The next day, during lunch – when most staff were away from the Unit – Alex cleaned Wayne's cell. Wayne was moved back and calmed down. When I asked Alex why she cleaned the cell, she explained 'the industrial cleaners will take too long to come and Wayne wasn't doing too well in that cell… but don't tell them lot. I'll never hear the end of it' (Fieldwork notes, p. 73).

The indifference or apathy of some staff was, sometimes, a mask for their feelings and emotions. It was an example of how staff adapted to working in the Unit: by embracing a certain tough, cold and detached demeanour, staff were able to manage their emotions – particularly anxiety, insecurity and fear (Arnold, 2005, pp. 405,406; Crawley, 2004). Nearly all staff during interview described feeling fearful, anxious and worried about their own personal safety:

> The most challenging? For me, it's the potential threat to your safety… the thought I might get hurt. (Richard, staff).

> I think you're always anxious, to a point, because you're the one that's opening the door. You don't have an idea of what's behind the door…you can never say, 100 percent, 'this is how it's going to happen'. You never know whether someone is just going to, one day, come out and smack you because, obviously, it happens. So I think you're always a bit anxious…Obviously, these people that are in here, they're in here for a reason, and a lot of them are unpredictable, so you don't know what's going to happen. (Oli, staff).

> Simpson makes me very anxious because I'm just waiting for him to go. Patel too, only because he's assaulted staff. All of them, nowadays, because of the last couple of staff assaults, I'm thinking they're all capable…[because] I would never have expected Miller to come out and smack someone. He was only saying on the yard, that morning, that he's got no staff assaults on his record. (Holly, staff).

A lot of the time, people won't talk about it, but there are times when you think 'you're about to fucking hit me'…Obviously that's a natural situation because of the nature of where we work: we work with people who have been in trouble with the police and might not like us. I remember when Barlow came out of his cell once…everyone was uncomfortable. He was walking really fast, we were all walking really fast, all really close to him. No one was talking and everyone thought he was just gonna swing for someone, and he was a real handful to fight with as well. Every single person, I don't care what they say, definitely felt scared and thought he was gonna do something. (Charlie, staff).

Fear was associated with concerns about physical safety and was embedded within staff perceptions of the Unit as an 'uncertain place', with unpredictable prisoners. It was grounded in the belief, for many staff, that prisoners in the Unit were dangerous and 'all capable of violence' (Alan). This belief was influenced by the nature of the environment: staff described how working in a high security prison meant they worked with some of the most 'violent individuals in the prison system' (Alan). It was also, as Richard and Alan indicate, influenced by the reputations of some prisoners, formed as a result of an individual's behaviour before arriving at the Unit:

They're all capable of it, obviously, because you just look at their crimes and they're not in here for robbing gas meters… they can be quite violent people. (Alan, staff).

So, you think to yourself, if they're so bad that they can't even be held in the CSC unit, which is as bad as it gets, and we've got them and you think, wow, that's going to make them quite dangerous and the risk is going to be quite high. The same as anyone who assaults a member of staff, it automatically puts you on edge, and puts you on your guard. (Richard, staff).

Simpson is still very new. We've got all these horror stories from Woodhill about him. Obviously, we're taking him at face value, but there's still that anxiety… is he going to stab one of us? Is he going to attack one of us? We don't know whether he's going to do it. So that's probably the stress…that's what I've found worse as an officer down here, the unknown. (Alan, staff).

Staff narratives of fear and anxiety were common during interviews, but they were emotions which were far removed from the confident and fearless selves staff often presented in the Unit. A number of staff recognised the difficulties in reconciling feeling afraid with the traditional conceptualisation of the prison officer:

We all give it − we're big roughty-toughty seg screws or prison officers − and we've got a white shirt or black, but these are cotton shirts and they're not made of steel. The reality is, and we don't show it, but yeah, you're scared. The risk of getting hurt could be quite high, depending on who you're dealing with − like Scott Whaite and Tony Barlow − very violent people and they mean what they're doing. (Alan, staff).

When I was younger I sort of bought into this ethos that prison officers were made out of stone, and we don't feel fear, we're 'too tough to feel fear', and it's just such a really, really horrible toxic masculinity thing; that men aren't allowed to be vulnerable, feel scared. Well, actually, I feel scared most days down here. (Richard, staff).

The admissions, from Alan and Richard, illustrate the complex culture of the Unit. It was not a place where fear and anxiety could be easily expressed. Staff felt they would be perceived as weak, unable to cope or that they were 'fraggled' (used by staff to denote a mental exhaustion, being 'burnt out'). The group identity was formed, superficially, along principles of machismo and bravado; and coping mechanisms (like a 'brave face', humour and disengagement) were used to mask their anxieties.

None of this is surprising. Existing research suggests that prison officers develop various coping strategies to offset the stresses and strains of the work (or their own 'pains of imprisonment') (Arnold, 2005, p. 413). They cope with their exposure to danger and the substantial uncertainty of their work by: (i) distancing themselves from the main source of that danger − prisoners; (ii) exuding confidence and projecting bravery and bravado; and (iii) developing substantial distrust and suspicion towards prisoners (Arnold, 2005, pp. 399, 414). Staff detachment and apathy may be important mechanisms for coping with the uncertainty and risk of violence in their work place (Liebling & Kant, 2018, p. 215). However, too much detachment or apathy can cause officers to withdraw, so that they cease to care and fail to perform their jobs properly (Arnold, 2005, p. 416). Here, the detachment and apathy perpetuated the distance between staff and prisoners. The distance meant prisoners were conceived as the 'dangerous others' (Drake, 2011); it made fear and 'othering' not only possible, but also likely (Bauman, 1989). Distance created a 'moral blindness' (Bauman & Donskis, 2013) in which staff failed to recognise the dignity and personhood of the prisoner (Liebling & Williams, 2018, p. 1215). This was not helped by the extreme isolation of the prisoner: located behind his door for 23 hours a day. There were few opportunities for staff interaction with prisoners, and therefore few opportunities for challenging the entrenched rhetoric of fear and dangerousness. Thus, the structural conditions of confinement, in many

ways, made it easier for staff to 'other' prisoners and to maintain their cynical, distrusting and detached attitudes.

*Staff and each other*

Staff in the Unit were undoubtedly very close. This was, for most staff participants, one of the main positives of working in the Unit. Nearly all participants, when answering the question 'what do you like about working in the Unit?', responded with accounts which praised staff dynamics and the closeness of the staff relationships:

> The thing I love most is the teamwork. I love the type of close working. We are brothers and sisters, really, and that's sort of a bit cliché, but…I think we do work like that. That's how it makes me feel, band of brothers and all that sort of stuff. (Alan, staff).

> The staff are brilliant…Yeah, it's a very close-knit community and we all go out drinking and socialising together. Definitely, I've never felt closer. I was a squaddie once, many moons ago, and that's very similar, the camaraderie, very close together – you've got to be. (Tony, staff).

> Because the level of risk is higher here, we look after each other and we trust each other, because people have got your back all the time. Everyone's always looking out for each other to make sure you're safe, because we all want to go home in one piece (Alan, staff).

> It's the team – hands down – that's what made me come down here in the first place. Cos even on the worst day, we have a laugh. Everyone picks each other up. If you're having a really rough time, it's not a problem. We have a laugh, have banter and I think that gets it off your chest. Instead of walking around anxious and nervous like you could be, I think laughing does you a world of good. And we do have a laugh, as I'm sure you'll have seen. Not always the most appropriate or whatever but you've got to have that sense of humour. It's probably a bit dark at times but that's the best thing about down here, the team. (Holly, staff).

It was evident, from many staff accounts, that positive staff relationships were deemed important for feeling safe. Within the group, there was a substantial level of trust and reliance. They shared jokes and 'banter'. They also socialised together outside the prison. They had a WhatsApp chat and a Facebook group. They went to the pub together and to music festivals. Their relationships extended beyond the boundaries of the prison.

In part, their relationships arose as a consequence of operational decisions – the same group worked in the Unit most of the time. However, they also arose from the pressures of the working environment. During interviews, and informal conversations throughout fieldwork, it became apparent how significant, traumatic events bonded staff. Shared trauma can lead to greater group solidarity and cohesion, and may explain why the group in the Unit were especially close (Rosenbloom & Williams, 2010). Prison officers can develop strong group solidarity by sharing intense experiences and danger with their colleagues. They also share a 'working isolation' which arises from the organisational aspects of the work: the shift patterns, irregular days off and the sense of alienation from ordinary society (Kleinig, 1996, p. 69). Thus, officers often describe a sense that only other officers can understand what it is like to work in a prison. This produces a camaraderie which reinforces the inward-looking nature of the staff group, their dependence on each other in times of threat and their opportunities for bonding (Liebling, 2007, p. 107).

Testing incidents – significant and traumatic events – featured in many staff accounts. Often the same incidents were described in ways which exposed the scars left in the Unit and on the people who work there. For example, many staff recounted how, in January 2017, six prisoners were on dirty protest in the Unit. The prisoners smashed their observation panels, threw faeces and urine onto the landing, refused to allow staff or cleaners to remove the waste (they threatened to throw faeces at anyone who tried), and this continued for four weeks. Most staff recognised how this was a hard environment to work in but looked back on it with humour, and some identified positives from the situation, particularly as it brought staff closer together:

> They smashed out their observation panel, they were just chucking all their rubbish and poo, everything, piss, all that out. The landing was covered, it was disgusting. It was like that for about four weeks. It was manic, unbelievable really. You'd come in, have a shower, and then you'd have work clothes to get changed in to. It was horrible. Coming in, just walking through all their poo. It wasn't good. You look at that and think 'bonkers', it wasn't normal at all. At the time you laughed, because you thought 'this ain't real'. You think 'how is this actually happening'? At the time, it's not funny but you just laugh through it because everyone is there together, doing the same thing, so you've gotta do it. (Jason, staff).

> I think in a way that was the best thing that happened because it brought everyone even closer together. Not at the time – people thought it was rubbish at the time – but the aftermath was good. A few of the people who hadn't been in the seg that long thought 'well that's the worst

it can get so it's alright now, everything's gonna be fine'. I think it pulled people together a bit. (Phil, staff).

Similarly, an incident in December 2017 was mentioned by staff in a number of interviews. Staff recalled how two prisoners (on separate occasions), who were under the influence of spice, set themselves on fire in their cells. One died. This incident had left a mark on many members of staff. In interviews, they reflected on how the deaths happened and what could have been done differently.

Staff accounts also featured some notorious prisoners. Several staff mentioned Rory. He was described as a difficult prisoner. One afternoon, he managed to escape from the telephone booth. He took another prisoner hostage – one who had come down from the wing to clean the Unit. Rory took the prisoner into the kitchen area, held a blade to his face and made threats to 'stab his eyes out'. Staff intervened, with one staff member offering herself in exchange for the hostage.

Staff narratives revealed how significant events, traumatic incidents and noteworthy prisoners could have important bonding functions: uniting staff in fear and trauma. In response to their challenging, stressful and dangerous work environment, staff developed close relationships, loyalty, trust and reliance. There was a level of shared understanding of how difficult and traumatic the environment could be. It was an environment in which a group identity – and solidarity – could thrive. Whilst good peer relationships can be important for job satisfaction, enjoyment and in helping staff to feel safe; some forms of 'traditional camaraderie' such as humorous (offensive) banter, 'in-jokes' and cliques, can contribute to an unhealthy 'us-them' culture (in staff-prisoner relationships but also in Unit staff/non-unit staff relationships – see below) (Liebling, Tait, Stiles, Harvey, & assisted by Rose, 2005, p. 215).

*Staff and outsiders*

The closeness of staff created a nexus of power in their hands, which they were able to use to influence recruitment decisions, as well as working practices (evident in their treatment of 'guests' discussed below):

> We can be quite prescriptive as to who we want to come down here. Sometimes names were put forward and we've said 'it's just not going to work'. It might sound a bit shady but you've got to get on with everyone because it's a close team. It's quite difficult to come in to. A lot of

people have said, when they've guested, it can be quite intimidating to come down here. That was never the intention but you've got to get on with them because you've got to work with them, you've got to trust them, and you've got to know that when you're opening the door and something goes off, then you've got a couple of people who are going to run in and not hide in an office somewhere or pretend they haven't heard the alarm bell or run the other way…which we had the other day. (Jason, staff).

Staff in the Unit had some influence when it came to recruiting new officers. During fieldwork, names were put forward for new recruits, and staff vehemently objected to some individuals. This was based on personal judgments like: 'he's a right pain' or 'he won't fit in here'.[66] As a consequence, there was little diversity in staff in the Unit. All were white, mostly male, and most shared the attitudes towards prisoners, and the institution, described above.

Unit staff were also able to influence the working practices of 'guests' in the Unit. 'Guesting' was when an officer, usually assigned to a different wing, was allocated to work in the Unit. Staff were often suspicious, hostile and critical of 'guests'. There was a shared sense, amongst Unit staff, that guests were lazy, unreliable and would undermine the safety of all staff in the Unit:

> Jason: Some of the guests are useless, you can't rely on them to do a good job.
> Alan: We send them to the yard. That's all they're good for. (Fieldwork notes, p.19)

> 'Guest' officer came in to Centre Office, I haven't seen him before. He picked up Alan's phone and Alan said 'what do you want, you can't use my phone, helmethead'. He snatched the phone back and put it down. It appears difficult for other officers to come to the Unit, they seem on the outside of the tight knit group, they get given the worst jobs (e.g. on the yard), are excluded from the 'in' jokes and the general team spirit of the officers who work in segregation permanently. (Fieldwork notes, p. 37).

> Alex came in to the office and was very upset. She explained: 'we only have two seg staff on tomorrow. The rest are guests, we could end up with the shit that the res [residential wing] don't want. I called the gov and told him it won't be safe because we only have two seg staff

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[66] Applicant names were informally shared with staff in the Unit. Sometimes by colleagues on the wings, sometimes by the applicants themselves. One manager disclosed how informal staff objections meant, for one applicant, a rejection for interview. The manager explained that, without staff acceptance, it would have been 'difficult' for the applicant to join the Unit. He suggested there needed to be some level of staff support for new staff. However, staff approval was not always a prerequisite: despite staff protestations, another applicant was interviewed and later offered a position in the Unit (Fieldwork notes, p.79).

on tomorrow afternoon. He's just had training on 'reflections': well, how about he tries to do some reflecting on our own safety? (Fieldwork notes, p. 97).

They typically assigned 'guests' to the worst duties. For example, Oli complained about distributing post to prisoners, to which Charlie replied 'we've got guests down here this afternoon, make them do it' (Fieldwork notes, p. 71). 'Guests' would be sent to the yards, a role generally disliked by staff because it involved standing outside in the cold and the rain, without cover, for hours. They would be given the task of escorting prisoners to segregation review meetings – meetings which most Unit staff dismissed as 'boring'. As a consequence, 'guests' reported feeling 'lost', like a 'spare part'. As I wrote, in my fieldwork notes:

> I was watching from the landings and a 'guest' from B Wing came up and said 'I feel like a spare part when I come here. If I come in the morning, I'll get given the yard and I'm like great, I know what to do there. But I don't know what to do now. Jessica just told me to be on hand and answer cell bells when they go, so that's what I'm doing. But I'm a bit lost' (p. 73).

Most staff acknowledged that they had a reputation in the prison for being close or 'cliquey', but justified it by reference to safety and security:

> Some staff enjoy it, and some staff see the seg as…because we're quite a cliquey group, they feel like they're outsiders when they come down here. But we've got to be. You've got to trust the person opening that door with you. (Jack, staff).

> Some people, when they come down here, think 'oh it's a clique down here', but it has to be. You've got to be a bit closed off; everyone knows we have each other's back, so that's why it might be hard for other people to enter...People would say that we are [cliquey]...I think we are, I think we have a closer knit than everywhere else. (Jason, staff).

They shared the perspective that they had to be a close, tight-knit group – their safety depended on it. It helped them through their hard days, they felt able to respond to challenges with humour and enjoyed working with people they considered to be their friends. However, there were drawbacks to such closeness and these manifested in ways which exacerbated the group identity and perpetuated a sense of hierarchy and status differential. Staff, during interviews, emphasised their differences from wing staff, in terms of experience and authority. For example, James said 'A, B, C wings aren't what they used to be…they're rubbish'. Several shared this view, complaining that wing staff tended to be young, inexperienced, easily manipulated by prisoners and unable (or unwilling) to enforce the rules. Some staff in

the Unit had worked in the prison for many years, but there was also a number of younger and less experienced staff. This made little difference to their self-perceptions as more experienced 'rule enforcers' and 'respected officers'. Thus, Jason described how the Unit staff, when deployed to the wings, would cause trouble by strictly enforcing the rules (e.g. by enforcing the rule that slippers were not allowed in the wing kitchens):

> We always have the argument 'oh you're seg staff, no one else cares. You come up here and you cause issues all the time'. It's because we're enforcing the rules. We're going up there to do our job, and it should be done by everyone, but they think we're upsetting the apple cart. When we're not, we're actually just going up there to do the job, [to do] what is expected. (Jason, staff).

Most staff in the Unit thought the rest of the prison staff respected them because they worked in a 'stressful and crazy place' (Jason). One staff member described how there was a perception that you 'earned your stripes through being in seg. It's perceived as a sexy, [a] macho place' (Tim). Oli thought other staff perceived it as 'testosterone-fuelled place' where 'there is a lot of lads...we all laugh and joke and have a banter and mess around together and be boisterous' which, for some, he admitted, could be intimidating. Phil also recognised how the Unit could be an intimidating place for others, especially as there were some 'big staff characters'. They were 'big' in the sense that they were loud, seemingly confident but also physically large and muscular. These perceptions were reinforced by senior management. Bulletins were published in the prison, in which Unit staff were named 'Whitemoor's dream team'. One senior manager described how staff in the Unit were respected because 'people understand they do a really difficult job and people understand that they are hand-picked and most staff wouldn't volunteer to go work there'. These sentiments did little to remove the divisions between Unit staff and the rest of the prison.

As a consequence, staff were a particularly powerful group, with a strong sense of group solidarity and a clear 'staff orientation' (Liebling & Kant, 2018, p. 212), which culminated in hostility towards outsiders. This hostility was illustrated by their attitudes and treatment towards 'guests', but it also manifested in the way they engaged with other outsiders. As discussed in Chapter Three, staff were hostile and suspicious of me. They were also critical of management and typically opposed managerial decisions. They criticised new 'CMs [custodial managers] who come in and try to put their stamp on it, and it's just wrong, and it never works' (James). They also criticised the SMT, for making decisions which contravened

standard practice in the Unit. These decisions might concern unlock levels or prisoner entitlements (for example, Vape pens or refills):

> You have people from higher up come and give their two pence worth on prisoners that they have no idea about, who they've had a two-minute chat with at the door. And, because they've got more stripes, prisoners think they can get more out of them. So, they will be nice as pie to them. Higher up will then say 'well he doesn't need to be that unlock level'; 'he doesn't need to be this, he doesn't need to be that'. But I threatened to down tools the other week because someone was saying that. So I said 'you go open the door then, go open it on your own then, because I'm not playing that game'. Our safety is just as important as anybody else' – as important as theirs [prisoners] – and sometimes, I think, that gets forgotten. (Holly, staff).

> I: And what do you think is the most challenging or your least favourite part?
> R: The politics probably…I suppose it can be frustrating because we're the ones that have to face them [prisoners] everyday. We're not the ones sat behind the desk making decisions about their lives; we are their lives. And we are the ones that bear the brunt of whatever decision the people sat behind the desk are making. (Jessica, staff).

> Governors stick their nose in and they don't really know what they're talking about. Some will make decisions and promises that cause a lot of problems – say they promised them Vapes or tobacco – and they haven't even consulted staff…and that causes problems, so that's not good. (James, staff).

These frustrations were not unique. Many staff relayed their frustration with senior management who they perceived as making decisions with little or no staff involvement. A common corresponding complaint was that staff felt forgotten and under-valued:

> A lot of managers would be more concerned about how the prisoners are [rather] than the staff. Some of them are not at all interested. As long as the work is getting done, they're not interested in how the staff are. So it just depends on the governor. Some of them will put the prisoners first, and their opinions and their well-being, before the staff. (Phil, staff).

> We've had to deal with so much but we just never really get the credit for it. Someone got assaulted the other day, the governor came up briefly, but we're sort of forgotten about. They just expect us to deal with it – and we do expect to deal with it – but we should still get credit for the job we do. And I don't think we're appreciated as much as we should be. (James, staff).

Many staff members described feeling neglected and unappreciated by management. They felt management expected them to be tolerant and resilient, to accept that violence came with the territory. The criticism and scepticism towards management fuelled the group solidarity and oppositional status, and reinforced their power. In fact, some senior managers described feeling 'intimidated' by the Unit and felt uncomfortable going there. This resentment and hostility towards management, as well as other outsiders like 'guests' (and researchers) reflects the cynical orientation, hostility and suspicion identified by Liebling and Kant (2018, p. 221) in the 'traditional-resistant' culture of Pentonville prison. Liebling, in her earlier work, identified how staff attitudes towards their work and management team can directly impact their behaviour and, as a result, the experiences and outcomes for prisoners (2007, p. 118). Cultures in which staff felt 'undervalued, alienated or distrustful', were more likely to be experienced by prisoners as unfair, less caring and less safe (Liebling, 2007, p. 118). Staff attitudes matter. They can substantially impact prisoners' experiences, and can directly contribute to the survivability of the prison. In the Unit, staff attitudes were often unsympathetic, and hostile, both towards management and other prisoners. The occupational and organisational working environment may explain these attitudes; specifically, the severe isolation and structured regime did little to foster more humane attitudes, nor the 'right' staff-prisoner relationships (Liebling, 2011). Importantly, the attitudes coalesced in a clear 'us versus them' attitude, although this was not just reserved for prisoners. The Unit functioned according to a 'paradigm that distanced or denigrated' non-Unit staff, managers and prisoners (Liebling & Kant, 2018, p. 221).

## 2. Culture, rules and discretion

The culture of the Unit was characterised by a preoccupation with 'getting the regime done'. Staff were detached from prisoners, often viewing them with suspicion and distrust. They also viewed non-Unit staff and senior managers with a similar level of distrust and scepticism. Importantly, there was consistent and omnipresent fear in staff – they perceived their environment as dangerous, violent, uncertain and most described a level of anxiety that never quite left them. The culture, generally 'traditional-resistant', was an important contextual factor, which influenced the implementation of the rules (legal and non-legal) and the exercise of staff discretion and judgment. The point is, adherence to rules and laws is bound up with the exercise of discretion; and certain cultures can foster positive, careful exercises of discretion (like the 'professionally supportive' one) or punitive, discriminatory and careless use of discretion (like the 'traditionally-resistant' one).

As discussed in Chapter Four (and in the introduction to this chapter), there is a substantial amount of discretion and flexibility in both the legal and non-legal rules. There is discretion in the operation of Rule 45, PSO 1700 and the Local Site Rules. They are intended to be used flexibly, as the circumstances demand. Yet, *too much* flexibility and the exercise of *too much* discretion is risky. Sparks et al. (1996, p. 272) warned how 'consistency is one of the chief terms that prisoners use to assess the fairness or legitimacy of the treatment they receive'. If discretion is used in varying ways, to achieve variable outcomes, it poses problems for the 'justification' of those decisions; and may exacerbate grievances and frustrations amongst prisoners (Sparks et al., 1996, p. 272).

The importance of officer discretion, to prison work, is not a new area of inquiry. Criminologists have identified the important interpretative function of prison officers, how they exercise discretion, and how they make judgments about how to apply the rules (Crewe, 2009; Liebling, 2000, 2008; Liebling & Price, 2003). Staff cannot deal with prisoners in a rigid, 'rule-bound manner' (Liebling, 2000, p. 345). Staff must use their discretion to decide how best to manage a situation or a prisoner. Exercising discretion is accepted as a fundamental part of the prison officer's role (Liebling, 2000; Liebling, Price, et al., 2011). It would be impossible for officers to adhere to, and enforce, every rule in prison (Liebling, Price, et al., 2011, p. 123). Officers have to make a choice about which rules will be followed, which will be ignored and which would be stretched (Liebling, Price, et al., 2011, p. 123). They make compromises with prisoners or 'under-enforce the rules' (Liebling, 2000, p. 343) and may turn a blind eye to minor infractions (Crewe, 2009, p. 86).

In the Unit, staff discretion featured in various ways. Staff exercised their discretion in the initial decision to segregate; in their decisions pertaining to the period of segregation; and in determining whether prisoners should be returned to the wings or transferred elsewhere. Discretion also featured in the routine decisions of staff, which concerned prisoner 'entitlements' (to radios, TVs and curtains) and 'privileges' (extra tea packs, additional blankets, visits to the library or chapel or opportunities for work in the Unit). These decisions were not made according to the formal Incentives and Earned Privileges Scheme, discussed elsewhere (Liebling, 2008) but instead arose from the established ways of working, those which governed the daily prisoner experiences. These informal rules and ways of working were not prescribed by formal rules or documents. Instead, they comprised knowledge, experience and judgments, which were all informal, tacitly known, and invoked in staff daily routines (Giddens, 1984).

Discretion thrived in the Unit partly because of the nature of the rules: the PR 1999 were broad and ambiguous, and explicitly authorised discretionary judgments of the governor. Moreover, PSO 1700 and the Local Site Rules contained substantial amounts of discretionary power; and they neglected the various daily operational decisions that staff made. However, the operational and cultural context was also an important factor in the exercise of staff discretion, whereby staff had: (i) variable knowledge of the rules and different approaches to decision-making; and (ii) divergent attitudes towards the rules – some preferred rigid enforcement of the rules, whereas others favoured an individualised approach. Together, they contributed to an environment which failed to encourage the 'right' (or 'wise') use of discretion, where staff lacked the 'moral courage' to wield their power sensitively and consistently (Liebling, 2000, p. 346). Instead, staff exercised their discretion in inconsistent ways and facilitated a regime which, at times, was neglectful and punitive (Liebling & Kant, 2018, p. 212).

*Knowledge and decision-making*

> I don't really read them. Well, there's PSO 1700, I think it's the seg one, and, again, I should really know it, but I don't really take much notice of it. I probably know most of what's in it, but just from doing my job rather than actually sitting down and reading it. (James, staff).

> I do think sometimes, I think I should read these different instructions, orders, and even like the seg rules. I've never read the orders or seg rules. I just know the important rules, because I know which ones everyone enforces. But I think I probably should read that other stuff. (Oli, staff).

> I don't really know what the rules are, so I dunno. Rules of segregation…filling out the paperwork to keep a prisoner in the seg, seg meetings, those are followed. But the local procedures, of what they can and can't have, who moves where and what and why…I don't know what they are. (Charlie, staff).

During fieldwork it became clear that staff had variable knowledge of the rules and local norms which governed the daily operations of the Unit. Most staff, like Charlie, could identify the main processes – segregation review meetings, 14 and 42 day approval processes, and the corresponding paperwork. However, the majority of staff were less clear about the rules which governed daily decisions relating to, for example, informal entitlements and privileges. This was driven by the limited implementation of the Local Site Rules. The most recent

version of the localised rules was finalised in February 2019. During fieldwork, the rules had not yet been issued to staff, and I only received a copy of the updated rules after completion of fieldwork. It was not wholly an implementation problem: most staff were ambivalent towards the Local Site Rules[67] (including towards the older version, which was implemented six years previously); some staff were unable to recall the content or even where the rules could be found. As a consequence, staff relied on rules of thumb – ways of working which they learned from each other – rather than any formal rules. As one member of staff described, the lack of formal guidance or localised rules meant 'Spanish practices developed…we do things because that was always the way, it's always been like that' (Trevor, fieldwork notes, p. 7). However, this system of 'Spanish practice' was criticised by a number of staff in the Unit. They were sceptical about the basis for certain behaviour and practices, which seemingly resulted from entrenched habits and customs rather than any considered or informed plan or intention:

> Some staff say to other staff, in the morning, that the prisoners have got to take their curtains down before they do their rounds. Whereas, to me, that doesn't really make much sense. If I can see in to the cell, as long as I feel that I'm happy, and if their light is on and I can see what's happening, then I'm happy…but no one really knows why we say that…but it's one of them things, like certain rules…So you can't take a roll-on into a shower, roll-on deodorant. Well, why can't you take it in there? I don't know, just someone said once that they can't take it in there… So, what is someone going to do with roll-on? It's just things like that. I think, to a degree, the rules and stuff like that do need updating, or like clarifying, because I've no idea why we do lots of things we do.
> I: Would you let someone take roll-on deodorant…?
> R: No, I won't let them, because I know they're not allowed, but I don't know why they're not allowed. And when they're like, 'why are we not allowed to take it', and I'm like, phoo, I don't know I just say 'you're not allowed to'. (Oli, staff).

> There was a rule that prisoners could only have six books in their cell at any one time. A completely pointless rule…it didn't make the place more safe…It was just a rule because it had always been the rule. (Richard, staff).

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[67] There was also a strong ambivalence towards PSO 1700. Staff were critical of its guidance and dismissed it as having little practical value. Pete expressed frustration at PSO 1700 for being long, out-dated and not particularly applicable to the realities of the Whitemoor Unit. Alan complained that PSO 1700 achieved little in practice, other than introducing additional paperwork. For him, PSO 1700 was burdensome and of little influence on the conditions or regime in the Unit; the paperwork did not improve the material conditions, or lead to a better-running regime. It was simply an illustration of the recent increase in bureaucracy in the prison (see Chapter Six).

The only people who can have televisions are 'level one' prisoners, with two officer unlocks, but why should prisoner property be determined by how many staff need to move him around the Unit? The whole point of the unlock level is…Well it's how many staff will be needed to make it safe to move the prisoner around the Unit. But back in their cell, they might be absolutely fine. We just do this because 'that's what we've always done', but no one really stops to question 'why?'. (Richard, staff).

The rules, well, they're totally bendable. Because, I mean, I just think a lot of problems that we have, we kind of create ourselves. Take Nazeer, who is down here for his own protection, why has he been told that he can't get 'enhanced' while he's here, but Price, he's threatened a prisoner, held a knife to his throat and he fought to come out of his cell in healthcare...why is he enhanced, and why has he got his PlayStation and everything else? (Steph, staff).

Staff had to apply rules which they considered lacked a legitimate basis. Some, like Steph, Richard and Oli, felt their day-to-day working practices were governed by entrenched established practices. Those practices were learned from (and therefore perpetuated by) each other. One of my interview questions asked 'how do you know whether someone could have an extra blanket?'. It received fairly consistent responses: 'from the other staff', 'from the lads'. As Oli explained 'well, if I didn't know what they could have, I'd just ask the others… someone here would know the answer'. He further explained:

Obviously… you learn from others, from people. Like when you first come down here, you watch people, you see how people work, and see what other people do, and you're picking bits of what you like from these people, then that's how you kind of mould yourself, I guess.

'Learning from others' and 'on the job' training is part of the prison officer role (Liebling, Price, et al., 2011). It works well when there are clear, agreed, established ways of working, to ensure there is some consistency in staff decision-making. However, staff had wide-ranging attitudes towards allowing radios, extra blankets, tea packets and so forth. Some would allow prisoners to have them whereas others would not. As such, decisions became individualised – dependent on the member of staff. As Jack illustrated, when I asked 'why don't you ask prisoners to take the curtains down in the morning?' he replied 'Because I'd hate to be in their situation and have the sun glaring in at me at stupid o'clock in the morning'. The individualised approach meant outcomes depended on the member of staff making the decision, and their broader attitudes towards risk, rules and discretion. Importantly, staff diverged in the latter, with some preferring a more rigid approach to rules whereas others advocated for flexibility.

*Perspectives – rules and discretion*

Officers approached discretion in different ways. About one-third of staff advocated for the rigid application of 'rules'. For the most part, staff who advocated for a more stringent application of 'rules' felt strict adherence would keep them safe. For James, the rules reduced the risk of 'things going wrong' and therefore helped ensure his own physical safety. This view was shared by Oli 'at the end of the day, the rules are there because the rules are what keep us safe'. He then explained how he 'stuck to the rules' because he knew he would be 'covered'. By that he meant that the rules could be used to justify and support his decision, and thereby reduce the risk of prisoners' complaints and staff rebuke. The concept of safety was therefore construed broadly: rules could bring physical safety but also safety from reproach or criticism. For Sarah, the rules were resources for new staff:

> If you are new to the job, or you hadn't got that experience, or you hadn't developed that experience over a number of years, then I suppose your safety is the rules, in being rule-focused. Having the mentality that this is the rule and this is what will look after me, and this is what I must stick to. I think everybody's different and everyone's got their own perspective on it, and it perhaps changes with experience, changes with confidence, changes with feeling safe or feeling unsafe. (Sarah, staff).

Most staff used the language of 'rules', yet often were not referring to the formal 'rules' prescribed in legislation, PSO 1700 nor the Local Site Rules. They were 'rules' in the sense that they were the established ways of doing things. For example, I asked both James and Oli to provide examples of the 'rules' they were referring to. They described local norms, which comprised the following practices: only allowing one prisoner out of his cell at a time; having two members of staff 'on the doors'; one member of staff in front and one behind during prisoner movement; rub-down practices (such as requiring a prisoner to untuck their trousers from their socks); requiring prisoners to return their jackets to the designated hooks after exercising on the yard; and requiring prisoners to remove their curtains in the morning. It is striking that all those practices were intended to ensure the safety of staff (staff-centred as opposed to prisoner-centred). They were also practices which were not contained in the formal rules but had developed, incrementally, within the Unit.

In contrast, about two-thirds of staff described a preference for a flexible and individual approach to rules and local norms. The majority of staff recognised how staff 'bent' the rules but this was necessary: 'when it's regimented, rigid rules, it's only ever black and

white…there is no grey, nothing, no flexibility…but life doesn't work like that' (Alan). One member of staff, when describing the fire incident, explained how strict adherence to the rules may not always produce good outcomes:

> A prisoner down here died as a result of being set on fire from smoking spice, and he died. The CM − because the rules said he had to − left to go to security and do the risk assessment. The rules said there should be three people present to open the cell door − but three people weren't there − so they left him inside the cell with burns, injuries, because the rules say… Is that what we want − somebody is prepared to let somebody burn to death because the rules say? (Terry, staff).

Sometimes violating a rule might be the most humane thing to do.

The majority of staff were more flexible in the way they approached 'entitlements' and 'privileges' like extra tea-packets, blankets or Vapes. Some would provide extra because it was the 'human thing to do' (Pete) and of relatively little consequence or trouble for the staff to provide: 'tea packs, coffee... Well, it's just a bit of coffee…what does it matter? If it's going to help him and obviously it doesn't really matter to me, does it?' (Pete). Others perceived flexibility as important for rehabilitation, the regime and for staff-prisoner relationships. For example, Jack described using his discretion in authorising extended visits:

> A basic prisoner is only entitled to a half hour visit…but, generally, if that's the first time they've seen their family in six months, you might be a bit… if they're okay with you and stuff, you might use your discretion to give them an hour visit − instead of a half hour visit − because it'll benefit them better, and then it'll benefit your relationship better, and then it'll impact on their behaviour. (Jack, staff).

Jack's description reveals the importance of staff-prisoner relationships. Prisoners who were liked, compliant, and well-behaved were more likely to receive additional privileges or entitlements: 'If I like them, or get on better with them, I'd sling them an extra tea pack or an extra shower gel' (Pete). 'If they're a decent con, I don't mind doing that little bit extra for them…like, if I'm on nights, I'll pass the newspapers…' (Tony). The likability of prisoners does factor into staff decisions and use of their discretion. As Liebling (2000, p. 344) identified, staff decisions will be influenced by the knowledge of the prisoner, staff assessments of risk, and, importantly, the relationships they have with the prisoner. Consequently, 'rules matter, but so do the relationships' (Liebling, 2000, p. 345).

Those staff-prisoner relationships were very important in the Unit. They influenced an individual's unlock level (and therefore their eligibility for a TV, whether they could collect their food from the servery or go to the bookshelf in the Unit to choose books). The relationships meant some prisoners were trusted more than others. As a consequence, prisoners received different privileges and entitlements. This was not the result of variations in their formal IEP status, but instead arose from their individual relationships with staff. The cases of Joe, Aiden and Norman are prime examples of this.

Joe was a trusted prisoner with a passion for the arts. He was allowed to have paint and brushes in his cell. Whilst some prisoners were allowed 'paint by numbers' and colouring books, Joe had a substantial (and exceptional) amount of art materials in his cell. He was also the only prisoner to paint his cell walls with murals and bright designs. Some staff acknowledged this was important for his mental health – creativity was an important outlet for his depression and suicidal thoughts. Others saw it as unfair, as a form of favouritism, which flouted the existing rules. In fact, some members of staff criticised Joe. Some described it as property damage 'he's damaged our cell with that' and others demanded he return the cell to the original condition 'he better paint it grey when he leaves' (Fieldwork notes, p. 44).

Aiden was allowed to work in his cell, he was asked to prepare 'tea packs' for the rest of the prison. He was also allowed an additional duvet because his cell was cold. Some staff saw this as an important way to keep him busy and distracted, as a way to manage his tendency to self-harm. Others saw this as undeserved preferential treatment (Fieldwork notes, p. 6).

Norman was asked to clean the yards and he received additional payment for doing so. This was a privilege reserved for only a small number of prisoners. Some staff supported this, on the basis that it helped clean up the Unit and kept Norman occupied. Others criticised it, stating that 'seg prisoners shouldn't be out making money doing the yards' (James).

Joe, Aiden and Norman had all been in the Unit for a long time. Staff exercised their discretion in ways which benefited them. They are examples of how the rules can be 'renegotiated' in favour of certain prisoners (Scott, 2006) and, as Liebling (2000, p. 344) acknowledged, discretion can work in two ways. It can be used wisely, to achieve justice, to correct for rules which do not work. However, at other times (as discussed further in the latter part of this chapter), discretion can be exercised to exert authority, for 'new forms of

punishment' and result in substantial injustice (Crewe, 2009, p. 105). Notably, whilst divergent perspectives on discretion can produce discriminate outcomes for prisoners, they can also create substantial divisions for staff. For example, some staff described how the lack of formal frameworks created a 'grey' area of ambiguity:

R: It seems there are a lot less rules now, it seems a bit more of a grey area. When I first got here, you knew what the rules were. I think that was the CM that was in charge, he was very this way or that way. Now it's a bit more wishy-washy. I don't know the word but it's a bit more blurred.

I: Do you have any examples of how the rules have become more blurred?

R: Just like little things, they used to be set: this is what you're allowed in your cell, this is what you're not allowed. Now it's a bit muddled. Now you can have your stereo when you could never have it before. And now certain people can have their own clothes, some can't, whereas it never used to be like that…now, it seems to be more on an individual basis.

I: Which approach do you prefer?

R: I don't think there were as many issues as we get now. Back when it was more stringent rules, they [prisoners] knew where they stood. There wasn't people going 'well he's getting that, why aren't I getting that'. I think it's made it a bit too blurred. I think the prisoners pick up that if they say certain things or kick off in a certain way then they'll be able to get something else. Whereas that was never the case before. They had to behave to get the extra stuff, so I think it's made it too blurred. (Phil, staff).

Staff acknowledged how the 'grey' area created problems for staff consistency. Some staff would pass newspapers between cells, others would give out extra packets of sugar or extra slices of bread:

I've been on nights before and someone [a prisoner] said about passing. I said 'no, you know there's no passing'. 'But why? When some others will?'... It was brought up in the briefing quite a few times where the SOs were instructing staff that you don't pass, you don't give it, nothing. You run off the same hymn sheet. But there's always staff that would do it on the sly, so no one could see them, or they'd do it when they're on nights. It just makes life harder for everyone else. I'd probably say three quarters of staff would stick to it but there's always that quarter, those three or four, that want to be everyone's mate and can't say no. (Josh, staff).

It creates silly little issues. If a prisoner has asked for extra sugar: they get a tea pack once a day, and if they want sugar they buy it on the canteen. But staff − some staff − will get sugar from downstairs, like little sachets and slide it under their door. It might not seem a big issue, but if one member of staff does it that day, and then the next day they don't, or if another staff

member doesn't do it, then it puts them in a tough position; they get a bit of grief. (James, staff).

If everyone stuck to the same line you'd never get the issues because the prisoner would know not to even ask, because he knows what the answer is. But then it causes uncertainty in their head, because they're thinking 'can I get away with it today, can I not?'. And then when they go a few days not getting away with it, obviously they're getting pissed off, and they can end up losing their shit. Like they did over a slice of bread. (Josh, staff).

These extra 'privileges' were only small additions to prisoners' daily lives but they took on much significance. When staff were inconsistent, it created frustration for prisoners. It also created a sense of resentment and a lack of understanding for the differential treatment of prisoners:

Another time I asked for mackerel and the officer said 'nah the officers have gone', and I said pass it. There's a hole in the door and the officers pass it through… and he goes, 'no, I can't pass it through there'. I said 'just open it up and just pass it through. What's so hard about it? I need some food', and he said, 'oh, I can't, I can't, mate'. I was just like – I'm sitting there – one of them would do it yesterday, and I'm like bruv, you're just making my life hard. (Nazeer, prisoner).

My clippers used to be outside, so I used to wait on my bell to get my clippers. And she goes 'why are they taking these from you, you're allowed them in your cell'. And she gave me my clippers. I didn't even know I'm allowed my clippers in my cell. (Nazeer, prisoner).

I was on the phone the other day and saw a guy in the corner cell upstairs [Aiden]. The officer's gone in his cell and asked him for a breakfast box. So they're keeping all their breakfast stuff in his cell. So what's different between me and him? Why is he allowed certain privileges? Yeah. It's funny here. Not used to the gaff here. (Billy, prisoner).

There was a substantial degree of inconsistency in the Unit. Sometimes this was related to a lack of knowledge of the formal rules or local norms governing the Unit (or their inadequate implementation). At other times, it was a by-product of staff attitudes towards the rules and local norms – some preferring to apply them rigidly, whilst others favoured a more flexible, individual approach. For some prisoners this was beneficial (in the cases of Joe, Aiden and Norman) but for most others it led to frustration and a sense that decisions were made discriminately, unfairly and inconsistently.

Importantly, local customs, experiences and shared support for the ideology 'this is how we've always done it' influenced the level of staff engagement with rules and local norms. Daily staff working practices – those which related to privileges and entitlements, ones which had real potential to impact prisoners' daily experiences – were in large part influenced by rules-of-thumb and established methods of working. As a result, the use of discretion, and the corresponding function of law, became subsumed within the culture of the Unit. As Trevor perceived: 'rules back up that culture a lot…sometimes, you're not breaking the rules, but you're pushing against the essence of the rules' (Trevor). This is to be expected. Legal sociologists have long asserted that norms and customs may be more influential than the formal rules, in shaping the different areas of social life. For example, Ehrlich (2002) argued that human activity is governed by informal rules and norms that often have little to do with formal rules and laws. However, whilst this is to be expected, it is not without its problems; and these problems become more concerning in cultures, like the 'traditional-resistant' culture identified in the Unit. When cultures more closely resemble the 'traditionally-resistant' one, staff tend to make decisions based on 'the way things have always been done'; ways of working become embedded in the dominant culture and are difficult to change (Liebling & Kant, 2018, pp. 212, 214). When the dominant culture, as suggested above, is characterised by staff distance, detachment and 'othering', it makes it all the more likely that prisoners will be treated punitively (Haney, Weill, Bakhshay, & Lockett, 2016, p. 132), as they may be perceived as 'undeserving of forgiveness, kindness and humanity' (Liebling, 2015b, p. 110).

*Discretion, punitiveness and punishment*

Discretion enabled staff to make a number of decisions: sometimes the decisions were wise and constructive but, at other times, they were unkind and punitive. The dominant culture permitted the more punitive and neglectful exercise of discretion, and the rules were important mechanisms for justifying and legitimating such punitiveness. For example, when Bilal Patel was brought to the Unit for attacking a member of staff, the response of a Unit officer was 'let's put Patel in the shittiest cell we have', and he was placed into a cell without electricity (Fieldwork notes, p. 50). Exercise was withheld for troublesome prisoners: 'If someone has hit you the day before and they're gobbing off at the door, oh yeah yeah you don't want exercise do you' (Phil, Staff). Nazeer described how a shower was refused before his family visit because he had been 'a bit of a dick that day'. George explained how, when he was 'acting up', after particularly violent confrontation with staff, his visits were cancelled:

My eye was cut open, I had a black eye and my lip was swollen and that's why they wouldn't let me go on my visit to let my family see it. So they told my family I was refusing my visit but I never refused. I would never let them travel all that way for me to refuse. (George, prisoner).

There were instances in which staff were able to use the rules (legal and non-legal) to justify a punitive approach, to support the refusal or withdrawal of 'privileges'. This represents, as Crewe suggested, new forms of abuse; those which no longer related to 'physical brutality or psychological persecution' but instead occurred within the 'bureaucratic folds, through distortions of policy and procedure…whose iniquities cannot be easily discerned, let alone proved' (Crewe, 2009, p. 105). For example, Henry was in the Unit for his part in the 'riot' on the wing, where he injured one member of staff. Henry was brought to the Unit and placed in a cell with a window that failed to close. It was very cold during the winter months. Henry asked for an additional blanket, a request which staff refused, on the basis that it was prohibited under the 'rules'. However, Holly later explained 'he ain't getting a blanket, he's getting nothing…Not after what he did'. Some staff decisions gave the impression that staff acted with retribution in mind. This was not always through actions of 'rough justice' described later in the chapter, but instead through 'going slow', being unresponsive or over-enforcing rules. George described:

If you've done something on a wing in here, assaulted a member of staff or something like that, you can tell them what you want but you won't get it. You'll get forgotten about in the seg. Don't go asking for canteen, don't go asking for your property. You won't get it. And, at the end of the day, you're locked up. So there's nothing much you can do about it. (George, prisoner).

Similarly, Theo explained how, during a long stint in the Unit, he would see prisoners come down with nothing in their cells. He asked staff to pass noodles, toothpaste, basic things, but staff refused. For him, those practices were less about security but more about punishment:

I think it's more about being mean…if someone comes down to the block, and they've got nothing in their cell, and you're trying to get a newspaper or some noodles and that…they've got nothing and not even proper toothpaste, deodorant or anything. You ask the officer to pass it and they'll not pass it. The way they go about it is, it's like they're taking pleasure in seeing someone suffering. That's what I think. It's not for security–what they gonna do with noodles and toothpaste? (Theo, prisoner).

Theo touched on a common thread that featured during both staff and prisoner interviews. Participants described how decisions would be made with the aim of 'security' in mind. 'Security' was applied broadly and, in part, became a metaphor for the use of discretion and unchecked power (Garland, 1990, 2001). For some participants the rhetoric of 'security' was used to justify their placement in the Unit:

> The reason for your segregation is 'good order and discipline' – what does that mean? Oh we cannot disclose the information because it would jeopardise intelligence gathering and national security and that's the excuse that they used all the time – security, security, security – because they hide behind security and that leaves a lot of us prisoners in the segregation feeling frustrated. (Imran, prisoner).

> DST come and take you and say 'oh you're going down the block, we've received intelligence'. But, intelligence of what? 'Can't say'. So now, you're in the block, not knowing what you're in the block for, for a month or two. If you can't think on your feet and no solicitor, you'll just end up sitting there. (Leroy, prisoner).

For others, principles of 'security' were used to justify decisions made in the Unit, such as cancelling visits or placing individuals on 'closed visits'. Billy and Henry (along with Ricky and Shawn) were the main individuals involved in the 'riot' (see Chapter Four). They first had their visits cancelled and then were put on 'closed visits':

> Last week, they cancelled our visits because of what we're down here for. What's that got to do with anything, what we're down here for?…But when the governor sent a letter – the security governor – he's saying 'we've cancelled your visit because of the situation, [because of] what you're down here for, so while you're down here just think about what you've done and don't do it again'.  And 'no visits are allowed until further notice'. But hold on a minute, I should still get my visit. (Billy, prisoner).

> We just got told 'you're going to the seg, security reasons'. It's not fair. In the same way, they want to put me on closed visits, for what reason? I haven't done anything on a visit. I haven't been doing any contraband. I haven't been trying to get no contraband. So why are you putting me on closed visits? My situation took place on the wing, with members of staff that are in seg right now and I'm getting along with them. So what is the problem? (Henry, prisoner).

'Closed visits' took place in a special room where glass separated prisoners away from their visitors. Closed visits are permitted under Rule 34(1) of the PR 1999, which allows the

imposition of restrictions upon communications and/or visits between prisoner and visitor. Under this rule, closed visits can be imposed to secure discipline and good order. Further guidance on 'closed visits' is provided in PSI 2011/15. Paragraph 3.1 describes eight circumstances in which closed visits can be imposed including: in the interests of national security; for the prevention and investigation of crime; for public safety; to achieve good-order or discipline; for the protection of health or morals; to protect the reputation of others; for maintaining authority and impartiality of the judiciary; and for the protection of the rights and freedoms of any other person. The PSI emphasises how 'in the majority of cases these measures will be imposed to prevent the smuggling of contraband through visits' (3.2). This part of the PSI caused most contention for Henry (and others). As Henry pointed out, his behaviour occurred on the wing, not during a visit. Henry, along with Billy, Ricky and Shawn, all described their frustration with the imposition of a practice which they deemed illegitimate. They all expressed how their actions on the wing were unrelated to their risk of 'smuggling'. They could not understand why closed visits were imposed and felt the sanction was imposed as a way to further punish them. As Ricky said 'but I'm in the seg, I'm already being punished. Why are they making it so hard for me to see my family? Closed visits should only be for people who bring in contraband. I haven't done that'.

These prisoner accounts represent only one side of the narrative. There may have been legitimate security concerns behind the decisions to initially cancel and later impose closed visits. I was not able to explore this empirically; I had no access to the security intelligence upon which the decisions were made. That said, these examples valuably illustrate the substantial disparities in knowledge. The prison had a 'monopoly on the technical knowledge and discourse of rules' (Armstrong, 2018, p. 412), which it used to justify its decisions. Prisoners were not always privy to the information or 'intelligence' behind their transfer to the Unit nor behind closed visits. From the prisoner perspective, it was often difficult to understand why decisions were made. As a consequence, it was hard for some prisoners to accept decisions which seemed arbitrary and lacking a legitimate foundation. Staff were able to make extra-legal discretionary judgments and impose informal punishments – the withholding of blankets, preventing access to the exercise yard, or a shower before a visit. Thus, the rules were used to justify staff control and punitiveness, and they protected the interests of the more powerful and dominant staff group (Drake, 2012, p. 135). They provided the 'legal authority' for decisions, but did not necessarily sustain the 'legitimate authority' of the power-holders (Black, 2005, p. 19). In effect, as Scott suggests, the prison could become a lawless institution where decisions on prisoners' daily experiences and circumstances were

not determined by legal rules, but were negotiated and embedded within the local organisational culture and the personal relationships between staff and prisoners (2006, p. 8).

*Oversight and accountability*

There was substantial discretionary power in the Unit, and such power was exercised in a particularly dominant culture. The culture (traditional-resistant) may not always encourage the 'right' exercise of discretion, nor constrain the 'wrong' use of discretion. As shown above, the staff in the Unit were very close. The downside of their friendships, or as one member of staff described 'their family', was the challenge this posed for accountability. During interviews, most staff acknowledged that they would report a colleague if there was a significant issue. This was interpreted as behaviour which warranted a formal response, that which threatened the safety of staff or was related to staff corruption. They distinguished minor violations or behavioural mistakes, which they preferred to resolve personally:

> I: Would you ever make a complaint here?
>
> R: Against who?
>
> I: Could be against prisoners or staff?
>
> R: I haven't done in 15 years. I'd like to think not, but I'd rat out a corrupt member of staff, without a shadow of a doubt; but I'm not really about paperwork, I'd rather do it old school and talk to people and take them into the office and say 'I didn't like that'. I don't get this paper culture. What happened to talking to people and talking it out. Why put it on a bit of paper? (Jessica, staff).

> I don't really want to be seen as someone who stiches colleagues up for no real reason. If it was something serious, like a corruption issue, then I'd definitely put a report in or something. But anything I think I can deal with, just by speaking to someone, I'll do it that way. I think it's better, and I think you get more respect doing it that way. (Pete, staff).

> I: And would you ever make a formal complaint?
>
> R: No. No, I'd never… I'd never paper anyone.
>
> I: You'd never what?
>
> R: Never paper anyone up.
>
> I: What does that mean?
>
> R: I've never put in a complaint against people.
>
> I: Why?
>
> R: It's grassing, isn't it? I mean, if they put staff life in danger or the security of the establishment, I mean, a real, real risk − not like leaving the gate open − then I would paper

them up, if there was like a safety risk, but not for most things. I wouldn't because I'm not a grass. It's a bit like what prisoners say: they'll never grass on each other. But I'd speak to them, rather than go above them, and I might say 'right, this is what you've done wrong' blah-blah-blah…But, yeah, I would never paper someone up. I never have done. (James, staff).

I think we just deal with it behind closed doors…We would deal with it rather than putting a formal bit of paperwork in. Maybe sometimes we should, but that's not really my cup of tea. I would rather just speak to someone about it. If I had an issue with you I would just say 'Ellie, I'm not okay with that'… And we would sort it out that way, rather than me complaining to the governor, or whatnot…(Pete, staff).

Whilst most staff described a willingness to report colleagues over a 'significant' issue, there were some contradictions in their accounts (and as prisoner Scott, below, reveals it did not always translate into practice). Jessica, for example, was keen to stress that she would report a 'corruption issue' but was 'not really about the paperwork'. Pete and James indicated a willingness to resort to formal procedures but stressed the importance of talking to the member of staff. This preference featured in several staff accounts. Many staff favoured the direct approach. They suggested that if someone made a mistake, or if their conduct fell below expectations, they would prefer to speak to them directly. This highlights the important oversight function of staff: they are responsible for holding each other to account and for ensuring that their peers adhere to the rules.

Oversight and accountability functioned through peer enforcement, rather than staff resorting to formal complaint processes. There were several reasons behind their desire to avoid formal procedures and paperwork. Some described scepticism towards formal paperwork, dismissing it as a waste of time or too burdensome. Others revealed scepticism towards outcomes 'what will paperwork really achieve'? (Pete). However, mostly, staff were concerned about the impact that formal complaints would have on their relationships with others working in the Unit. They did not want to jeopardise their friendships or be perceived as 'stitching staff up' or 'grassing' on their friends. Their accounts emphasised the value of loyalty, 'no snitching' and was much like the 'prisoner code'.

However, there were times when 'peer enforcement' failed to uphold rights standards in the Unit. There were instances of abuse (physical and psychological). About half of the prisoners described the Unit as a violent place, and some prisoners labelled it as a Unit of 'rough justice':

It's a place for rough justice. I mean, it's been a place for rough justice for a long time, and I don't think it's about to change…what I mean is, if you assault a member of staff, them officers will come in, with their shields, they'll take a man down. (Nazeer, prisoner).

There's [been] plenty of times I've been down this seg where prisoners have been assaulted by members of staff and a lot of things, like I said, there's no smoke without fire. They're not going to just come into somebody's cell and beat you up for no reason. Usually the guy has assaulted a member of staff or thrown faeces or something. But still you're a member of staff. If that happens to you, that's part of your job, you can't then go in a cell and start stamping on the guy's head. If I did that, I'm down the seg. But down here, if I punched a member of staff now, they'd come in with all their shields and that. [But] it depends: if you comply, then they'll comply. It depends... but they don't follow their rules. (Sam, prisoner).

Most staff recognised a potential conflict between wishing to 'settle a score' and professionalism in the Unit. They acknowledged how less legitimate intentions might cloud their practices. Sometimes, they might manifest in less overtly harmful ways: being slow to respond to a cell bell or to post a prisoner's letter. At other times, the risk or harm might be greater, old scores might be settled through the excessive or the over-use of force:

Well, it's just not decent is it? How awkward is it that Miller gave me a black eye and now I've got to be like 'yeah I'll help you with your problem'. You think 'nah, I've got a fucking sore face because of you. I don't give a fuck about your stupid letter'. (Charlie, staff).

It's quite hard really, when you know your mate has been smacked, or your colleague has been hurt, and you've got to give them a shower and a phone call, and treat them nice…There'll probably be a bit of resentment for a few days, and then you try get on with it. Yeah, it's hard. (Pete, staff).

You've got to take the conflict out of it somehow, and you've got to find a way for it to be alright to treat people that have done bad things well. But that's not easy, particularly when we're tired, particularly when they've hurt colleagues, or the need to want to punish is quite strong. (Terry, staff).

Sometimes, I do think, were we too rough? Were we being excessive with him? But you know what? They've [prisoners] done what they've done and people are going to have really strong feelings about that and, actually, it's human nature and sometimes, if there's a chance, then we are going to go and put a shield in his face. (Steph, staff).

There was one particularly compelling example which featured in many staff interviews. I was informed about Scott, a prisoner who staff found very difficult to manage. He shouted insults and abuse throughout the day, he urinated out of his door, and when staff went in to his cell, he tried to bite, spit and scratch them. He was in the Unit for 8 months. After he was transferred out of Whitemoor, allegations were made that staff psychologically abused him, by goading and tormenting him, and physically abused him through the use of unlawful force (examples included kneeing him in the face and kicking him in the stomach). There was an investigation within Whitemoor. Officially, staff were absolved from all wrong-doing; but unofficially, three members of staff were transferred to work in different parts of the prison. Scott featured in many staff accounts, and several staff revealed concerns about his treatment and dissatisfaction in the way he was managed:

> I said to the CM that 'he needs to go'. I said 'he needs to go for his sake and our sake' because the relationship had broken down so much. Some staff were saying 'yeah, when we go in, we're going to punch him' and I really struggle with that. If the prisoners are fighting back, if they're not doing what they're told then, okay, they get a shield in the face, because that's what they know they'll get if they misbehave. But it's almost that pre-planned goading him, the winding him up, that I really struggled with…He was just an arsehole. He spat at us, he was vile, so I kind of get that. I get how you get to that point. But then, equally, I just think, we're the professionals and this is actually our job and we should be acting in a professional way. So I really struggled, but if I said that to the rest of them they would just call me a goody two-shoes. (Steph, staff).

> I think, when it gets to that point, the governor should be stepping in and saying 'Do you know what? Actually, we've had him for eight months, and other places have only managed him for a couple of months, now he needs to be moved'…because it's not fair on us and it's just not fair on him…some of the stuff the others used to say about Scott, it really bothered me…
> I: What sort of stuff was said?
> R: Well, like, 'oh yeah, we need to go in on Scott everyday', 'we need to check his bars everyday'. A couple of them had a fight with him and they were really, really hyped up. It was just weird. (Steph, staff).

> I: And what's the worst thing that's happened down here?
> R: In a way, although it didn't affect me, probably Scott [because of] the way it affected some members of staff. He got to them. I don't know why he did because, to be honest, I think he

was pathetic. We tried and we tried to work with him and he weren't having any of it... But yeah a few staff let him get to them...

I: Why was that the worst thing?

R: Because of the way he dragged down quite a few staff. It made for a weird atmosphere for a while. I mean, Irene left and never came back. And then other staff, I think they almost became a bit obsessive with him in a way and it wasn't very healthy. They got obsessed with Scott, he was the highlight of the day and everything else was on the back burner. I think it made him worse because [if] people just ignored him he would quieten down. (Phil, staff).

A number of staff reported reservations in the way Scott was treated. Yet those, like Steph, felt unable to voice their concerns. Instead, some members of staff resorted to leaving anonymous notes. I never managed to identify who left the notes and what they contained. However, it was suggested that the notes were attempts by some staff to 'blow the whistle' on Scott's treatment. The notes were not well-received by all in the Unit:

You're dealing with some horrible people. And things happen in the seg and I think they should stay in the seg. A couple of things went outside, and I didn't like that. I don't know if you know what I'm talking about, but notes were left outside trying to grass up the staff, and I didn't like that, so that's one of the reasons I left. (Tony, staff).

The comment from Tony illustrates one of the more troubling aspects of there being a close, cohesive group in the Unit. There was a sense that things 'should stay *in* seg'. This was evident in staff accounts which described their preference for resolving issues directly, without using formal procedures, paperwork, and implicitly without involving senior managers. This was recognised by some managers, who acknowledged that some staff might not 'whistle blow' or report prisoner abuse, violence or mistreatment:

I'm not aware of a culture of brutality. Having said that, I did worry when Scott Whaite was in our segregation unit, what was going on there sometimes…I don't think people would have come and told me that there's something that's not quite right. (Trevor, staff).

Others, such as Pete, made comments which suggested that concealment was needed (sometimes encouraged):

I've seen people [staff] punch people [prisoners] for no reason, or hit them when they're on the floor; and, yeah, I've seen that. I just tell them after 'don't do that when I'm about' because we

don't need it. And that's why people − like Scott Whaite − I did think about him. And I didn't see this, but I knew he was in a bad way. (Pete, staff).

Under these conditions, it makes it difficult for staff to hold others to account. Staff reported a preference to resolve matters directly with colleagues, yet this did not apply to the case of Scott. Scott was a prisoner who was both very vulnerable and a handful for staff, but he needed staff to be accountable. He needed staff to be brave enough to escalate their concerns to senior management, for there to be a system of checks and balances that operated transparently. He needed more than anonymous notes and an *ex post facto* investigation, which occurred after he had been transferred and it was too late.[68]

The staff, above, described a culture which, much like the prisoners' 'no grassing' code, depended on the perceived necessity of loyalty (Bittner, 1970, p. 63; Oliver, 2016, p. 217) . One consequence of this loyalty was an unwillingness to escalate breaches of rules, unlawful conduct or to expose practices like those used against Scott. There was a secretiveness and closed orientation to the group. This was far from the open, honest and non-defensive style identified by Liebling and Kant (2018, pp. 210, 224) in 'professional-supportive' officers. It meant there were weak internal controls on the arbitrary or unfair exercise of discretion.

## 3. Conclusion

Staff culture can have an important role in moulding the functioning of law and rules in segregation units. The culture in the Unit resembled the 'traditional-resistant' type identified by Liebling and Kant (2018). It was characterised by staff who prioritised the regime over rehabilitation, who had deep-rooted friendships and loyalties, and were suspicious of outsiders. They were a group who, in many ways, were united by fear and trauma; traumatised people working in a dysfunctional environment. These conditions made it hard for law and rules to be perceived as valuable resources − are they something which, as a member staff, could keep you safe? Arguably not. Adhering to the law might keep you safe from complaints, rebuke or litigation but, during the immediate day-to-day work of the Unit, had little significance for staff. More important was having a team they could trust, supportive peers, and working practices which ensured they could go home in one piece at the end of the day. Strict adherence to the law (and various accompanying rules) was not always perceived as the way to achieve this. Instead, flexibility and discretion were recognised as important for

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[68] As discussed above, the investigation resulted in staff being cleared of wrong-doing but three members of staff were transferred to different parts of the prison.

ensuring the daily functioning of the Unit. Staff had the freedom to make decisions which directly affected the daily experiences of prisoners. These decisions allowed, at times, for the rules to be renegotiated, sometimes in favour of prisoners' interests, allowing access to greater 'privileges' or favours, but sometimes against them (Scott, 2006, p. 9). Discretion could be exercised in ways which extended, or even contradicted, rules and local norms; as was the case with excessive use of force, denial of visitation rights and the withdrawal of exercise. The rules became optional resources (Bittner, 1970; Liebling, 2000, p. 347), ones which were often secondary to established ways of working. They were subsumed by the culture of the Unit, one which allowed punitive practices to creep in – practices which, in many ways, were legitimated by the rules (or, more accurately, legitimated by the complex combination of legal and non-legal rules, and local norms and custom). Through the denial of privileges, withholding entitlements, or over-enforcement of the rules, discretion could be exercised in punishing ways, to create substantial injustice (Crewe, 2009, p. 105). These practices were permitted (and may even have been facilitated) by the culture of the Unit.

Liebling suggested that most staff will follow a 'set of principles', which create boundaries around or guide the use of their discretion (2000, p. 346), these principles may not always be formal legal rules, but they were grounded in a clear organisational vision (p. 346). They could be established by the 'good staff', those able to create positive ways of working and shape the 'wise' use of discretion (p. 346). What matters, is that those principles are consistent and predictable (p. 346). However, as this chapter sought to demonstrate, the 'set of principles' in the Unit was largely characterised by: (i) a lack of understanding of rules (whether formal or informal in nature); (ii) substantial divergence in practice; (iii) individualised decision-making; and (iv) inconsistency. As a consequence, discretion was not always bounded or used 'wisely'. In fact, it was sometimes used punitively, to reflect the punitive attitudes of some members of staff; it was driven by 'traditional' ways of working, rather than by any enlightened approaches to practice. This is important because staff judgments – how they interpret and enforce the rules – have a considerable impact on the wider institution. The way decisions are made and applied can influence the safety and order of the prison, as well as prisoners' perceptions of staff, the institution, and their associated authority and legitimacy (Liebling & Kant, 2018). The value of this should not be underestimated. A more 'legitimate' prison – one which has the 'virtues' of justice, recognition and humanity – can 'literally be more survivable for prisoners than others' (Liebling & Kant, 2018, pp. 212, 214).

The unbounded use of discretion can allow misconduct and bad practice to creep in (to greater or lesser degrees). Newburn (2015) cautions about the risks of dominant cultures and the extensive use of discretion. He identified the main factors which contributed towards police officers deviating from the legal rules and becoming susceptible to corruption. He found that where there are: (i) high levels of discretion; (ii) low managerial supervision; (iii) low public visibility; (iv) peer group secrecy; (v) weak governance mechanisms (oversight and accountability); and (vi) 'moral cynicism' – defined as a 'jaundiced view of the world' (pp. 8, 9), police deviance becomes more likely. As this chapter reveals, most of these factors are present in the daily operations of prison officers, and are especially evident in the Unit. In fact, most are intrinsic to their roles, making practices in the Unit particularly vulnerable to misconduct (Newburn, 2015, p. 10). This is concerning when we consider officers' power over prisoners' lives. Prisoners are vulnerable due to their imprisoned status – no longer free citizens and have limited agency– and their segregation status –isolated, alienated and almost completely reliant on staff (Liebling, 2000, p. 335). It is not difficult to see how segregation units are sites which have a serious potential for prisoner abuse and staff misconduct.

There endured, in the Unit, a complex relationship between the formal rules (legal and non-legal) and informal local norms and customs. All were used, to varying degrees, to secure acquiescence of prisoners, to legitimate decisions and to reinforce the dominant culture of the Unit. The 'law' was sometimes a 'blunt' instrument (Hawkins, 1984, 2002) for ensuring accountability and upholding principles of justice and fairness (Scott, 2006). In this context, the rules did not always function in accordance with the rule of law; they were not always used fairly and indiscriminately; were not free from bias or exercised in good faith.

This chapter is not intended to paint a picture of despair. In fact, it reveals important opportunities for reform efforts. Firstly, I identified 'knowledge' and 'implementation' problems. i.e. the majority of staff had poor knowledge of the rules; which was a consequence of the poor implementation of the rules (the PSO 1700 and Local Site Rules in particular). Better and more regular training could overcome this. Secondly, the chapter identified a constellation of factors: pressured regime; distant staff-prisoner relationships; close and powerful staff relationships; fearful and anxious staff, which coalesced into the distinctive 'traditional-resistant' culture. Culture is directly related to the implementation of new rules or policies; specifically, the extent to which staff will embrace and implement them (Liebling, 2007, p. 8). Importantly, cultures characterised as 'traditional-resistant' are less likely to embrace organisational change (Liebling & Kant, 2018). The culture may severely undermine

reform efforts. Consequently, reform efforts which focus solely on redrafting the legislation, PSO 1700 or Local Site Rules, are unlikely to achieve substantial change in practice. Instead, efforts should be directed towards tackling some of the cultural factors in the Unit, those which led to the punitive exercise of discretion and unkind, dispassionate practices. For example, staff could be rotated[69] more frequently; members of staff could be assigned responsibility for specific prisoners, for ensuring their needs are heard, and encouraged to cultivate the 'right' relationships; firmer management could be practised in the Unit e.g. removal of the 'wall of shame' (discussed in Chapter Three) and a ceasing or reduction of derogatory references (like the 'Fussy Sod Board'). Moreover, reform efforts should not be limited to clarifying or extending legal mechanisms or regulatory powers. The above shows that staff practices are driven by organisational and occupational culture as much as they are the rules (legal and non-legal). As such, any reform efforts will need to be comprehended and endorsed by officers, which will require substantial staff involvement and staff 'buy in'. Finally, we should remember, prison officer culture is not static (Whitty et al., 2001, p. 231): it can be changed. Staff have an interest in embracing changes which improve prison conditions. Staff spend a high proportion of their lives in prison: 'the living conditions of prisoners are the working conditions of prison officers' (Whitty et al., 2001, p. 232). However, law and policy reform, alone, may not be the 'right' mechanisms for this change.

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[69] Whitemoor has a policy that staff should only spend three years in the Unit, after which they would be transferred to a different part of the prison. However, several staff members had worked for 'two terms' i.e. five years and, on average, had spent three years in the Unit.

# Chapter Six – Law and Context: Application, Accessibility and Authority

[W]hen I first got segregated I didn't have a clue what was going on. I couldn't understand why I was put into segregation. No evidence was brought and I was willing to sit with the governors and ask them what was the issue, or the IMB…what I found was, there's all these veils and veils, you have to take a barrier down before you can move on and then you find another barrier, you take that one down, then there's another one and you can't get to the root cause. (Imran, prisoner).

I: So, would you say you have faith in the law?
R: No, definitely not. Definitely not. No. And that's scary, when you think about it. It is, innit? (Theo, prisoner).

R: What law? …There ain't no law here. (Nazeer, prisoner).

In the previous chapters, I demonstrated how the functioning of law was contingent on prison staff, those primarily responsible for the implementation of rules and processes. Staff had a fundamental role in determining when segregation was used, how it was used, and how it was experienced. They also had a fundamental role in shaping whether segregation was used fairly, indiscriminately and consistently: they were instrumental in giving effect to the rule of law. Staff also performed important oversight functions: not only were they responsible for complying with the rules, themselves, but also for ensuring that their peers complied with the rules (and escalating or enforcing any alleged non-compliance). Staff were important for ensuring there was accountability in the Unit. To an extent, there is an implicit expectation that staff will act in good faith (importantly, the 'rule of law' is contingent on good faith) (Jacobs, 1977, p. 116). Yet there is also an implicit recognition, in the complex web of rules, that staff may not always do so. This is borne out by the systems of rules and processes which are implemented in the Unit (such as internal and external approvals, segregation review boards, monitoring by the IMB etc.). Such processes are designed to constrain staff discretion, uphold fairness and ensure segregation is used proportionately, for the 'right' reasons and in the 'right' ways. Implicit in these processes (or safeguards) is the recognition of prisoners' vulnerability and the unequal distribution of power. Rules and processes may be one of the few ways in which prisoners can be protected and empowered.

In this chapter, I focus on how the law, rules and processes are implemented in the Unit. Specifically, I discuss some of the structural and environmental constrains which shape the *application*, *accessibility*, and *authority* of laws and rules. The chapter is structured in three parts. Firstly, I focus my analysis on three procedural processes: (i) internal and external approvals (and accompanying paperwork); (ii) the visitation process (from members of the IMB, Chaplaincy, SMT and MHT); and (iii) segregation review meetings, which best illustrate the prison's preoccupation with *proceduralisation* and *risk mitigation*. They are examples of how prison work has become proceduralised, embracing 'rational legal bureaucracy' (Jacobs, 1977, p. 119). These are internal safeguards, which could, in theory, help protect and uphold prisoners' rights. However, in practice, they protect the organisation ('legal proofing') (Whitty, 2011, p. 129), by making it more legally defensible. The emphasis on procedure erodes the opportunities for engaging meaningfully with prisoners' rights and means these processes may not always be experienced as fair, just or reasonable.

Secondly, given the limits of the accountability mechanisms, identified in Part One, I go on to discuss the importance for prisoners in 'taking law' into their hands. Specifically, in Part Two, I consider the extent to which prisoners can rely on, or *access*, legal processes and resources, including: (i) the ease with which they have access to legal know-how; (ii) recourse to legal advisers; and (iii) access to, and utility of, engaging with the accountability mechanisms, like complaints processes and segregation review meetings. I suggest that these are important mechanisms for protecting and sustaining prisoners' rights. However, the organisational structure and operational practices of the Unit make it very difficult for prisoners to access and engage with certain legal protections.

In the final part of this chapter I discuss the implications, for prisoners (and the institution), of the weak *application* of safeguarding processes and the limited *access* to legal resources and mechanisms. I draw on prisoners' accounts and experiences to suggest how prisoners typically responded in one of two ways. They were either: (i) galvanised to educate themselves on law and rules, however best they could; or (ii) they became frustrated, defeated and cynical towards rules and law. The latter view was more commonly held by prisoners in the Unit. These views, as other research shows, can be found elsewhere in the prison system (Crewe, 2009, p. 124; Sparks et al., 1996), however, they were particularly acute in the Unit. The Unit was occupied by prisoners who were cynical towards the law, rules and processes; they had a distinct lack of faith in the law. Law was a euphemism for power; it privileged the powerful and justified arbitrary decision-making. The law provided the legal *authority,* but

not the legitimate authority, for the decisions and practices of the institution. Participants' accounts suggest that 'law' may not be perceived to be 'working' well (i.e. perceived as giving effect to rule of law principles) in illegitimate places or institutions.

The main theme of this chapter is that prison processes can provide opportunities for constraining power and discretion, for encouraging fairness and equality, and protecting human rights. Thus, they are important conduits for effecting, or undermining, the rule of law. However, I suggest that when legal protections are *proceduralised* – and access to legal mechanisms and resources are limited and constrained – there is a corresponding risk that rule of law principles (like fairness, consistency and equality) are eroded. As a consequence, the possibilities for creating (or sustaining) the legitimacy of the institution (see Sparks et al. (1996)) are diminished.

Useem and Kimball (1989) introduced the concept of legitimacy to prison sociology. It has been developed by subsequent researchers (such as Carrabine, 2005; Scraton, Skidmore, & Sim, 1991; Wooldredge & Steiner, 2016) and of importance here, by Sparks et al. (1996), who provide a compelling account of legitimacy in their analysis of order in two maximum security English prisons. For them, legitimacy had a number of facets including the 'centrality of fair procedures and…consistent outcomes' as well as 'the quality of behaviour of officials…[and] the basic regime of the institution—its accommodation, services, and activities' (p. 89). Importantly, conformity with the letter of the law and 'close adherence to the written rules' (Holloway & Grounds, 2003, p. 139) are 'key to legitimacy and fairness of the internal order' (Whitty et al., 2001). Thus, laws and rules are an important facet of legitimacy: they can be conduits through which legitimacy is created or diminished in prisons. By this I mean the *application* of law (how legal rules are applied and discretion exercised) as well as the *accessibility* of law (in terms of legal advice, knowledge and resources) can both influence perceptions of fairness and justice. Every ignored complaint, every arbitrary refusal to access the PSOs, every unnecessary bureaucratic delay, every unsatisfactory segregation review meeting, every petty decision and every perceived miscarriage of justice can threaten the legitimacy of the institution (Sparks & Bottoms, 1995, p. 60). Therefore, the law (perceptions of, and engagement with) presents an opportunity through which the legitimacy of the prison can be re-evaluated, reaffirmed and called into question. This is important because if practices, decisions and processes are deemed fair and just (and the ways in which law is wielded and perceived is just one of the contributors to this assessment), they will more likely be accepted and complied with (Tyler, 1990). As such, the legitimacy of routine

encounters, daily interactions, staff decisions, regime operations (and not forgetting the underlying presence of law in these), are integral to the 'success or otherwise of a prison in sustaining order over time' (Sparks et al., 1996, p. 87).  Thus, laws and rules can go to the very heart of the prison's  'legitimate authority'; they are important conduits for creating, sustaining, (or diminishing), prison legitimacy.

## 1. Proceduralisation of law

> R: I think some of the statutory instruments are more about arse covering than having any real impact and I think sometimes it hinders rehab and stuff like that. I think when you impose stuff, it's never really personalised – demanding review times, all the paperwork, going off to the DDC[70] – I don't think is necessarily helpful. I'm not saying you should segregate people and forget about them, but I do worry that ticking the box becomes more important than what you're actually doing with the individual.
>
> R: And, who is that keeping safe? Oh, it's the organisation. And so we often spend longer protecting the organisation than we do the prisoner. The seg reviews, the ACCT process, they protect the organisation, it is less about the prisoner. The paperwork is there, and the checks are there, but that's just a way of covering, to protect ourselves.
>
> I: To protect yourselves from what?
>
> R: Future litigation of course! (Trevor, staff).

Scholars have written elsewhere that certain prison processes are designed for 'risk management' (Garland, 2001; Hood, Rothstein, & Baldwin, 2004; Kemshall, 2003; Loader & Sparks, 2007); that rules and processes are ways for organisations, like prisons, to manage their operational and, importantly, legal risks. Whitty suggests there is a 'common architecture of risk management' in prisons today (2010, p. 4). Within this 'common architecture', Whitty provides a persuasive account of how legal risk (i.e. the risk of a legal complaint and the resulting litigation) can become framed as an organisational risk (p. 8). He suggests that a failure to manage legal risks can prove very costly for prisons, not just in financial terms but also in reputational and political ones (pp. 10, 11) (see Downes & Morgan, 2007; Sparks, 2000).

During fieldwork, it became clear that many of the Unit's processes and procedures functioned in ways which were intended to mitigate legal risk. This was an area of inquiry

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[70] After 42 days in segregation, approval is sought from the 'Deputy Director of Custody' who has a director role within HMPPS and is charged with overseeing the high-security prisons within their designated area (e.g North or South of the UK).

which arose organically during fieldwork (rather than through any intentional investigation). For example, there was a system for internal and external approvals in the Unit; extensive accompanying paperwork; visitor rounds (from the IMB, governor, Chaplaincy etc.); and segregation review meetings. These safeguards were, ostensibly, intended to preserve prisoners' rights. However, in practice, they largely served the interests of the institution. The paperwork provided the evidence that the institution had complied with its legal requirements: the review meetings and visitor rounds instilled accountability and a sharing of responsibility across the IMB, Chaplaincy, MHT and the operational managers within HMPPS. They provided the evidence that the institution had discharged its monitoring and oversight obligations. As such, the safeguards worked in complex ways and it was not always clear who were the intended beneficiaries.

Importantly, these safeguards (the reviews, approval processes and paperwork) gained prominence after previous litigation, which was initiated from Whitemoor. In *R (Bourgass and another) v Secretary of State for Justice* (2015) UKSC 54, the Supreme Court highlighted a number of failings in the oversight of segregation in prisons. The Supreme Court stressed the importance of internal approvals, like segregation review meetings, as well as external approvals (such as the referrals to the Secretary of State for Justice). The Supreme Court criticised the approach of prison governors, to authorise segregation on behalf of the Secretary of State. For the Supreme Court, external referrals were important mechanisms for ensuring some degree of independent oversight and accountability, and were deemed important for safeguarding prisoners' rights. Soon after the judgment, on 4 September 2015, Digby Griffith (the Director of National Operational Services in the National Offender Management Service) wrote to all governors and directors of prisons in the UK prison estate reiterating the importance of review processes and segregation review meetings. He also informed governors of a new approval process: for individuals held in continuous segregation for 42 days, the prison must obtain external authorisation from the DDC. As a result of *Bourgass,* there was an immediate and direct change to the approval process in prisons. It is an example of how prisons can be impacted by litigation, and how institutional behaviour and organisational methods may need to change as a consequence.[71]

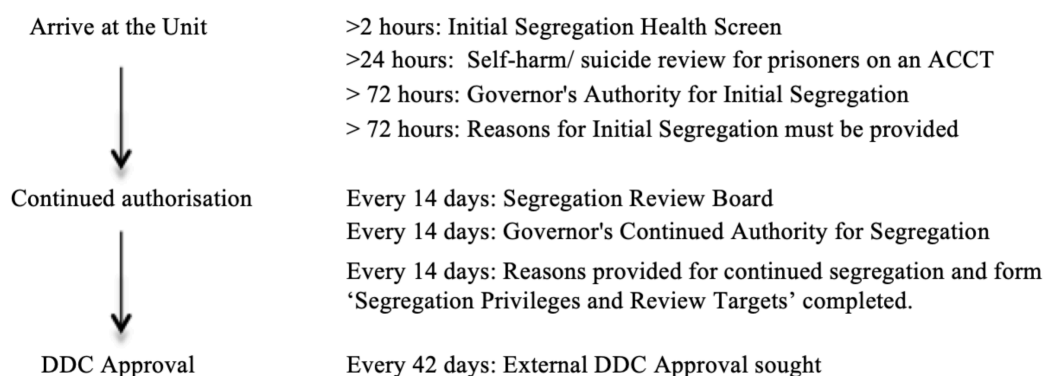Many staff described how, since *Bourgass,* their processes and procedures had been tightened. They described the pressures from the introduction of new, additional paperwork, as well as the demands of weekly segregation review meetings. However, it was not always clear who

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[71] Although, as Chapter Two discussed, such change may not always be as envisaged, nor help the intended beneficiaries of the litigation.

these processes hindered, and who they benefited: Staff? Prisoners? The institution? Therefore, the first part of this chapter focuses on the ways in which procedural safeguards functioned in the Unit. It focuses on three processes: (i) the internal and external approvals (and accompanying paperwork); (ii) the visitation process (from members of the IMB, Chaplaincy, SMT and MHT); and (iii) segregation review meetings. The safeguards were intended to introduce accountability and transparency to the Unit.[72] However, these procedures were heavily criticised by staff and prisoners. The criticisms were rooted in perceptions that practices (like paperwork and review meetings) were bureaucratic processes, ones which occurred because the rules required them to, but were of little benefit to staff and prisoners. They are good examples of how bureaucratic processes can displace the provision of services by staff (Drybread, 2016; Gupta, 2012; Meehan, 1986). The institution encouraged staff to focus their attention on completing mundane tasks (like paperwork, form filing, rubber stamping) and thereby diverted staff away from engaging with prisoners, dealing with their requests and the timely implementation of the regime. The bureaucratic demands overrode the opportunity for meaningful interactions with prisoners; it reduced the opportunity for informed assessments about well-being; and came at the expense of safeguarding.

*Approvals and paperwork processes*

Figure Two: Authorisation Process

| | |
|---|---|
| Arrive at the Unit | >2 hours: Initial Segregation Health Screen |
| | >24 hours: Self-harm/ suicide review for prisoners on an ACCT |
| | > 72 hours: Governor's Authority for Initial Segregation |
| | > 72 hours: Reasons for Initial Segregation must be provided |
| Continued authorisation | Every 14 days: Segregation Review Board |
| | Every 14 days: Governor's Continued Authority for Segregation |
| | Every 14 days: Reasons provided for continued segregation and form 'Segregation Privileges and Review Targets' completed. |
| DDC Approval | Every 42 days: External DDC Approval sought |

When a prisoner is first brought to the Unit, a doctor or nurse should complete the 'Initial Segregation Health Screen' within 2 hours. A governor level manager must then determine whether to authorise segregation based on the outcome of that health screen. If the prisoner is deemed fit for segregation (a determination which, during fieldwork, was upheld in all the

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[72] There was an explicit aim, within PSO 1700, which called for clear lines of accountability for staff, governors and Directors (p. 6).

cases I observed), he will be detained in the Unit. Then, within the next 72 hours, a governor level manager must review the decision for the initial segregation. He/she (along with input from the health team) must then complete the: 'Governor's Authority for Initial Segregation', 'Reason for Initial Segregation' and a Self-harm/suicide case review for prisoners on an open ACCT. The prisoner is not required to attend this review. From this point forward, segregation review meetings then occur every 14 days, during which a governor level manager chairs the meeting and is responsible for completing the documentation: 'Governor's continued authority for segregation', 'Segregation Privileges and Behaviour Targets' and another self-harm/suicide case review completed for all those on an ACCT (PSO 1700, p. 14). If a prisoner is approaching 42 days in the Unit, an external review must be sought from the DDC, an individual outside the prison who sits within HMPPS, and is charged with overseeing the high security estate.[73] During fieldwork, every 42-day case which was submitted to the DDC for external approval was returned as 'authorised'. When I asked staff if the DDC ever refused authorisation, it was met with a definitive 'no'.

Alongside this approval process, PSO 1700 requires staff to complete and retain the following documentation:

- Segregation Daily Diary Sheet: contains details of all staff on duty and visitors to the Unit.
- Segregation Unit Daily Log: includes details of the daily activities prisoners had access to. E.g. exercise, showers, cell clean etc.
- Daily Adjudications Record: includes the name of the prisoner, charge, outcome/award, and adjudicator for all of the adjudications heard each day. It should be completed by segregation staff at the end of the adjudication process.
- Segregation Daily Memo Notes: intended to record any significant events that happen within the segregation unit during the day e.g. control and restraints, use of special accommodation (like 'the box'), comments on the health screen and handover notes for staff (PSO 1700, pp. 6, 7).

PSO 1700 permits each establishment to develop their own records, so long as they capture the key information, detailed above. As such, there is no standardised record-keeping across the prison estate.

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[73] See PSO 1700, pages 22 -33, 40

During fieldwork, I observed how these paperwork practices were not always rigorously followed. When I reviewed each prisoner's personal folder, some authorisations were missing, and some folders were entirely empty. When I reviewed the Daily Log and Daily Memo Notes, they were often short and lacking in detail. Some entries were amended and backdated. For example, on one occasion, staff refused to allow Arthur access to the exercise yard. This was on the basis that, the previous day, he had been misbehaving, 'acting up'. There was no record of this in the Logs. When staff realised this they updated it retrospectively (Fieldwork notes, p. 112, 114). Why do this? By the time they amended the logs, Arthur had already lost his yard entitlement – the paperwork did not change the reality. Instead, importantly, it changed the narrative. The paperwork stated the reasons behind, and was the evidence for, the decision. Significantly, it was evidence that staff had fulfilled their legal obligations. The emphasis on paperwork and form filling illustrates the increasingly bureaucratised nature of prison work and how documentation is important for mitigating institutional (legal) risk.

Staff described how completing the paperwork was an important part of their role. They also vociferously complained about it. It was perceived as burdensome and meaningless. They saw it as excessive and criticised the prison for being overly reliant on paperwork (and the corresponding pressure from the institution for its timely completion):

> I don't like all the paperwork you have to do all the time. There's a lot of just rubbish paperwork. I could do five bits of paperwork for one incident, all different. Paperwork is just rubbish – a real waste of time. (Pete, staff).

> I get what we have to do. I get that with, obviously, all the paperwork, I have to do it. I don't really understand why I have to do it, but I know all the different pieces of paper...I know how to do it, but why we do it, I haven't got a clue. (Oli, staff).

> Obviously you've got loads of papers, and there's the one on 'use of force' and whatever... I think sometimes it can be a bit pressured. I remember when I started in prisons, you didn't have to do it. It was up to you, whether you'd done the use of force paperwork or not. You wouldn't have a time limit. Whereas now, it seems that [within] 48 hours, you have to get it done and you'll get pressure put on you for that…I'm not sure where that's come from but it just has. That's not just Whitemoor, that's everywhere, but they seem to have completely changed their tack on that. (Phil, staff).

Many staff described the prison's preoccupation with record-keeping. It added to their substantial feelings of pressure. It was seen as an evidence trail which protected the prisoner but did little to help them in their daily operations in the Unit:

> I wouldn't say the legal paperwork aspects are for the officers at all, I don't think they protect us, they seem to just go towards them. If we miss a tiny bit of paperwork, I mean the tiniest little signature, that's it, everything is thrown out and he's [the prisoner] got compensation. What world is that? When they're plotting to blow things up and seriously harm people, and not just one person. I mean taking out a whole area of people and we get punished for their behaviour. I just think it's wrong, it's not the right way round at all. It should be that he needs to prove why he should have this and not us proving why we've not done something wrong. I think that's ridiculous. (Holly, staff).

Holly's complaint was typical of many staff accounts. For them, the demands of paperwork were perceived as privileging prisoners rather than staff. They questioned 'who did the paperwork protect; the prisoner or the institution?'. In the eyes of many, it was not designed to assist or protect the staff. For staff, laws and rules were seen as a mechanism which protected the prisoner. Importantly, the processes perpetuated 'us/them' attitudes in the Unit. In effect, paperwork processes were perceived as irritants; they were perceived as diverting power away from staff, by eroding the independence of staff to get on with their day-to-day duties (Murphy & Whitty, 2016, p. 128). For Scott (2009), this outlook was strongly correlated with prison officers who were punitive, authoritarian and who had strong aversions to the notion of prisoners' rights. In many ways, these processes were perceived as mechanisms which confronted and challenged the existing authoritarian style of prison management (Whitty et al., 2001). In contrast, for prisoners, the law was perceived as functioning in ways which protected the institution. Therefore, both groups gave the impression that law was a hindrance; that it undermined their power structures, and unfairly advantaged the opposing group. Conceived this way, law was everyone's enemy.

*Visitor rounds*

PSO 1700 (p. 7) contains an extensive list of individuals who should visit a prisoner in the Unit. Every day, a prisoner should receive a visit from: (i) a governor level manager; (ii) the healthcare team; and (iii) the Chaplaincy team. The prisoner should be visited by the Governing Governor and a member of the IMB on a weekly basis. These visits occurred as required by the PSOs. However, in reality, the visits were a *process* without much substance.

Their visits, and interactions, were often short, with visitors rushing from door to door, and presented little opportunity for meaningful interactions or discussions. Many prisoners described feeling conscious that staff would be listening and therefore felt reluctant to raise any problems or difficulties during these visits:

> They're just following the procedure. They don't care. It's different if they'd come and be like 'you alright? you need anything?' but they're just 'you alright?'…right…tick…next cell. So [shrugs] how is that helping anyone? Because if someone was actually suffering, how would you know they are suffering? When you're not even talking to them. You're just asking them if 'they're alright'. They might not want to say 'I've got this issue and this problem', in front of the officers that you're around, because they want to keep it close to them. Even the Chaplaincy department – the Christian guy – he's alright. He's alright because when I see him he wants to talk but I find it difficult to talk to him, but I don't know why. But the Imam, which is technically my guy, he doesn't do anything. He just says 'oh you're alright' tick. I'm like, all yous are just following procedure. You don't really care. You just want to see me get punished. (Henry, prisoner).

Visitors fulfilled their obligations under PSO 1700 at the most basic level. They discharged their legal duties: they visited daily and weekly (as required) and recorded their visits in the Segregation Unit Daily Log. Visits were often as Henry described: they were short, no more than a few minutes, at each prisoner's door. There was little attempt to meaningfully explore prisoners' health and well-being. Their visits were impersonal, experienced as punitive and lacking in care. Importantly, their obligations were discharged, *on paper,* but lacked the humane substance.

*Segregation review meetings*

Segregation review meetings are required under PSO 1700. They are intended to be a mechanism through which the members of the segregation review board ('SRB') can review and approve (or not) the continued segregation of a prisoner. In making this determination, the SRB should consider: (i) the initial reason for segregation; (ii) the behaviour and attitude of the prisoner since the last review; (iii) the prisoner's ability to 'cope' with segregation; and (iv) plans for the prisoner's transfer or return to the wing (PSO 1700, pp. 11, 12, 13). The meetings require a level of faith and commitment from staff (to be patient, to make time for prisoners and to take the meetings seriously) and prisoners (to attend and engage with the members of the board). However, my research revealed that both were lacking in the Unit. Most staff and prisoner participants were cynical about the purpose, function and

effectiveness of these meetings. There was a sense that segregation review meetings were a superficial safeguard, they were procedures which occurred every week, but achieved very little. In my view, the SRBs were ineffective because they failed to solve the problems which mattered most to prisoners, for example, assisting with lost property or obtaining a transfer.

Sometimes the SRB's problem-solving abilities were constrained by issues beyond Whitemoor. For example, transfers took time to arrange: some prisons refused to accept prisoners from the segregation unit or prisoners were unwilling to transfer to the prisons that would accept them. However, for the most part, their abilities were constrained by the culture and nature of the SRB: there was a lack of joined up decision-making, members were not always proactive, there was a general unwillingness to take responsibility for tasks and members failed to recognise (or were disinterested in) the significance of the meetings (and failed to assign adequate time and importance to them).

The main prisoner complaints related to the composition of the SRB. PSO 1700 details eight individuals who *should* attend the review meetings. These include: chairperson (mandatory); healthcare representative/ MHT member (mandatory); segregation officer; wing/unit personal officer; Chaplain; psychologist; prisoner (for at least part of the board); IMB member (p. 10). The SRB in Whitemoor comprised many of those detailed in PSO 1700. Typically, there would be:

- Chair – Governor grade manager (never the 'number one' i.e. the Governing Governor);
- SO from the Unit
- Two officers
- Chaplain
- Representative from MHT
- Representative from OMT
- IMB member
- Prisoner

PSO 1700 requires the mandatory attendance of the chair and a member of the MHT. For all other members, attendance is discretionary. In Whitemoor, this had the effect of producing substantial inconsistency in the composition of the boards. The same individuals rarely attended for consecutive weeks. Sometimes a Chaplain would attend, at other times a member of the IMB would attend, sometimes a representative from the OMT would attend, but not

always at the same time and rarely with the same frequency. The changing members of the SRB had a substantial influence on the usefulness of the meetings for prisoners. For example, prisoners who were awaiting information on their transfers (often at least half) were dismayed when members of the OMT (charged with responsibility for transfers) failed to attend, as they were not updated on the status of their transfer nor were they given any clarity on their remaining time in segregation and/or in Whitemoor. On many occasions this caused frustration for prisoners who attended the meetings with the hope that their issues (perhaps relating to transfer or relocating back to the wing) could be resolved, only to find that key members of staff were not in attendance. The discretionary nature of the rules (it is not mandatory for an OMT representative to attend) may explain the limitations of the effectiveness of the board. However, it may also be explained by members' attitudes towards SRBs, specifically their reluctance to take them seriously and to prioritise their key oversight duties. I observed how members prioritised other prison duties – other meetings – over their review board duties. There was a lack of commitment from members to attend, which gave the impression that they did not take the SRBs seriously, nor recognised them as valuable and worth prioritising. Moreover, when members were unable to attend, they rarely communicated their updates to other members of the board, to ensure that adequate information and advice could be provided to prisoners.

Moreover, the weekly rotation of the chair had an acute impact on the meetings and the extent to which prisoners found them to be effective (i.e. able to assist with the problems they raised). According to PSO 1700, a prison establishment can determine the most appropriate person to chair the SRB. However, PSO 1700 suggests that, in the interests of fairness, the role should not be assigned to only *one* manager: the chair should be rotated (p. 10). Whitemoor made the operational decision to have a pool of four or five different managers who chaired the meetings. As a result, each week, there was often a different manager. This had the aim of impartiality, fairness and independence in mind. However, in reality these aims came at the expense of consistency and competency. Although lengthy, the fieldwork notes below provide a good illustration of how segregation review meetings functioned:

> Time - 14.10
> Freddie (prisoner)
> Freddie: [He arrived and seemed angry and upset.] He said he was pissed off that he was down here.
> Chair: You're down here because you've been threatening staff.
> Freddie: What threats? [Shrugs].

Chair: So, you're denying it?

Freddie: Yeah.

Chair: Well that's the information we've got. The security information we have says you threatened to stab people.

Freddie: Who?

Chair: Mr Riley.

Freddie: Who is that? I don't understand who that is. I haven't done anything. I was asleep in bed, then at half 12 they came and got me. I was out in the morning and then half an hour later they came and got me.

Chair: What's been said to you about being down here?

Freddie: Only this.

[He got agitated and cross. Jack (officer) tried to talk to him and bent down and said 'come on now, calm down'. Then Freddie said 'don't touch me or you'll see what I'm capable of'. Intimidating, volatile. Unpredictable. He seemed distressed and frustrated].

Jack: At the last seg review, it said he's been deselected.

Chair: So what's the plan for him?

Alan (officer): We don't really know as yet.

Freddie: I don't understand why I'm down here. I can act like a cunt if you want.

Chair: Well let's not use language like that, there are ladies present.

Freddie: I'll talk however I like. I can act bad to prove to you that I need to be here.

Chair: See, you are making threats again.

Freddie: No, I'm saying I could act like that but I don't. What do I need to do? Start smashing stuff up? I've been here a week and I don't know why. I could take the obs panel out and shit out of the block.

Chair: You're being threatening.

Freddie: No I'm not, I'm saying I've been behaving but I don't have to. In the past I've cut people, stabbed people and used violence. I used to seek out sex offenders on the main and attack them. But I came here and said I don't want to do that.

Chair: Alright, well we'll deal with this in 14 days.

Freddie: I'm gunna take the obs panel out now, you absolute fucking dick. Go suck your mum off.

14.25 End (Fieldwork notes pp. 31, 32).


14.35 Harris

Chair: Your case has been referred to the police, you know why you're here?

Harris: No, I don't know nothing. I'm here to listen.

Alan: Your adjudication, which was opened by the governor, has been referred to the police, they'll come have a chat with you. They'll interview you and make a decision on whether to

prosecute. If they decide not to prosecute, then you'll come back to adjudication. Whilst that's going on, you'll be staying with us.

Chair: Your review is in 14 days. Everything alright in seg?

Harris: [Shrug].

Chair: Any questions for us?

Harris: No

14.40 End (Fieldwork notes, p. 32).


14.48 Aiden

Aiden: I'm still doing work, being kept busy doing that.

OMT representative: You've got parole at the end of the month.

Alan: We are trying to sort your stuff for you, the stuff we talked about yesterday.

Aiden: I got another certificate for English [he seemed proud, happy, smiling].

[Everyone congratulated him and clapped].

Chair: Anything for us?

Aiden: Nah.

14.51 End (Fieldwork notes, p. 32).


Chair: God, how many more?

Alan: Two more.


14.55 Simon

Chair: Remind us why you're down here? I've never seen you before.

Simon: Waiting for a referral to D Wing.

Chair: What do we know about this chap? [Said to the room].

OMT representative: He's from Woodhill, was a seg to seg move. He wants to make a change to his life, he wants a referral to D Wing, it's in the pipeline.

Alan: Was it previously a drug problem?

Simon: Yeah.

Alan: But you've been good as gold down here.

Chair: So you want D Wing if you can? Have they confirmed they'll have you?

OMT representative: Not yet but the referral is in.

Alan: Any other issues, questions or problems?

Simon: No. I've started education down here though.

Alan: That's good, so they'll pay you then.

Simon: Yeah

OMT representative: Mental health should be contacted for on-going support for you.

15.00 End (Fieldwork notes, p. 33).

15.02 Nazeer

Chair: Why you down here?

Nazeer: I dunno.

Chair: You've been a naughty boy?

Nazeer: Nah because of conflict.

Chair: You're under threat yeah?

Nazeer: I dunno.

Chair: What's been happening?

OMT representative: Well, we managed to get him a move to Garth, it's not his first choice but I struggled to even get this. We will try for the end of next week. Will you go clear your property up over lunch and work out what to take with you?

Nazeer: Yeah.

Chair: Anything else you'd like to say?

Nazeer: Thank you. I wasn't under threat per se. I was just in conflict and was trying to avoid it.

Alan: We appreciate that and understand.

Nazeer: Now I gotta move.

Alan: Yeah and your enhanced [status], we'll sort it before you leave.

15.05 End (Fieldwork notes, p. 33).

SRB meetings were scheduled for Tuesday afternoons (14.00-15.30). Between eight and twelve prisoners would attend each meeting. The meeting lengths, for prisoners, tended to be short (between five and fifteen minutes), and they varied depending on the chair. In the above, the chair approached his meetings in a brusque and inpatient manner, rushing through prisoners. His meetings were short, no more than five minutes per prisoner. Chairs, like Graham, gave the impression, to prisoners, that the board members were not interested in engaging meaningfully with them ('they don't make any time to really *listen* to what I'm saying', 'all they care about is filling out their paperwork').

In contrast, some chairs approached the meetings in a more constructive way. The better chairs, before prisoners arrived, made enquiries with the rest of the board (about the reasons for segregation, plans for the prisoner and well-being of the prisoner); they familiarised themselves with notes from previous meetings; they introduced themselves and other members of the board; they framed their questions neutrally; probed prisoners comments further; were solutions focused; demonstrated empathy, compassion and patience; made time to listen to prisoners; and tried to work with prisoners, by involving them in the decision-making (e.g. asking how they see themselves progressing) to reach a mutually acceptable outcome:

14.10 Marcus, prisoner

Prisoner entered. Chair introduced himself and others around the table.

Chair: Right, so you're here because you got on the netting on the wing, you then got CC but are now refusing to go back to the wing. What is the purpose of not going back to the wing?

Marcus: I've had nothing resolved.

Chair: What do you mean?

Marcus: Stuff was supposed to be resolved that hasn't been resolved.

Chair: What needs resolving?

Marcus: I overstayed my welcome on the wing. I did all of the courses because I haven't got long left but there's no progression.

Chair: What do you see yourself progressing to?

Marcus: B Cat, because I've done all the courses.

Chair: Doing the courses and learning from them are two different things. You came here because you jumped on the netting to try enforce a transfer. And if I was a Gov at a new jail, I would be asking, have you actually learned anything from the courses when you acted liked that.

Marcus: I didn't want to do the courses but I had to. I would like to go Grendon or the TC at Dovegate. I haven't been in a violent situation for over 6 years. Jumping on the netting is nothing when compared to other violent people who got a move to a Cat B and have much longer left than I do

Chair: What did OMT say?

Marcus: To go back to consolidations [the final part of courses, aimed at 'consolidating' learning], we sorted a plan in January but it is now February.

OMT: You cannot do consolidation from segregation, you will have to go back to the wing.

Marcus: I came off CC last week.

OMT: You need to go back to the wing and then you can sort your consolidation.

Chair: We are not trying to stitch you up. Whilst you are in seg the clock stops. You need to get back on to the wing and get your consolidation done and then you can get to Dovegate.

Marcus: I understand that.

Terry: Are you prepared to go back to the wing?

Marcus: Yeah

Chair: So we won't sign you on, we will take you back to the wing.

Marcus: You better not be gaming the system.

Chair: No. Signing you on is not the best course of action. If I was a governor elsewhere, I would be interested in how long you were in seg for. So I won't sign you on because you are better off on the wing.

OMT: The work won't stop when you're on the wing. It'll carry on – I'll call the psychologists and get consolidation going.

Marcus: Alright

14.27 End. (Fieldwork notes, p. 51)

Simon (prisoner)

14.35

Chair: Last time we spoke, I asked about D wing. Has someone from D wing spoken to you?

Simon: No.

OMT: I spoke to D wing, Simon. The psychologist will come to speak to you in the next few weeks.

Chair: I'm unhappy because it will take another few weeks, and we have spoken about this at your past few reviews. How are you doing down here?

Simon: I've had a bit of stress but I'm alright.

Chair: Do you need help with that?

Simon: It's the anniversary of my dad's death. He died a year ago. I've not had any emotions and that stresses me, I'm supressing it a bit.

Chair: Do you want to speak to anyone about that? Psychology or mental health? We can arrange for someone to come talk to you.

Simon: No, I'm used to dealing with it myself.

Chair: But your way of dealing with it is substance misuse. You might want to consider talking to someone about it. Do you have things in your cell to keep you occupied?

Simon: I have a TV, that's fine.

Officer: I have some activities, painting, art materials, would you like any of those?

Simon: I don't mind art and that, yeah please.

Officer: Okay, I'll put some bits outside your cell.

14.42 End. (Fieldwork notes p.52).

There were important differences in managerial style, tone and relational approach, which had a substantial impact on the meetings, one which should not be underestimated. The chair could influence whether an individual felt listened to, and felt their problems had been resolved, and therefore impacted whether an individual left the meeting feeling satisfied or frustrated. Not surprisingly, the meetings that tended to be better, were often longer, but generally resulted in fewer explosive outcomes (like Freddie above). The effectiveness of the meetings was individualised – in large part dependent on the chair. As such, the meetings were not always consistent in approach nor outcome.

Differences in the chair also brought differences in knowledge and insight into each prisoner. Each week different people reviewed and oversaw segregation decisions. This was intended to introduce impartiality, and reduce the opportunities for bias and discrimination. Whilst a good idea in theory, there was a trade-off. Sometimes, chairs had never met the prisoner before and they lacked sufficient knowledge about why the prisoner was in segregation or how to move

things forward. At other times, there may have been weeks between a chair seeing a prisoner - weeks during which different decisions and outcomes were agreed. As a consequence, I observed how different chairs often had the same, repeated conversations with prisoners; commencing with the chair asking the prisoner: 'why are you here?', 'how are you doing?' and 'what can we do for you?'. There was a substantial disconnect between the chairs. There were several explanations for this; the rotating chair was one of them. However, I also observed how few chairs took the time to read the notes on prisoners from previous meetings. They turned up to the SRBs and looked around the table to other members to provide updates and advice. Moreover, the notes from each segregation review were not always the most detailed, making handovers difficult. Also, amongst the SRB members, there was often confusion about, or denial of, responsibility for a particular action. Consequently, there was a combination of rotating chairs, poor handovers, poor record-keeping and failures to take responsibility, which all contributed to the, sometimes, chaotic and disorganised nature of the meetings. Thus, advice and action agreed in the meetings was often disjointed, fragmented, and tended to roll on from week to week. In effect, problems trundled on, passed on to the members of the next meeting, each time the 'can was kicked' further down the road.

Sometimes the lack of knowledge and joined up thinking was a consequence of the nature of the environment. There was a complex relationship between the Unit and the security team in the prison. The manager and staff working in the Unit were somewhat removed from security decisions, despite being responsible for their implementation. For example, Bilal was brought to the Unit by the security team, but very little further information was provided to staff or the manager of the Unit:

> Chair: Perhaps this is something you can help us with. Have you been told why you are here?
> Bilal: Vaguely.
> Chair: Can you tell us?
> Bilal: You have me down here pending an investigation. Something to do with my offence…That's all I've been told.
> Alan: That's more than we know.
> Chair: We are trying to find out what's going on but security holds all the information. It is very hard for us to decide your future without any knowledge about why you're here. They'll tell you before they'll tell us. So I can't make any recommendations about your reasons for segregation. But we can check out your welfare, do you have activities and things to do? But there's not much we can do until security give us the information.
> Alan: They sent us nothing.

This example illustrates the veil which 'security' can create, one which can affect the functioning and effectiveness of legal safeguards.[74] Security was the 'ultimate trump card' for the prison authorities and it created a discretionary space in which segregation could be justified (Armstrong, 2018, p. 409). Information was not shared with those in the Unit, on the basis of 'security' reasons. Instead, the chair had to seek guidance from Bilal, hoping he could reveal why he was detained in the Unit. This is not how the 'review' board should function. The board should have, at least, *some* information of the reason behind the decision, in order to be able to 'review' and 'monitor' the effect of that decision. In Bilal's case, the chair was not able to scrutinise the decision. His 'review' and subsequent authorisation was nothing more than a rubber stamp. 'Security', here, was invoked as the reason for segregation, it meant the decision could not be disputed and represented an important instrument of penal power (Drake, 2012, p. 88). 'Security' was a concept used to justify violations of procedural rights (violating the right to reasons and information as set out in *Bourgass)*.

Segregation review meetings were a common area of contention for both prisoners and staff. There were many examples from staff and prisoners who both complained that chairs 'did not know what was going on'; and how they felt frustrated with the meetings, which they perceived as ineffective, 'pointless', and a 'waste of time':

> I: Do you go to your seg review meetings?
>
> R: Yeah.
>
> I: How do you find those?
>
> R: Shit. Pointless.
>
> I: Why do you think they're pointless?
>
> R: Because they've got all those people in there for no reason. It's just to tick a box, that's what it is. They've got about 10 people in there and no one is in your corner at all… they're pointless. I don't think I'll go again to the review.
>
> I: How come?
>
> R: Right, so, on the first review they said we were staying down here until transfer. So that was the first one. The second one they said we were staying down here because of the police investigation. In the one after that they said we were waiting for a transfer again. And now, in this last one, they started talking about going back on the wing. So I don't know what's going on. One thing they say one week, one thing they say the next week. (Shawn, prisoner).

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[74] It also illustrates the ways in which processes like segregation review meetings functioned to perpetuate the loss of agency for prisoners: the emphasis on 'we' and 'us' in 'deciding your future' does little to equip the individual with responsibility for their own future.

[I] had a meeting yesterday for my review. When I was at the review, they weren't telling me anything positive. They changed their minds, [they] just don't talk no sense. So I felt kinda down, I felt kinda stressed out…because you're in these meetings, being told stuff and when it gets to the next meeting, there's nothing. Nothing happens. Nothing changes. So that makes you feel like you've got somewhere but you've gone nowhere. (Billy, prisoner).

I mentioned to them in that board, I said 'can you get me to Manchester so I can get my accumulated visits' and then move on from there or Full Sutton. But then when I went on the next review, there was no mention of Manchester.. and she said 'we've got nothing down for you about Manchester'. So it just wound me up. I thought they didn't listen to anything I said in the last review. (Patrick, prisoner).

I think they're a bit pointless to be honest, they just seem to go round in circles, especially the ones that are down here long term who want ship outs. They go there, they'll tell them where they want ship outs, the governor will listen, he will say 'keep your head down, do this, do that'. They go in there next time and the whole room is completely different people, same department but completely different people. 'So what's the plan for you?', the governor will start with, then the prisoner says 'oh don't you know from the last one, they were looking in to this place and this place'. And they will sit there and say 'oh no, I've not got that written down' and it will just go round in circles again and again. That's why a lot of them get frustrated and wound up because they'll go to seg reviews and they will just have to go over the same thing again and again and again and they don't seem to get anywhere for a long time. (Phil, staff).

Fuckin waste of time half the time, aren't they? I really don't like them. I think I end up feeling so helpless, maybe powerless, frustrated and to see people coming in week after week, nothing being done. I can sit there all day long and say 'we will do this, if you do that' but it doesn't get done, for whatever reason. (Trevor, staff).

These accounts reveal the importance of comprehensive record-keeping. The complaints raised by Patrick and Phil suggest that better note-keeping could mitigate some of the disjointedness of the board. Moreover, if board members took the time to familiarise themselves with the notes, or review previous discussions or agreed plans with prisoners, they would be in a stronger position to give the impression that they care, that they listen to prisoners, and that they take their complaints seriously.

Moreover, Trevor's words illustrate the sense of powerlessness and frustration that some board members felt. Sometimes agreed actions were not performed because members failed to take responsibility for them. For example, I observed instances in which the OMT representative thought the officer was responsible for the task, or the mental health member was, and vice versa. However, this powerlessness was also related to broader issues, such as the broader penal climate in which members were trying to reach solutions. For example, members acknowledged how they struggled to obtain transfers because other prisons 'refused to accept' prisoners from the Whitemoor segregation unit, or that secure psychiatric hospitals (sometimes the prisoner's preference) were full. Thus, the board often had limited options. There were few alternatives to segregation which made inspired 'problem-solving' difficult (Hannah-Moffat & Klassen, 2015).

Both staff and prisoners were critical of the role of other actors (like the IMB, Chaplain and MHT), for failing to perform properly their safeguarding functions. Prisoners criticised the IMB and mental health representatives for failing to speak up on their behalf. For example, Billy complained that:

> Mental health were there and the Gov said 'any evidence of this affecting his mental health?' but he just said nothing. I was like 'c'mon bruv, speak up'. I haven't been able to get my medication, of course it's fucking with my mental health (Fieldwork notes, p. 111).

My own observations of the meetings were that the Chaplain, mental health and IMB representatives rarely voiced concerns or objections. Few questions were asked. Papers were passed around the table, quickly glanced at, and subsequently signed. Whilst these representatives may have asked questions and expressed their views outside of the segregation review meetings, I was not able to confirm this empirically. Alex Sutherland, the Chairman of the IMB at HMP Whitemoor (2015-17), has acknowledged some of the complexities of the presence of the IMB at segregation review meetings (2018, p. 50).[75] Specifically, according to PSO 1700, IMB members should not be involved in the 'management decision'; they are simply required to tick 'yes' or 'no' to 'questions of whether procedures have been followed and the decision is reasonable' (p. 50). He suggests that the procedures are usually followed and the range of options is so limited that the decision, in the circumstances, is usually reasonable. However, he questions, when the alternatives are 'so thin', what 'reasonable' truly

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[75] He also identifies some of the reasons for the limited impact of IMB objections to segregation (p.50-51). He explains how, for the last six years, the IMB at Whitemoor recorded profound concerns about segregation, yet the same problems persist. These problems were identified in Chapter Three; little has changed over the years, despite vociferous complaints from the IMB, regarding the regime and conditions at HMP Whitemoor.

means (p.50). Moreover, PSO 1700 specifically states that IMB members should not raise their objections in front of prisoners. Thus, whilst there is an explanation for the silence of IMB members (an explanation which does not extend to mental health representatives, who could have been more vocal), this silence gave the impression, to prisoners, that nobody was advocating for their interests and that the meetings were little more than a 'box ticking exercise': 'why do they all sit there? Just staring at me? When they don't say nothin? Chaplain, IMB, mental health, shouldn't they be sayin somethin? Nah, they don't care'. (Henry, prisoner).

The meetings were often experienced as a hollow process, one which was intended to legitimate decision-making but lacked the substance of such. Staff were aware of the limited role of the other representatives:

> Sometimes, it feels like a box ticking exercise when we have the IMB there, mental health and they don't really say much and they just sign the papers. So I think, if we're here as an oversight function, we're not really doing that, so why are we all here? And then, if you look at all that paperwork… I have to sign about three bits of paperwork…There is so much paperwork, you get bogged down in paperwork. So the process becomes a hindrance, rather than a benefit. (Trevor, staff).

Segregation review meetings are, in theory, an important mechanism for reviewing and authorising segregation decisions. The various actors (the chair, staff, IMB, Chaplain and mental health) are critical for overseeing the use of segregation. However, they authorised decisions without much scrutiny or challenge. They legitimated decisions but failed to perform their safeguarding function. Both prisoners and staff were acutely aware of the problems associated with revolving board members, lack of knowledge, disjointed information, inconsistent decision-making, and a lack of ownership for decision-implementation. The meetings became a revolving door for prisoners. They attended every two weeks but felt little was achieved by those meetings.

They were also experienced as intimidating and artificial environments in which prisoners felt unable to disclose their concerns or difficulties:

> I think I find them very intimidating, because it may be one or two people that I know there, but the rest of them I don't really know. They need to be talking more to the prisoners, getting to know them. So when it comes to the board they've got a little bit of background and a bit of

understanding [about] who is in front of them. Because when I sit here, I think I don't know you, I don't know you, don't know you; and you're not going to get to know me in five or ten minutes, three minutes, half an hour. You need to spend a bit of time. If they're going to be doing seg reviews on prisoners, then they need to go out and about and spend time, or go into the Bubble and spend time, talking to the prisoners. (Joe, prisoner).

I've sat in cells for so many weeks; sat around thinking, ruminating and that's 23 hours a day in that cell with your own thoughts. Then someone comes [and] gets you − it's not like you know the time − and they bring you in this room and you've got all these people staring at you, asking you 'what can we do for you?'. And it's a bit embarrassing, it's a bit awkward. And for people like myself, who suffer from anxiety and that, it's quite difficult to go there and describe how you're feeling. (Daniel, prisoner).

Because I've been in the seg for so long, I don't like being around people and that, it's a bit, I feel awkward, I feel out of place. And to go in there, with so many people around the table, everyone's just staring at you waiting for you to say something. It's intimidating and I never know what to say. (George, prisoner).

One of the explicit responsibilities of SRBs, contained within PSO 1700, is to monitor and review a prisoner's ability to 'cope' with segregation and to assess whether it is impacting their mental health and well-being (p. 11). However, the nature of the SRB − comprising a number of changeable individuals − can limit the extent to which these responsibilities are fulfilled. The meetings were a difficult space for some prisoners: an intimidating environment which made it difficult to reveal their challenges or expose vulnerabilities. Most staff were aware of this. They recognised how 'a room full of strangers' tended to represent a 'trip out of the cell', rather than a positive mechanism through which to engage with prisoners and assess their well-being:

I kind of get that it would be really tricky to come in to a big room full of strangers − never mind if you were emotionally struggling − to get any thoughts out. I sometimes wonder why some prisoners come, because they come but they don't really bring anything, they don't want anything, it's almost like it's just a trip out of the cell. (Trevor, staff).

This analysis illustrates how segregation review meetings were, sometimes, inherently flawed. The composition of the SRB − with numerous and changeable members − perpetuated inconsistency and ineffective decision-making. This was a negative impact which greatly

outweighed the intended benefits associated with an independent board.[76] Moreover, genuine assessments could not be made about prisoners' mental health and well-being: time and space prevented constructive discussions (plans for progression or to hear prisoners' concerns). In many staff and prisoner accounts, the segregation meetings (as implemented) appeared to achieve more harm than good. They perpetuated feelings of frustration, alienation and unavoidable impotence. In many ways, they failed to reduce the risks in the Unit, and in some cases may have even exacerbated them. For example, prisoners' sense of powerlessness and frustration could quickly coalesce into anger and resentment, and provoke severe and dangerous reactions. Often prisoners left the meetings making threats of violence, to 'remove their obs panels' and 'shit up'. These were not always empty threats. Freddie, after his meeting, broke his observation panel and started throwing things out of his cell. Billy, in the evening after his meeting, created a ligature and attempted to kill himself. When I asked why, he explained his overwhelming sense of powerlessness and frustration at the lack of progress and inaction of some staff in the Unit. He described feeling 'fed up' with having the same conversations, with different members of staff in the meetings, and felt he was getting 'nowhere'. Some staff were aware of the detrimental impact of ineffective meetings on individuals. Phil (staff) reflected on the catalyst for the group of 5/6 prisoners who, in 2017, participated in the dirty protest over a period of several weeks:

> I think over 4, 5, 6 months maybe, they became increasingly fed up of going to seg reviews and being told the same thing every week… and I think that is a big problem down here – seg reviews – because they see a different governor every time, there's a different person from OMT every time, they have to go over the same thing and then they [the board] don't know anything about it. I think that's why, it just built up from that. (Phil, staff).

Meetings experienced as unhelpful, dissatisfactory or a waste of time fed prisoners' feelings of anger, anxiety, and powerlessness and, on some occasions, contributed to (perhaps fuelled) grave actions. When the prison authorities prioritised 'procedure', they revealed their preference for *procedural justice*, rather than *substantive justice*. By rushing prisoners through the meetings, approving segregation without much scrutiny, and signing paperwork without much thought, they could demonstrate that the segregation reviews had taken place, and their legal duties had been discharged (i.e. the procedural requirements were satisfied). However, the speed at which the meetings occurred, the lack of attentiveness and investment from the board, and the limited options for staff, meant there was little opportunity to meaningfully

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[76] Board independence was an unlikely, unattainable aspiration, in light of the board composition – always comprising members from inside the institution.

work with prisoners, to identify solutions and reach outcomes which mattered to prisoners (i.e. constructive, substantive outcomes).

## 2. Accessibility of law

The above highlights some of the complexities of the internal safeguarding processes. Staff did not always endorse the processes and prisoners were cynical about their usefulness (i.e. sceptical about whether the paperwork or the segregation review meetings benefited them or protected their interests). Thus, during interviews, some prisoners described how it was important to take 'law into their own hands'. By this, they meant, it was important to have access to their solicitors and legal resources to empower themselves, to try 'fight' the practices of staff. However, it became clear how prisoners did not have easy access to: (i) telephones, which created barriers for contacting their legal advisers; (ii) resources, like the PSOs and PSIs, which were held in the library and therefore inaccessible to prisoners in the Unit; and (iii) accountability mechanisms (like complaints processes and the segregation review meetings). Staff were important gatekeepers for a prisoner's access to legal advice and legal resources; they were important actors who influenced *if, when* and *how* a prisoner's rights were protected.

Firstly, prisoners were entitled to use the phone every other day. Many prisoners identified a reluctance to use their limited phone calls to contact their solicitor. The phone call was a rare opportunity to speak to family members and friends, who prisoners preferred to prioritise. A number of participants discussed their on-going appeals but explained how it was difficult, in the Unit, to contact their legal advisers and therefore difficult to make progress:

> R: My solicitor is trying to sort out this [his imprisonment] situation but, as I said, because being in here, you only get a phone call every other day, it's hard. It's hard to contact him. So it's not really leaving me much room to sort out my situation really.
> I: What would happen if you got to the phonebox to call your solicitor but there was no answer? Would you be able to call back later in the day?
> R: I mean, if you're lucky, you might have an okay officer then maybe, you might. They might let you try again if you explain to them. But normally, no, that's not how it works down here. (Kamil, prisoner).

Since moving to the Unit, Kamil found it difficult to keep in touch with his solicitor. If his solicitor failed to answer, it was effectively a waste of his phone call. Most prisoners were

aware of this risk and therefore chose to prioritise speaking to family members. They put their on-going legal actions on hold during their time in the Unit.

Other prisoners described how the timing of the phone call could have a substantial impact on contacting their legal advisers. Henry, in his first week in the Unit, complained that the staff took him to the phone in the afternoons, sometimes quite late in the day: 'they keep doing this, and I keep missing my solicitor. He doesn't answer after 4pm and they keep putting me on the phone at 4pm'. Thus, prisoners were almost completely reliant on staff and the Unit's routine.

Some prisoners suggested that the limited opportunity for a legal call was 'against the law'. This exposed their outrage and sense that detention, in the Unit, had in many ways violated their legal rights. However, as far as the law is concerned, telephone calls are not explicitly regulated in the main prison legislation (the PR 1999). There is some limited guidance in PSO 1700, which states the restrictions in the Unit must be 'no more than necessary…to protect the prisoner…or to maintain the good order or discipline of the establishment' (p. 9). The guidance further states that legal visits and the use of the telephone should be 'comparable' to that of a prisoner held on normal location (p. 9). According to PSI 2011/49, a prisoner on normal location must be given access to a telephone during association 'and at other such times as are reasonably practicable, depending on the nature of the establishment's regime'. At Whitemoor, on normal location, there were three or four telephones on each spur, available for prisoners during their periods of association.[77] On the wings, these periods of association varied, but they tended to provide at least a 2-hour window in which prisoners could use the telephones. On the wings, prisoners had much more flexibility to determine when they used the telephone and could, if they decided (and their funds permitted), make a number of telephone calls each day. In contrast, in the Unit, prisoners had little choice about when (and if) they accessed the telephone. 'Comparability' was not a helpful barometer. Access to the telephones in the Unit was so restricted that it could not be offered in a way which was 'comparable' to the wings. Moreover, access to the telephone could be withdrawn if a 'prisoner's behaviour and attitude' made it 'impracticable or undesirable' (PSO 1700, p. 15). Access to the telephone, and therefore access to a legal adviser, was not unconditional. There

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[77] These periods varied. The phones could be used between 9 and 10am, before prisoners attended their morning workshops. They could then be used between 4.30 – 7.30pm, after returning from the workshops. There were also periods in the day when some prisoners did not attend workshops and therefore were able to use the phones outside those timeframes. It depended on the schedules for each wing and spur. It also depended on whether the wing was 'locked down'. As discussed elsewhere, during some days the regime was cancelled and prisoners were not unlocked from their cells.

was no explicit right for a legal call in the legal rules (PR 1999) or accompanying non-legal rules (PSOs or Local Site Rules). The PSO makes no distinction between 'legal calls' and calls with family members. The law and rules, as they functioned in the prison, were only of limited value in facilitating access to legal advice. Access to the telephones, and therefore access to a legal adviser, were effectively embedded within staff decision-making and the operation of the Unit's regime.[78]

Secondly, prisoners in the Unit described practical difficulties in accessing legal resources, such as textbooks or copies of the PSOs and PSIs. Some prisoners viewed these as important documents, containing relevant information, for helping them understand, and perhaps challenge, the imposition of segregation. However, the books, PSOs and PSIs were stored in the library. Prisoners could put forward an application to attend the library, however, they were often refused:

> R: So, the PSO is in the library… but we in the seg don't have access to the library. Well, we can put an application in, but I've never had that approved. So, because those books have to stay in the library − the library won't bring them here for people to read them − it's a bit of a double-edged sword. Yes they are there and we've got access to them but we don't really have access to them, understand what I'm sayin?
> I: That's probably the time when you need access to them the most.
> R: Yes, exactly, yes. (Eric, prisoner).

> What it is yeah…we do read it [PSO 1700], us prisoners, we do…because you want to know what your rights are and if staff can do certain things. So we read things like the Human Rights Act and everything that falls underneath that…and the PSI and PSO and all these types of things…but…If I was out of here, I would go to the library, and go find the thing, so I could show it to the governor and say 'look, you're not meant to be doing this'. But, obviously, I can't do that, and they know I can't do that. I'm in the segregation unit so there's nothing I can do about it right now. I'll have to wait until I come out and then try to fight it. (Henry, prisoner).

> You can get them [the books and PSIs] if you put in [an] application to go to the library. Cos there's so much books and PSIs, you need to know what you're looking for. You could go and look at, say PSI 49/2011, that is correspondence and safeguarding, you can go and pay for a

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[78] Although, as Chapter Two discussed, access to legal advisers is also embedded within the wider socio-economic and political environment, which has reduced the availability of Legal Aid for prison law matters.

photocopy…If you've got the insight into what you want, you can get it. If you don't know what you want, you'd be lost. (Shawn, prisoner).

Even if prisoners were granted access to the library, as Shawn described, it required a minimum level of legal knowledge. One had to know what to look for, which book, PSO or PSI was relevant, and this was not always easy to establish. At the very least, prisoners needed sufficient time to review the documents, and resources (pens and paper) to make a note of the relevant information. Neither are particularly abundant in prisons. It also required prisoners to have the financial resources to make and pay for photocopies. Sam (a prisoner in the Unit) explained that it cost 10p per sheet to photocopy in the library. PS0 1700 is a 73-page document, therefore it costs £7.30 to photocopy the full document. Of course, not all pages would be needed but 10p per page is still a substantial expense when considered against the payment opportunities in the Unit, which are often limited and meagre (e.g. 0.28p (basic), £1.41 (standard), £1.52 (enhanced) per session of in-cell education). It was not simple or easy for prisoners to access the relevant legal resources.

Prisons are only under a limited obligation to hold copies of statutes, PSOs and PSIs. The minimum requirement is for every prison to have a copy of the PSOs and PSIs in their library, although access to such can be restricted 'for security reasons'. This was confirmed by the MoJ in its response to a Freedom of Information request in December 2008, which expressed concerns about prisoners' access to PSIs and PSOs.[79] In its response, the MoJ confirmed that prisoners are not allowed to remove the PSOs and PSIs from the library, but may be able to request a photocopy, at their own expense. The MoJ suggested that family, friends or legal advisers may be able to print and send the PSOs and PSIs to prisoners (see Freedom of Information Request dated 5 December 2008). This is not straightforward. As discussed in Chapter Two, there are a number of PSOs and PSIs which have been updated, replaced or entirely removed. It can be difficult, even for those of us with legal experience, and access to all PSOs and PSIs, to work out which are relevant and still in force.

Thirdly, prisoners described challenges associated with oversight mechanisms like complaint processes and segregation review meetings.

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[79] The FOI request stated 'I would like to know the procedures that are in place to ensure that serving prisoners have full and unrestricted access to PSIs and PSOs. Certain PSIs and PSOs (for example, PSI 45/2007) contain template documents that a prisoner can use. I would like to know what procedures are put in place within the Prison Service so that prisoners have access to it and so they have the ability to duplicate such documents to enable them to take them away for reference purposes, or, as in the case of PSI 45/2007, take them away to complete so that they can make use of the benefits that the PSI provides'.

As far as complaints were concerned, the process required prisoners to complete a complaint form and either slide it under the door, or hand it to a member of staff to post in the designated 'complaints box'. Participants raised concerns associated with the lack of confidentiality of this process. Some suggested that staff 'would just read them if they wanted to' (Sam), and others believed that complaints would be leaked to the officers involved. There was little faith in the complaints process, rooted in a broader scepticism towards legal accountability mechanisms (discussed in the final part of this chapter). Participants' perspectives were also influenced by previous experiences in which they had made complaints but received delayed or unhelpful responses. During fieldwork, four participants submitted formal complaints, the content of which challenged decisions such as the cancellation of visits or the basis for their segregation. Two received a response, although it took several weeks (at least three), whereas two others did not receive any response:

> I've written a complaint but they haven't even come back to me. I gave it to the officer and I don't even know if the officer posted it because it was…how many of us put in a complaint…about 1, 2, 3…about 4 different prisoners put in a complaint and none of us have had a reply since. So it's like, what's happening? (Henry, prisoner).

> Yeah, it's not – so the complaint process…I don't think it's for day-to-day complaints, it's for more serious things like if you've been assaulted, or threatening behaviour from staff, it's things like that, that's what it's for. That's what I thought anyway. On top of that, numerous complaints go missing. I've put in so many complaints that I just don't get replies to. So, it's like, you just give up. I've put my time and effort into this, and if I'm not going to get a reply…then why bother?… The complaints process can sometimes be effective, but most of the times it's a joke because it's like a fucking lottery. (Nazeer, prisoner).

> I: Have you used the complaints process here?
> R: Yeah I've put three in since I've been down here but everything is slow here. I put in a confidential access to security about two weeks ago and I still haven't had a response. I put in another complaint about not having a response, and I've not had a response.
> I: What do you mean by 'confidential access to security'?
> R: It's like, you put it in an envelope, so the officers can't read it. So …If I want to complain to your boss, I'll put it in an envelope so you can't read the complaint, kinda thing.
> I: So what was that first complaint about?
> R: About my visits [getting cancelled].
> I: And why don't you want the seg staff to see that?

R: I wanted it to go straight to security because what would happen is…with a complaint form, usually the first response is that the SO will read it, then reply, and they will just fob you off basically. So if I put in a complaint for security, it doesn't go via the SO, so I don't get no dumb response from him. Instead, I put it in an envelope, so no one else will read it and that way it'll go straight to security. (Sam, prisoner).

There was a lack of faith, for many participants, in the usefulness of the complaints system. Most reported concerns about delays, whereas others reported more immediate issues: 'How are you meant to complain, when you ain't got no pen, no paper? Then you have to ask them [staff] for something, but I don't want to talk to them' (Johnny). Accessing the complaints process was much like accessing legal representatives on the phone: it depended on staff. Staff were responsible for ensuring the complaints made their way to the appropriate person – a responsibility which many prisoners had little faith in. Many prisoners described a futility to the complaints process: they recounted how delays in responding to complaints created significant issues; and how such delays contributed to a sense of frustration, powerlessness and anger towards the Unit, its regime and those who implemented it.

Similar considerations were raised in the context of segregation review meetings. The meetings occurred every week, although the prisoner group was divided in two, with only half attending each week. In effect, prisoners attended a segregation review meeting every 14 days, the maximum limit set out in PSO 1700 (p. 10). Every Tuesday morning, staff visited the cells of the prisoners scheduled to attend the segregation review meeting later that day. They asked each prisoner if he was intending to attend. Typically only half would choose to do so. Many were reluctant because, as discussed above, the meetings were perceived as a 'waste of time' and 'unhelpful'.

Importantly, staff had the power to determine whether a prisoner attended their segregation review meeting and, at times, they refused to allow a prisoner to attend.[80] This was justified mainly on two grounds: security concerns and operational constraints.

Firstly, security concerns were sometimes used to justify the withholding of oversight mechanisms, like segregation reviewing meetings. The case of Bilal is a good example of this. Bilal was brought to the Unit and, a few weeks later, started displaying concerning behaviour. He was shouting and screaming out of his cell, he removed the TV shelf from the wall and

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[80] This happened fairly frequently: about three prisoners a month would be denied access (fieldwork notes) and, in the case of Bilal, this happened for several weeks (five+).

repeatedly hit his head with it, he covered himself with water (and subsequently flooded his cell), he wrapped himself in his prayer mat and refused to eat (Fieldwork notes, p. 60). Staff were cautious about Bilal because of his 'unpredictable' behaviour. As a consequence he was assigned a high unlock level, rarely deviating from 'SO+4' (supervising officer plus four additional officers). He requested to attend the segregation review meetings, but his requests were often refused, due to his unlock level. As Steph commented one Tuesday morning: 'I didn't bother asking [Bilal] Patel because he is SO+4', thereby implying he was too high risk to attend the meetings (Fieldwork notes p. 107). In fact, I only observed him attend one meeting, and this was in his first two weeks in the Unit. This worried the Imam who urged staff to allow him to attend the meeting but staff refused, again, on the basis that he was unpredictable and presented a substantial security threat (Fieldwork notes, p. 64).

It is difficult to know whether this was a proportionate response. I was not able to review the security intelligence on which this decision was based (and nor was I qualified to make such assessment). My observation, for the most part, was that he was unpredictable and I could understand why staff perceived him as a threat. However, there were other ways in which this oversight duty could have been discharged. For example, Bilal (with support from the Imam) could have been invited to submit written representations, or staff could have facilitated smaller meetings in the Bubble. Neither of these options were considered by staff, mostly because they represented a break from the norm, a deviation from the typical regime. The point of this example is not to dispute the way in which staff assessed Bilal's risk. Instead, it is intended to illustrate how staff made determinations about risk, which influenced whether an individual was able to attend a segregation review meeting and access one of the safeguarding and oversight mechanisms of the Unit.

Secondly, attendance at segregation review meetings was also influenced by operational constraints and demands. After the 'riot', a number of individuals were brought to the Unit. There were too many prisoners to attend the next segregation review meeting. Shawn, Ricky and Billy attended their meetings a week after arriving in the Unit, whereas Henry had to wait an additional week before he could attend his meeting. The high number of prisoners in the Unit meant the segregation review list was 'too long' and prisoners could not attend the meetings as frequently as intended (Fieldwork notes, p.68). For staff, this was a pragmatic response. For Henry, it produced much anxiety, concern and uncertainty:

> I don't know when it's going to be, I don't know if they're going to take me in. Everyone else has been in apart from me, so I don't get it. We will have to see what happens. It's weird

though, why wouldn't they take me in? I've just been left to sit here whilst all of them go. It's like they've just forgotten about me. (Henry, prisoner)

On other occasions (but less commonly), segregation review meetings were cancelled in their entirety, for a variety of reasons.[81] On one occasion, prisoners were on lockdown, and therefore movements to the showers, exercise yard and segregation review meetings were not permitted. On another occasion, staff from the Unit were needed on the wings to collect a prisoner, one who was presumed violent and volatile, to bring him to the Unit (Fieldwork notes pp. 72, 74). As a consequence, there was an insufficient number of staff present in the Unit, to move prisoners and therefore allow the meetings to go ahead as planned.

These three examples (the challenges associated with: (i) accessing legal advisers on the telephone; (ii) obtaining legal resources like PSOs and PSIs; and (iii) the functioning of oversight mechanisms like complaints processes and segregation review meetings) illustrate the difficulties which prisoners face in accessing, or engaging with, safeguarding processes. Importantly, they reveal how staff have a substantial role as the gatekeepers to accessing legal advice and resources. Moreover, they illustrate how opportunities for engaging with law (and opportunities for obtaining legal protection) can be limited by the institution. The institutional context – which is largely shaped by security concerns and operational demands – can override access to legal advice, legal resources and the functioning of legal protections. The dictates of a legal order, and rule of law principles, often yielded to the pragmatic concerns of the institution (Arbour, 1996, p. 180). Thus, recourse to the law, for prisoners, is bounded: constrained by and subordinate to staff discretion, the demands of the regime, and the aims of the institution.

## 3. Experience of law

The above discussion demonstrates the limited and contingent ways in which law and rules penetrated the Unit. There was a hollow approval system and a 'defensive' paperwork process. There was an ineffective segregation review board. Prisoners had restricted access to legal advice and resources; and limited engagement with complaints processes and, sometimes, even segregation review meetings. When faced with the perceived weak accountability mechanisms, prisoners typically responded in one of two ways. They: (i) were galvanised to educate themselves on the laws and rules, to be able to enforce their rights and

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[81] During fieldwork, the meetings were cancelled three times.

entitlements; or (ii) withdrew from the processes and described feeling dejected, disappointed and powerless.

One third of my participants described a perceived value in gaining knowledge of the law, rules and procedures; they perceived an apparent value, or utility to law. Their descriptions are reminiscent of Ewick and Silbey's (1998, p. 47) 'with the law' category: whereby law was described as game, one in which rules could be used to further individuals' self-interests (see Chapter Two). Not only was it perceived as an important instrument for furthering their own material interests[82] (i.e. producing positive outcomes) but there was a strong sense that *knowledge* of the law itself (regardless of whether this knowledge achieved a positive outcome), was deemed necessary for redistributing power in prison (away from staff, back to prisoners), and therefore brought a cognitive sense of safety and contributed substantially to perceptions of survivability of prison. Those who felt knowledgeable about law described the methods behind their acquisition of legal know-how. They stressed the importance of self-education, of direct previous experience, as well as the support of peers on the wings. For them, it was important to be legally informed because, as Billy suggested, there was a perception that staff would not be forthcoming with assistance:

> Basically, during my time, I've educated myself on the penal system, to know how the law affects me. I've gone down the library, taken books on tort, contract all that sort of stuff. I tried to educate myself in prison because I know a lot of people face difficulties…and I was trying to study, you know, self-study, for my appeal, so I've become all involved with law. (Kelvin, prisoner).

> How it happens is through other prisoners − a few of the lads − one or two prisoners on the wings, who are very up to date with the law, and they will make it known that you're allowed this or you're not allowed this…and in most cases they will highlight the law and obviously we will use that. (Ali, prisoner).

> You know what, we've got some prisoner solicitors. There's a couple of people on the wing who know everything. They'll just deal with the whole thing for you. They know their stuff. So a lot of times, people go to them. (Ricky, prisoner).

> If I knew what I was doing, the process and everything, I'd use it. But I'm not good when it comes to things like that. Obviously, these officers aren't going to show me what to do, I need

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[82] For example, to achieve material ends such as recovering private property or to obtain compensation from HMPPS.

to know another inmate who knows what he's doing and you have to be on the wing to do that. (Billy, prisoner).

Those who felt better informed tended to be those with greater experience of legal processes. They relayed a greater tendency to engage with law (e.g. using the complaints process, escalating issues to their solicitor or by challenging practices or decisions in the courts). They had a corresponding faith in the utility of law, and revealed a belief that law could be used to produce the outcome they desired.

Importantly, they perceived legal knowledge as necessary for their survivability in prison. Leroy explained, 'it's not a great place but you can survive. If you know how to put pen to paper, have some understanding of the law, and have a legal team behind you, it'll be okay whilst you're here. If you don't, you're fucked man'. There were three or four other participants, like Leroy, who assigned substantial value to legal knowledge: it was perceived as an asset which could reduce the power imbalance between prisoners and staff, and help correct the knowledge deficit identified by some prisoners. Legal knowledge, for some, was a form of legal capital:

> They hate it [legal complaints]. That's what hurts them the most, I think. That's why I need to get my legal knowledge up a bit more, I think. I know a bit about it…I've been violated so many times, I know I've got like a hundred claims but because I don't really know how to deal with it, they got away with it. (Ricky, prisoner).

> In prison, the pen is mightier than the sword. And prisons are geared up to deal with violence. They're geared up to deal with aggression, because they'll just put you in a cell and leave you [there]. If three people can't manage you, they'll bring six. So the way to enforce your rights is through the courts. That's the best way to resolve anything. And, monetary damages, the prison don't like [them]. They don't actually like giving a prisoner money for failures of staff. It's only when you actually study the laws, and you actually utilise the law, you're a problem. That's how they see it. They think 'ah you're too knowledgeable with the law, we can't mess about with you'. Cos you know the rules and regulations and the laws. (David, prisoner).

> If you go in there [to an adjudication], and they think you don't know what they're on about, they'll just do what they want. If your prison number is wrong or if the date on the adjudication is wrong, you can get a 'not guilty' because the evidence is wrong. But if somebody goes in there and they don't know what they're talking about, and they can't state the PSI, the governor will say 'ah that's just a technicality', 'that's just a type up error' and

they'll find them guilty for something they shouldn't have been found guilty for. It's just nice to know, makes things fairer, you know what I mean? (George, prisoner).

Ricky, David and George articulated how knowledge of the law could be an important resource for individuals in prison. This perspective recognises the entrenched power differentials in prison: staff have a wide ambit when it comes to enforcing rules, and this was especially evident in the Unit (as described in the previous chapter, in the context of staff discretion). For some prisoners, law was one of the few ways in power could be claimed and used to achieve instrumental outcomes. These might be material advantages (money, like David suggested) or ideological gains (like a sense of fairness, legitimacy and power distribution, as George described). For them, the law could be a tool to achieve certain self-interested outcomes. However, it also had an expressive and communicative function: as David suggested, legal knowledge was a way in which he could demonstrate to staff that he made a worthy opponent.

In contrast, the majority (about two thirds) of prisoners were much more cynical about the influence of law, and described orientations which placed them closer to those 'against the law' in Ewick and Silbey's (1998) research. For them, the law was a presence which limited their choices but benefited the prison institution. The 'law' (and 'rules') were used by staff to justify decisions; they became euphemisms for arbitrary power:

> What I usually understand about prison is that if a prisoner does something wrong, it'll be pointed out very quickly. But what they do right is never rewarded. Then, if I point out to an officer that I'm entitled to this, according to this PSI, usually they just look at you – they give you a weird look – and think 'this guy's mad'. It doesn't make a difference. Like if I'm entitled to a shower every day and I tell these staff that I'm entitled to a shower every day, PSI so and so says... they'll be like 'yeah, you're getting one every other day. You want it or not?'. Do you know what I mean? It doesn't make a difference. They're good for the staff but they don't really help us against the establishment. (Sam, prisoner).

> I know what I'm entitled to and what I'm not entitled to, right? I'm a very educated man, but I tell you one thing, when you start giving these people the riot act and saying 'wait a minute, you've crossed the line on the PSO, you've crossed the line on this, you've crossed the line on that'. The answer is 'I don't give a fuck!' (Joe, prisoner).

> I've read some of them PSIs and PSOs, but that don't matter in here. They've got the PSI and PSO, and then they've got something called local policies, and that's like a fine print of how

they get on [with] things. Well, they can say, 'yeah, yeah, it's not in the PSI, but that's the local policy of Whitemoor'. So they use that [the local policy] to make their own rules, which they've used here to fuck me over a couple times when I've gone against them. So, yeah, you have to go put a complaint in…But, by the time you've done the paperwork, you've already been punished and you've already lost this, or they've won anyway. So you can't win. (Johnny, prisoner).

R: A lot of them aren't adhered to a lot of the time, the PSIs.
I: Why do you say that?
R: Because I've had governors walk away and I've said, oh, under the PSI so and so, and they've just shrugged it off and walked off. I've had that. And, sometimes, you're better off just not saying it. Otherwise… well, they then think you're a pain, disruptive, you're a 'problem', a 'complainer'. That don't help you either. (Norman, prisoner).

Sam, Joe, Johnny and Norman reveal a perception, common amongst many of the prisoner participants, that the legal rules, and non-legal guidance in the PSOs and PSIs, privileged the powerful (Armstrong, 2018, p. 412). Their cynicism was predicated on the belief that 'law' was a blunt instrument and would not help them (Nielsen, 2000, p. 1083). For some participants, there was little value in referring staff to passages from the relevant PSO or PSI: this was an ineffective approach, which either made little difference or potentially made situations worse. There was also a perception that the prison administration cared little about conforming to its own rules and processes (and pointing this out would be futile). We know that prisoners can be especially concerned that prison authorities 'deliver' on their written commitments i.e. that they adhere to their own rules and policies (Sparks et al., 1996, p. 239; Whitty et al., 2001); and conforming with the rules is one of the main ways in which legitimacy can be created or sustained. When staff made arbitrary decisions, or deviated from the rules, or ignored prisoners' attempts at highlighting such violations, it cultivated a sense of unfairness and cynicism towards staff authority, the institution and the force of law.

Specifically, their descriptions expose an affinity to Ewick and Silbey's final category 'against the law' (1998, p. 183), which was rooted in the belief that individuals were subordinated and unable to escape the arbitrary exercise of power (p. 184). Ewick and Silbey's participants, in their final category, revealed scepticism towards law: it was perceived as dangerous to invoke and something to be avoided (p. 192). If their participants were unable to avoid legal encounters, they instead deployed a 'strategy of resignation and deference' (p. 195). Much of the criticism, scepticism and cynicism, identified by Ewick and

Silbey's participants, were evident in the voices of my participants. This was especially true for those who perceived staff as the ultimate gatekeepers, and themselves as powerless. They described a sense of resignation, a submission to their fates. For them, it was a situation in which laws and rules offered only limited potential and were of very little value.

As a consequence, there was a reluctance to engage in processes, like the complaints system or segregation review meetings. For example, Nazeer described how some processes had to be used strategically. He explained that the complaints process was not for mundane or trivial matters. He would only use it for a serious matter, like an assault: 'that's what they tell you it's for anyway, if you've not got a serious complaint, don't waste the complaints process, it's not worth your own energy'. Otherwise, for him, it was a waste of time, energy and unlikely to achieve anything constructive.

Prisoners who shared an orientation close to Ewick and Silbey's 'against the law' category, were acutely aware of the power dynamics in the Unit. There was a presumption, for some, that on transfer to the Unit, they had rescinded their legal rights. This perspective was borne out of a sense of powerlessness, that prisoners were dependent on, and therefore at the mercy of, staff. This presumption exposed the stark dynamics of power in the Unit:

> [I]nevitably, what rights do you really have? Cos [our] rights are whatever the decision-maker makes and you can just either agree with it or don't. It makes no difference really. (Daniel, prisoner).

> I think once you come here, you lose a lot of your rights. I think in segregation you have very little, and the only rights you have is to shower once every two days and your phone call, and even then sometimes they don't even give it to you because they're locked down or they just don't do it. (Nazeer, prisoner).

> Here, well, we become subhuman. You know. It's like the way they give us clothes, the way they make us shower only once every other day…it's like they are just giving us our rights to the bare minimum, where they have to do what they have to. (Ali, prisoner).

> But once you come to prison, and you haven't got any rights any more, you're a slave to the industry that we're living in. So they can do what they want, and they can tell you when to shit, sleep, when to eat, whatever. You belong to them. And if you don't do what they say, [you are] punished. (Johnny, prisoner).

They [staff] don't care. They just do whatever the governor says. They've seen so much injustice, and I've seen them see it. And the IMB, they don't do anything. Even the Chaplaincy, they're not interested. You know what it is? They're just not interested…not interested at all…It's like they lack a certain empathy for prisoners. (Ricky, prisoner).

These narratives were fairly common amongst prisoners who positioned themselves as powerless individuals, subordinate to the use of arbitrary power and boundless authority. These accounts resemble those provided by Ewick and Silbey's participants who saw a necessity in 'bowing to what seems like the overwhelming power of police, judges and courts' (1998, p. 195). For those who were sceptical, or 'against the law', there was a futility to engaging with law. It was perceived as ineffective for producing the outcomes prisoners desired – whether it be material improvements, like better conditions or entitlements such as TVs, radios, visits and such – or ideological gains, like creating a sense of justice, fairness and legitimacy.

There is also a suggestion, within the accounts of Nazeer, Ali and Johnny, of the 'othered' status of prisoners. This was discussed in the previous chapter, in the context of staff perceptions of prisoners. However, it also arose in prisoner discussions during which we explored the function of law in the Unit. Some prisoners suggested they were not 'equal rights holders'. For example, Ali described feeling 'subhuman', that staff perceived him as only eligible for the basic rights, the bare minimum. As such, there was a sense that the 'law' had forgotten them and that it had, in many ways, let them down. There was also a sense that the law (and those who implemented it) lacked understanding and empathy towards prisoners' situations. Ricky highlighted how he felt actors (like staff, the IMB and Chaplaincy) were 'not interested'. Lack of empathy might, as I suggest in Chapter Five, be related to the pragmatic distancing of staff: it is easier to lock individuals away for 23 hours a day if you do not relate to, or empathise with, their circumstances. However, for many prisoners, this failure to consider, or take account of their circumstances, was alienating, another form of 'othering', and was experienced as a way of subverting rather than ensuring justice (Ewick & Silbey, 1998, p. 190).

It was not easy for prisoners to access legal advice, obtain legal knowledge and access legal resources. Moreover, when attempts were made to engage with processes, like complaints procedures or segregation review meetings, the outcomes were not always positive experiences: sometimes delayed, unsatisfactory or non-existent. For the majority of prisoners, in the Unit, the practical and structural barriers perpetuated cynicism towards engaging with

law. Taken together, they coalesced to create an acute sense of powerlessness for many prisoners. The Unit was not a place in which many felt law could be accessed (practically) and relied on (cognitively). There was a lack of faith in law, and scepticism towards the utility and instrumentalism of law. In many ways prisoners described feeling 'untouched' by law, they identified a 'legal void' in the Unit, one in which on-going legal actions were halted and future or potential causes of action were rendered difficult or impossible.[83] Many participants perceived a futility to engaging with complaints processes, or trying to assert their rights by reference to the relevant PSI/PSO. The lack of faith in the utility of law meant there were very few ways in which prisoners perceived they could *legitimately*[84] challenge the segregation decision, their treatment or conditions.

## 4. Conclusion

> Sometimes you get to that point where you do think 'it's them and us' and that's [because of] the way you're getting treated by them. If they respect you as a human being, you wouldn't be thinking it's 'them and us'. But if they don't respect you, and they just want to tick their boxes all day, they just want to go past us and say 'you know what, it's not on me if this guy dies, I checked, I asked the question and I'm done'. You do have a lot of people like that. (Henry, prisoner).

During fieldwork, it became clear that many of the Unit's processes – those with a legal orientation such as segregation review meetings, approvals and paperwork processes – were implemented in ways which were *proceduralised*. There was a sense that bureaucracy had seeped in and created a preoccupation with *process* in the Unit; practices were process rather than outcome driven; and they protected the institution, by providing evidence that the institution had discharged its legal duties (to review and monitor the use of segregation).

Staff prioritised completing the paperwork, rushing people through segregation review meetings, facilitating the daily checks at prisoners' doors. These practices were intended to instil a sense of accountability and transparency, actioned through a system of reviews, authorisations and record-keeping. There was an emphasis on 'procedural justice': decision-makers prioritised certain processes and were concerned to ensure that justice was *seen* to be

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[83] For example, Theo and Billy discussed, at length, the status of their appeals. However, neither felt able to progress their appeals from the Unit and described having to wait until they were returned to the wings in order to do so.

[84] As previous chapters illustrated, prisoners were able to challenge authority in other, less legitimate ways. For example by dirty protests, violence or refusals to leave the Unit.

done (Kingwell, 2017), rather than ensuring that justice was *meaningfully* done ('substantive justice'). The substantial bureaucracy, the emphasis on *process*, influenced prisoners' assessments of their experiences in the Unit. The superficial implementation of the processes (perceived as 'box ticking exercises' or 'rubber stamps') gave the impression to prisoners that staff (and the institution) were uninterested and lacked concern. As Sparks et al. (1996, p. 89) warn, a 'procedurally 'correct' and bureaucratically efficient regime might simply fail on grounds of impersonality and lack of humaneness' (see Jacobs, 1977).

These processes represented important opportunities for the prison authorities to embrace rule of law principles and, in turn, to legitimate their own authority (Paternoster et al., 1997; Tyler, 1988, p. 128; 2003). However, the processes, as Armstrong suggests, were designed to make the Unit (and by extension the prison) a safe place i.e. a legally defensible one, but had a dehumanising effect for individuals (2003, p. 298). They allowed for compliance with bureaucratic norms, those in which the legal risk was reduced, but diminished the opportunities for realising broader moral or social goals (Armstrong, 2003, p. 291). They provided a minimum level of legal responsibility and accountability but failed to provide the basis for the values needed to constrain or challenge the use of segregation. They removed the capacity for a human rights based vision, one in which virtues (like empathy, respect and care) could permeate daily practices.

The *proceduralisation* of safeguards meant some prisoners felt, in order to enforce their rights, it was necessary to take 'law' into their hands. They attempted to educate themselves on the law and rules; they sought advice from solicitors; they engaged with the internal complaint processes and segregation review meetings. All of the foregoing were constrained by the regime and staff discretion: staff had substantial discretion to determine (and limit) whether an individual could engage with the 'law', in this way. Whilst such limitations galvanised some prisoners to make greater use of the law (there was legal capital in knowing the relevant rules and statutes); for the most part, prisoners felt disempowered by the processes. For many, the processes were euphemisms for arbitrary power. Processes (like the approval mechanisms and SRBs) justified the power of the institution; they provided the 'legal authority' for the institution's actions, rather than any substantive merit for the action (Whitty et al., 2001, p. 239). The processes and structures were demonstrative of legal compliance (legal authority) but did not help cultivate legitimacy in the wider sense (legitimate authority) (Black, 2005, p. 19). They are examples of how process, and bureaucracy can 'enhance and mask authority' (Armstrong, 2018, p. 413); and helped

reproduce a society in which 'naked power' – and not essential rights – could so often be the 'rule of law' (Heritage, 2004, p. 104).

Consequently, this chapter raises important questions about the role of law in segregation units, specifically whether (and how) it might ever be considered a legitimate force. Can the law 'work' (i.e. in ways which give effect to rule of law principles) in environments, like segregation units, where there is such an imbalance in power? Or will it inevitably be perceived as privileging the powerful and justifying arbitrary decisions? Can law ever be legitimate in an illegitimate institution? Undoubtedly, there were ways in which the 'law', (specifically its processes), could be improved; and, by extension, wielded more legitimately. Segregation review meetings could be made better: senior management could stress their importance, and emphasise that the board members *must* make them a priority. Members could be required to familiarise themselves with the notes and outcomes agreed at previous meetings. Chairs could be trained (or reminded of) communication strategies, particularly conflict resolution. Members could be inspired to think more imaginatively about outcomes. Access to lawyers and legal resources could be encouraged and supported by staff. Internal complaints could be responded to more promptly, thoroughly and in ways which suggest they are taken more seriously. Improving these processes may go some way to instilling greater faith in the utility of 'law'.

However, at present, these 'improvements' may be unlikely to have any miraculous or substantial impact. Segregation review boards have limited options available to them; there is little they can do if a prison refuses to accept a prisoner from the Unit (on the basis of being full – at operational capacity – a common problem across the prison estate). Moreover, even if staff encouraged and supported recourse to lawyers, a prisoner may struggle to obtain Legal Aid (see Chapter Two). Thus, prisoners face difficulties which appear, not only at the institutional level, but also at the wider political, economic and penal level. Consequently, attempts by prison administrators to improve legal processes *inside* the Unit, whilst welcome, may fail to correct for the problems observed *outside* the Unit, those which plague our criminal justice system more broadly.

# Chapter Seven – Challenge, Change and Hope

When a person becomes dehumanised, it leaves an impression on you…Segregation messed up my speech, my eyesight, I became sensitive to noise…I was assaulted, [I] had my head stamped on. It was sadistic. How can they do that?...There's no point to it, it doesn't encourage pro-social behaviour, it hardens your anger, resentment and frustration…[and] as a prisoner behind that door, you are scared, you think it can be opened at any time and you can be assaulted. That's not done by the individual. Instead, it is done by someone who represents civilisation, who represents society, because *you* wear the uniform. That's the only representation of society you meet. So when you are abused, that is society abusing you, [and] that is your only connection to humanity. (Usman Khan).

In February 2019, I had nearly a two-hour conversation with Usman Khan. I was introduced to him through my work with Learning Together at Cambridge. His insights proved to be a helpful sounding board for my research. He had been released two months previously, in December 2018. During our discussion, he explained how he spent 'most' of his six years in prison in segregation units in the High-Security Estate. From Usman's perspective, he was segregated because of the nature of his offence – a Terrorism Act offence – and he could not understand the justification for his lengthy segregation. However, this only represents one side of the narrative and, unfortunately, I was not privy to the prison's security information or decision-making in this regard. During segregation, he described being abused, both physically and psychologically. The word 'torture' featured prominently in his account. He also described a deep sadness, related to a sense of neglect by society, which developed into a strong sense of injustice. On the 29th November 2019, he killed Jack Merritt and Saskia Jones, and wounded others. Following the attack, Usman was shot and died. His attack was at an event hosted by Learning Together, a University of Cambridge initiative, at which I was present. Since November 2019, my discussions with Usman have plagued me, not least because of the unease I have since felt about our conversations. In particular, I have searched our discussions for signs or suggestions that could reveal Usman's ill-intent or could have exposed him to have been anything other than an ex-prisoner who had returned to the community, who was kind to me, and who revealed a determination to start a new, more positive life.

During criminological research, many of us confront ethical questions about our work, particularly in prisons when the research boundaries can become muddied and blurred. I have had to consider whether I overlooked red-flags or warning signs from a man who killed one of my best friends. This question will continue to haunt me. The challenge was that Usman,

although describing a difficult and distressing experience of segregation, revealed little that was different, starker, or more extreme than many other accounts provided by other participants. This is not to say that narratives of torture or abuse featured in *every* account. In fact, for some, segregation was able to provide a greater sense of safety; it was a place of refuge. However, for most, there were similar feelings of hurt, frustration, resentment and fear.

I mention this here, in the final part of this thesis, not to detract from the overarching themes of the research but to illustrate some of the challenges (the 'limitations') of this work. This research was not about Usman nor was it about how one comes to terms with such a significant event, either professionally as a researcher or personally as a human being. But it has, undoubtedly, influenced *some* of my work over the last few months. Such influence needs to be acknowledged. Whilst I have tried to remain objective and neutral, I cannot overlook the way in which the incident provoked feelings of dissatisfaction with and concern about our prisons, as well as our societal approach to punishment. I was struck, during fieldwork, by the depleting resources in prisons, the limited provision of activities (including low-level education and menial work, often cancelled because of staff and resourcing issues), the numbers of young and inexperienced staff and the extent of disillusionment common across both staff and prisoners. Whitemoor felt like a place without hope. These observations and sentiments were even more pronounced in the Unit.

So the first limitation of this study concerns the ability of any researcher to remain truly 'neutral'. I reflected on this assumption in Chapter Three. Most qualitative work in the social sciences involves research with humans, by humans. We can never truly set aside our personal, philosophical and political sympathies. We, as the researchers asking the questions, become the research instrument. We draft the questions, ask them, ascribe meanings to encounters and statements, and ultimately imbue a narrative into an otherwise discrete collection of transcripts. Researchers have a special, and distinct, relationship to the field: it was emphasised by Jeff (Chapter Three) in his exclamation that researchers 'breeze in' but are not responsible for locking prisoners up or instructing them to return from the yards. Prison researchers, whilst occupying the same spaces as staff and prisoners, experience a very different reality. It may be easier for researchers to *see* distress and *feel* sympathy because they have different roles, relationships and expectations placed upon them.

As I suggested in Chapter Three, there is a level of moral ambiguity to the work; we sometimes have to reconcile personal integrity with access to the field (Jewkes, 2012; Sutton, 2011).

Humans are fallible, and, by extension, the research instrument is fallible. During interviews, follow up questions came too late. Hindsight was precious. I sometimes said things which, on reflection, I wished I could retract, and I sometimes omitted things which, in hindsight, I wish I had asked (Behar, 1996). We can strive (and hope) for objectivity, neutrality and independence but should not deny the ways in which our experiences, understandings and perceptions influence our work. To do so would be to overlook our humanity, with all the frailties and fallibilities that come with it. We are humans first, researchers second. If we ignored that, we would be overlooking the realities of research and the roles we play. Our work would be fundamentally dishonest.

There is a second, related, limitation, which concerns the validity of this research. It is a limitation inherent in qualitative research generally – observation and interview data are often subjective and difficult to validate or independently verify. So much of the analysis is rooted in my own perceptions, observations and experiences during fieldwork. They involved both objective and subjective assessments, which may differ from researcher to researcher. This is not a limitation specific to this research, but is one which is embedded within the broader research method of qualitative ethnography.

Thirdly, this study was narrow in focus. The research was directed at one segregation unit in one particular prison. It also involved a sample which, for contextual reasons, may not be wholly representative of all those in the segregation unit. The nature of the environment meant random sampling was not possible. I secured participants mostly through word of mouth. Participation was contingent on several factors beyond my control: whether people were willing to talk to me (most were); to whom staff would allow me access (generally most prisoners); and whether the interviews fitted in with the daily demands of the regime (more challenging). Thus, there is an argument that the problems and experiences identified in this research may be confined to Whitemoor and are not capable of generalisation. Whilst there may be other prisons and other segregation units, which do manage to get things 'right', my findings do not appear to be an anomaly. Others have identified similar flaws with the systems and processes in segregation units elsewhere (see Sutherland, 2018). It is worrying that the problems, the flaws and the damage of segregation are so widespread.

Despite this, these limitations should not diminish the value of this research. This thesis has offered several legal and sociological insights, which I hope will be of wider interest to sociologists, lawyers and policy-makers. It has contributed to our theoretical understanding of

the ways in which segregation is used, justified and experienced. It has also considered the ways in which segregation has been legally challenged and the relationship between law and practice in prisons. Specifically, it has shown how formal legal rules have only a limited impact in the segregation unit. In Chapter Four, I showed how much of the current framework – as set out in the PR 1999 and PSO 1700 – was broad and ill-defined. They allowed large amounts of discretion, which equipped prison managers with substantial latitude for interpretation. Segregation was used in a number of different ways, to manage a range of complex behaviour and needs. The segregation unit was a place of punishment, intended to be a deterrent, whilst also being a preventative mechanism, as well as a place intended for care and rehabilitation. Often those aims were in conflict. Importantly, my findings challenged the paradigm that segregation was a 'last resort' and reserved for the 'worst of the worst' (Lanes, 2011). As a consequence, I suggested that the law was an ineffective force in constraining the use of segregation and in sustaining the legitimacy of the practice. This was partly explained by the conflict and contradictions which characterised the use of segregation, in both the aims it pursued and the legal authority behind its existence. However, it was also rooted in the substantial uncertainty and discretion embedded within the law, which functioned to equip staff and decision-makers with great powers of interpretation and decision-making.

This argument was expanded in Chapter Five where I showed how much of the way 'law'[85] functioned in the Unit was dependent on staff culture. In particular, I drew on the work of Liebling and Kant (2018) to show how officer culture –which in this case resembled the 'traditional resistant' type– had an important influence on the functioning of law. In particular, I identified how local norms and customs subverted formal laws. This was not always to the detriment of the prisoner, but it did produce detrimental outcomes for rule of law principles such as consistency, predictability and fairness. I demonstrated how, for many staff, formal laws and rules were not valuable resources. Instead, they were perceived as a hindrance or a burden. Most staff favoured flexibility and discretion. I also suggested that perspectives on law and rules were bound up with perspectives on safety. Formal written rules were not always perceived as tools that would necessarily keep staff safe, with most preferring to fall back on informal established ways of working (which were sometimes outside the ambit of formal laws).

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[85] 'Law' was interpreted in its most widest sense, as a system of formal legal rules (PR 1999) and non-legal rules (PSO 1700 and Local Site Rules) as well as local norms and customs, which all gave effect to Rule 45 of the PR 1999.

In Chapter Six, I suggested that law and rules became *proceduralised* in the Unit, whereby institutional processes prioritised 'procedural justice' over 'substantive justice'. I also suggested that a prisoner's access to and engagement with law was substantially constrained by staff and the regime. The perceived weaknesses, or limitations, of various safeguarding processes, prompted some prisoners to embrace the law: they attempted to educate themselves on the law and rules; sought help from their solicitors; or tried to use complaint processes and segregation reviewing meetings to reach their desired ends. There was a suggestion that legal knowledge was a form of legal capital in prison. However, for the most part, prisoners felt disempowered by the rules and processes. Processes (like the approval mechanisms and SRBs) were perceived as protecting and justifying the power of the institution. They provided the 'legal authority' for the institution's actions rather than any 'legitimate authority' (Black, 2005, p. 19).

I also drew attention to the contradictions between the external formal *law of segregation*, and the internal norms, customs and practices which gave effect to the *law in segregation*. Whilst law was ostensibly 'present' – in name, language and the complex web of rules and procedures – it was limited by, and subordinated to, the experiences of everyday life in the Unit. By this I mean the ambitions promised by procedural justice, human rights, the rule of law, and natural justice principles were subsumed within the bureaucracy, the processes and culture of the institution. At times, there was little 'evidence of the will to yield pragmatic concerns', of security and order, to the 'dictates of a legal order', providing support for the argument that the rule of law was absent, although rules were everywhere (Arbour, 1996, p. 180). Thus, the Unit was a place in the prison – and an aspect of society – which was, sometimes, beyond law's reach.

Most significantly this thesis contributes insights into the effectiveness of law as a mechanism for shaping and changing individual behaviour and institutional culture. Throughout, I have identified opportunities for improvement:

- In Chapter Four, I suggested the PR 1999, PSO 1700 and Local Site Rules could all be updated to include clearer definitions, more precise language, and a better articulation of the purpose of segregation and stricter limits on its use.
- In Chapter Five, I explained how efforts should be directed towards staff culture in the Unit. There could be better (and more regular) training on the rules; more frequent staff rotations; and firmer management in the Unit, to focus on encouraging more humane

standards and 'right' staff-prisoner relationships (Liebling, 2008; Liebling, Price, et al., 2011).

- In Chapter Six, I highlighted how oversight mechanisms could be improved. Visitors (like the Chaplain, Governor and IMB) could make more time for more meaningful interactions. I also identified several ways in which segregation meetings could be improved: their importance should be emphasised; chairs should be trained and/or reminded of communication strategies; and boards encouraged and empowered to pursue more imaginative outcomes. I suggested that access to lawyers and legal resources should be better supported; and internal complaints should be responded to more quickly and more thoroughly.

Importantly, some of these change opportunities include law reform: there might be ways in which 'law' could work better. However, most do not. Changing law or statutory standards, alone, will be unlikely to produce substantial changes to practice, customs, attitudes and culture of the Unit. Many of the Unit's problems originate elsewhere (see Haney et al., 2020). They are institutional, political and societal problems which cannot be easily rectified by law. For example, segregation is used to manage chaotic, violent and unsafe wings, as well as to manage individuals with complex mental illness. The Unit is only one part of one prison[86] in a greater prison system, one which is under-resourced, staffed by young and inexperienced individuals, and close to (or at) operational capacity. Importantly, it occurs in a political system which is 'tough on crime' (Newburn, 2007); where the provision of Legal Aid for prisoners has been substantially reduced. We cannot expect to right the wrongs of our broader social, economic, political and criminal justice systems through a short, sharp law reform process, directed solely at the segregation unit. To put another way, law reform of the segregation unit may not correct the deficits found elsewhere in society. Consequently, segregation reform should be considered as part of broader prison reform efforts (Haney et al., 2020).

It is difficult to predict the future of segregation. As Chapter One showed, it has been a long-standing part of our prison system. There are strong ideological attachments to segregation

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[86] The 2019 MQPL at HMP Whitemoor (Liebling et al., 2019) revealed prisoners on the wings felt similar frustrations to those in segregation: lack of progression, limited purposeful activity and poor procedural organisation (p.2). It also found: wing prisoners 'lacked hope'; staff and prisoners were disengaged and had only limited interactions (p.2); low measures of 'bureaucratic legitimacy', 'organisation and consistency', 'wellbeing' and 'distress'. The researchers concluded that Whitemoor 'did not cross the legitimacy threshold' (p.3). Thus the experiences of prisoners in the Unit may be reflective of broader cultural dynamics and frustrations experienced by those in the rest of the prison.

from those who believe it is necessary to maintain order, safety and discipline in prisons. However, there has also been strong opposition to segregation, which has prompted legislators, policy-makers and prison decision-makers to seek out proposals for reform. I had hoped this study might become part of the change process as it developed, if not a blueprint for legal reform. But, in reality, legal reform would be insufficient for changing culture, practices and conduct within segregation units. As Sered warns '…we make a grave error if we mistake policy change for culture change – changing the law and changing hearts and minds are not the same' (2019, p. 157). More is needed. Policy-makers and legal reformers must consider ways in which greater transparency could be introduced to the Unit; how time could be assigned to rehabilitative work; how staff could be better encouraged and supported by senior management; how the Unit could be resourced by greater numbers and more diverse staff; and how education, work and purposeful activities could be better introduced to segregation units. All of these would require substantially greater resources, including time, money and individual commitment; and all of these suggestions are aimed at mitigating the detrimental impact we now more commonly recognise, if not wholly accept, in the use of segregation.

Insofar as the 'rule of law' was concerned, it became clear that 'rules' were not necessarily the instruments which gave effect to the 'rule of law'. There were many rules and processes which existed in the Unit, however, they were not implemented in ways which upheld rule of law principles. Thus, the existence of 'rules' and 'law' did not equate to the existence of the 'rule of law'. This was primarily a consequence of the culture of the Unit. Staff were cynical, distrusting, lacked empathy and respect, and prisoners were 'othered'. This was not because staff were primarily 'bad' individuals but because they were fearful. There were high levels of fear and anxiety in the Unit. Staff deemed it a violent, volatile and unpredictable place to work. Staff described an enormous amount of pressure and stress which sustained their distrust, cynicism and intensified the 'moral' distance between staff and prisoners.

The culture meant there was little space for principles of equality, fairness, consistency and legitimacy. Thus, legal and policy change may achieve little unless accompanied by cultural change. Only then may it be possible to create an environment in which Lord Bingham's principles could be better supported. Part of this cultural change would require challenging the cynicism and distrust so entrenched in the Unit, by creating opportunities for cultivating empathy, dignity and respect. One way these principles could be achieved is through removing some of the physical and psychological distance between staff and prisoners. With

an increase in and/or a proper allocation of resources, staff could return to making time to talk to prisoners (at their doors or in 'the Bubble') and there could be small group work – staff and prisoners together – in the meeting rooms, which may create opportunities for fostering the 'right' relationships.

The aim would be, as Preston-Roedder (2013) suggests, to reorient perspectives towards those which foster 'faith in humanity' (as a preferable perspective to cynicism). Faith in humanity is not the same as 'blind charity' nor the 'virtues of ignorance' (Driver, 1989), which are at risk of being dismissed as simply naive and have serious risks of exploitation and harm (p. 665). It does not mean we are blind to undesirable behaviours, motives or actions (p. 667). Instead, 'faith in humanity' is about being sensitive to evidence – of decency – but also of risks. It may require viewing people favourably but, at the same time, having an awareness that others may have, or will, act wrongly (p. 668). This perspective is not about minimising our estimation of the harm caused by an individual – whether to themselves or others – but is about 'growing our estimation of the person who caused it' (Sered, 2019, p. 96). Importantly, this perspective demands not only that we see decency and hope for betterment in others, but that we pragmatically respond and address behaviours, attitudes or experiences that may undermine that hope and betterment. By doing so, we can acknowledge individuals' risks openly and take steps to mitigate that risk.

Segregation, in its current form, is centred on addressing undesirable behaviour: it punishes people who have 'acted wrongly', it contains those who are deemed risky: but does little to mitigate individual risk. The Unit, as many staff agreed, is not a place which rehabilitates individuals, nor can it heal past experiences of violence or trauma. It is not a place which fosters hope and decency. Segregation is a passive tool – it contains, punishes and restricts – and is imposed unilaterally by prison decision-makers. Segregation imposes isolation, shame and erodes human relationships. In the Unit, people are treated as if they are only capable of causing further harm and pain; the main premise of segregation being an 'ethic of separation, domination and extreme individualisation' (Sered, 2019, p. 140), rather than one of worth, connectedness and human dignity. Nor does segregation demand that individuals work to become people who will not commit harm or wrongdoing again. The regime of the Unit removes fundamental facets of humanity: it diminishes freedoms; revokes power and agency; disregards people's ability to change; requires little of its prisoners; and offers no opportunity for remorse, accountability and meaningful repair (not only in relation to the wrongdoing that led the individual to the Unit, but also for their crime that led them to prison). Segregation

displaces opportunities for repair and eradicates possibilities for change. It should not be surprising then that the same individuals return to the Unit or the 'long-term seg dwellers' (as staff frequently referred) refuse to leave.

Usman Khan was in prison for a serious terrorism offence. He was also treated extremely badly in prison. He went on to commit horrific atrocities. A 'faith in humanity' perspective does not mean we overlook the violence and significant harm he has caused. Nor am I suggesting that a 'faith in humanity' centred approach would remove all risk. Instead, I am suggesting that this perspective allows some reconciliation of the 'better' and 'worse' aspects of human behaviour. Importantly, that reconciliation must be contextualised, recognising that history and social context can be just as much a contributor to harm and wrongdoing as individual pathology. As Sered suggests, we can start by asking 'what happened to you?' rather than 'what is wrong with you'? (2019, p.228). We can search for human decency whilst recognising that others may cause harm, and may be violent or risky. At the same time, we can encourage people to take responsibility and meaningful accountability for that harm: to 'be sorry' as well as 'doing sorry' (both, Sered suggests, are important for healing and repair for all parties −offenders, victims and society (2019, p.239)). There is a valuable utility to this perspective, as Preston-Roedder (2013) suggests, having faith in people's decency tends to encourage them to act 'rightly'. Our beliefs about people can obligate them, 'for better or worse, to act in ways that confirm one's expectations' (p. 676).

Unfortunately, principles from the 'faith in humanity' perspective (such as trust, respect, decency and dignity) – and the importance of accountability, healing and repair – are not recognised in the aims of the current law or policy of segregation. In fact, much of the law, rules, policies and processes are silent on concepts of accountability, dignity, morality, respect and humanity. Thus, it may not be for the law and rules to cultivate these cultural values. Instead, efforts should focus on creating a framework of ethics and rights which *matter* to staff. It could be a set of professional standards[87] which defines them, as prison officers. These standards could induce a public service ethos, one typically associated with doctors, nurses, and social workers. They could become an internalised framework which allows staff to hold themselves, and each other, to account. Not only that, but the framework could introduce opportunities for staff to empower prisoners, to assist with repair, to enable proper modes of accountability. This may be a more effective approach, as it aims at encouraging a

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[87] With thanks to Adrian Grounds for his advice about possibilities for ethical standards and an 'internalised' framework of assumptions that could govern how staff make decisions about morality, ethics, necessity and legitimacy.

system of internal values (intrinsic motivations) as opposed to imposing a system of external (blunt) laws and rules (extrinsic commands).

In order to move to a more ambitious position, one in which segregation is no longer a fundamental part of the prison system – a vision advocated by influential leaders in the prison service – attitudes will first need to change. For, as long as segregation is deemed necessary for managing a complex prison population, there will be a psychological reliance and a perceived benefit to it. Segregation survives in our penal system as a result of entrenched thinking: 'that's the way it has always been done'. Segregation is the accepted response to threats of violence and disorder in prison. When we talk about abolishing segregation or changing current policy, we are not discussing alternatives to something that 'works'. Instead, we are acknowledging that the risks and problems of segregation, as currently stand, are no longer ones we can tolerate. We choose something different; not out of bravery, not out of curiosity but out of a responsibility to victims, offenders, society and what remains of our democracy (Sered, 2019, pp. 132, 158). It is not just about asking whether there is an appetite (or political will) for something new, but we should also be asking whether there is any moral, ethical or practical basis for continuing with the old. The solution will not be as simple as changing the law, as this may do little to change entrenched thinking. However, change, or alternative ways of working, are possible. For example, in the 1990s, in HMP Wormwood Scrubs, the senior officer from the wing visited each prisoner in segregation, to reintegrate them back to the wing; similarly, HMP Oakwood allows trusted prisoners to visit the segregation unit to facilitate prisoners' return to the wings (Edgar, 2018, p. 42); and in 2017, HMP Warren Hill discontinued its segregation unit (HMCIP, 2019, p. 14). They provide hope that segregation can be improved, changed and may even be capable of abandonment.

I mentioned, in the introduction, my unease with making suggestions about how to 'improve' the Unit, specifically the risk of becoming unintentionally complicit in supporting the existence of the Unit. As Armstrong warns, to criticise segregation means to engage with the prison on its 'own terms', and thereby be forced to see some renewed form of segregation as the solution to the problems (Armstrong, 2018, p. 405). The risk is that we assume the current institutional, political and legal framework, rather than questioning it (Garland, 1990, p. 3). This is not my intention. There was something 'profoundly inhuman' in the way prisoners in the Unit were thought about and treated (Liebling, 2015b, p. 110), as if they were mainly violent individuals, underserving of kindness or humanity. Whilst my observations suggest that a *small* number were violent and volatile, many others were in no small part vulnerable

and suffering. Regardless, no one deserves to be treated as insignificant, worthless, or less than human. Being treated in such a manner can lead to hurt, frustration and further potential violence (Drake, 2012, pp. 156, 157). Undoubtedly, the Unit was a violent place (both against the self and against others): self-harm, suicide attempts, use of force, property damage, dirty protests, verbal abuse (staff to prisoners, prisoners to staff), were all common. It was also a place characterised by an entrenched – and dangerous – lack of faith in humanity. Prisoners were considered, and treated, as violent, volatile and risky. There was a significant lack of trust in the Unit. When we treat individuals this way, there is a risk that they come to internalise this view of themselves. It may have the effect of ensuring the individual adopts the very behaviours the Unit is seeking to prevent and avoid (Preston-Roedder, 2013, p. 677). Thus, measures like segregation, intended to remove the risk of violence, may be perpetuating it. And the 'law' – and legal apparatus – by rendering segregation decisions lawful, sustains this violence and punitiveness and contributes to normalising its use (Arrigo, Bersot, & Sellers, 2011).

Usman Khan is a stark example of the risks of being treated violently in prison. We will never know the extent to which his segregation experience contributed to his actions. However, I wonder whether his 'risk' could have been better mitigated by a more humane and compassionate environment: where prisoner denigration was not tolerated and human dignity was respected; and ethics and rights were preserved, not because they avoided falling foul of legislation and were necessary for protecting the institution, but because they were the 'right' things to do (Murphy & Whitty, 2007b, p. 540).

# Annexes

# Annex One – Case law summary

| Case name | Judgment Date | Court | Location | Facts/ Issues | Time in segregation | Decision |
|---|---|---|---|---|---|---|
| *The Queen (AB a child, by his litigation friend) v Secretary of State for Justice* [2017] EWHC 1694 (Admin)<br><br><br><br>Appeal: [2019] EWCA Civ 9 | 04/07/2017<br><br><br><br>Appeal: 7-8/11/2018 | High Court (QB)<br><br><br><br>Court of Appeal | Feltham YOI<br><br>Public<br><br>M | 15-year-old boy was removed from association (RFA), as a precautionary measure. He was transferred to Feltham YOI from Cookham Wood and placed into segregation as a consequence of previous violence at Cookham Wood. Complaints:<br><br>(i) RFA unlawful because the respondents had not complied with procedural requirements of the YOI Rules i.e. processes for removal and failing to hold regular reviews. The Respondent acknowledged the placement into segregation was in breach of these rules and provided an apology.<br><br>(ii) Failure to provide education: he was not allocated to a pathway for education, had not been provided with education packs (not even for private study) albeit they were provided at a later date. The Respondent accepted that not enough had been done to give AB the education provision required under the rules and guidance.<br><br>(iii) Article 3 ECHR: argued that RFA, in excess of 15 days, was such severe treatment that it constituted prolonged solitary confinement and was inhuman or degrading treatment.<br><br>(iv) Article 8 ECHR: rights to private and family life had been interfered with, and such interference was not in pursuit of legitimate aims and was not proportionate. | 12 months | The High Court: the Secretary of State failed to comply with Rule 49 of the YOI Rules (re: procedural oversight of removal from association). The Secretary of State had failed to comply with the rules requiring the provision of education.<br>Article 3: The treatment was not sufficiently severe to cross the high threshold required for treatment to be regarded as inhuman or degrading.<br>Article 8: There had been a breach insofar as the interference with AB's rights was not in accordance with the law. The High Court made a declaration to this effect.<br><br>AB appealed against the finding that there was no violation of Article 3. There was a cross-appeal by the Secretary of State, challenging the finding that Article 8 was engaged.<br><br>Court of Appeal dismissed both appeals. The threshold of Article 3 was not breached, there were good reasons for AB's segregation, his treatment was essential for the protection of others and for his own protection. As far as Article 8 was concerned, it is engaged when a prisoner is removed from association and therefore needs to be in accordance with the law and proportionate to the aims of 8(2). |

| Case | Date | Court | Prison | Duration | Summary | Decision |
|------|------|-------|--------|----------|---------|----------|
| *R (Syed) v The Secretary of State for Justice* [2017] EWHC 727 (Admin)  Appeal: [2019] EWCA Civ 367 | 07/04/2017   Appeal: 13/02/2019 | High Court (QB)   Court of Appeal | HMP Woodhill  High-security  Public  M | NS sought judicial review of a decision of 22 September 2016, when he was transferred to the Central Managing Challenging Behaviour Strategy Unit ('the Unit') at HMP Woodhill. The prison authorities had received intelligence reports that NS had been planning to behead a member of prison staff. NS later created a disturbance and shouted out further threats to behead all staff. After which, he was transferred to the Unit.  NS argued his transfer to the Unit involved removing him from association (within Rule 45 PR 1999) so that the criteria and procedures prescribed by that rule had to be satisfied [1]. NS argued that the proper procedures were not followed, the decision was in breach of the relevant policies, he did not meet the criteria for transfer to the Unit, he was given no opportunity to make representations and adequate reasons were not provided. As such, the restrictions on his ability to associate with other prisoners amounted to an interference with the right to respect private life within the meaning of Article 8(1) of the ECHR which was not justified under Article 8(2) of the ECHR [33-36]. | High Court: NS's transfer to the Unit did not amount to removal from association. The Secretary of State accepted that the decision was procedurally flawed and would be quashed on that basis.  The restrictions imposed on NS interfered with his Article 8 right and such interference was not in accordance with the law because of the procedural breaches. However, the finding of a violation was just satisfaction and no damages were awarded.  Court of Appeal: considered whether NS was 'removed from association' within the meaning of R45 of PR 1999. It also considered, pursuant the Secretary of State's cross-appeal, whether the conditions amounted to an interference with NS's Article 8(1) rights. Held: 'removal from association' required removal from all other prisoners. It did not mean a 'reduction' or 'limitation' in association, and therefore was not satisfied in this case. 'Removal from association' was synonymous with 'segregation' which was a stricter form of separation than that experienced by NS [32-33]. The restrictions to which NS was subjected, in the Unit, sufficiently interfered with NS's right to a private life [61]. Such interference was not in accordance with the law and therefore not justified under Art 8(2). However, no damages would be awarded. Both appeals were dismissed. |
| *The Queen (Dennehy) v Secretary of State for Justice and Sodexo Limited* | 26/05/16 | High Court (QB) | HMP Bronzefield  High-security | For two years, from 19 September 2013 (when she was still on remand) D had been held in 'segregation' (strictly 'removal from association'). D argued that her segregation was unlawful:  (i) Her segregation was not authorised by the Secretary of State and therefore not in accordance with R45 of PR 1999. SSJ | 2 years | The defendants conceded that segregation between 19 September 2013 and 4 September 2015 was unlawful because it was not authorised by the SSJ, as required by PR 1999. The High Court held it was not procedurally unfair as D had received written reasons for her initial |

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| EWHC 1219 (2016) | | | | Private W | conceded this, in light of the Supreme Court decision in *R (Bourgass) v Secretary of State for Justice* [2016] AC 384; (ii) D's segregation was procedurally unfair: she was not entitled to receive reasons nor given a reasonable opportunity to make representations before a decision was made by the SSJ. D argued that she was only provided with the 'most general idea of the allegations against her' [81]; (iii) Article 3: D submitted she was subjected to inhuman or degrading treatment (not torture) [98]; (iv) her segregation breached her Article 8 right to private life; (v) Article 14: D argued that she was discriminated against based on her disability [160]; (vi) D's segregation was unlawful at common law as being irrational.<br><br>SSJ argued that the terms of D's segregation were far from 'complete isolation or even solitary confinement…she was permitted to have domestic visits and to have access to a library' [40]. D's segregation was reviewed by the board every 14 days. D had an orderly role. The prison developed and implemented a reintegration plan with D. Prison discussed alternatives to segregation with D. | | segregation due to her escape risk [86]. Subsequently, D attended meetings of the Segregation Review Board on 21 and 26 September 2013 where she had the opportunity to make representations and could respond to the substance of the allegations against her in relation to the suspected escape plan [89)]. For the second period of segregation, D was segregated because of the serious risk she posed to others. This was communicated to D and therefore discharged the burden of providing reasons for segregation [93]. Consequently, there was no breach of the duty to act fairly i.e. no breach of procedural fairness [96].<br><br>Article 3 threshold was not met. There was no suggestion that D was segregated with the intention of 'debasing or humiliating her; nor any suggestion that the measure was calculated to break her resistance or will.' [122]. The regime did not amount to 'solitary confinement', D was permitted to communicate with other people, was able to work as an orderly and had access to the library and gym [123]. Although D suffered from a mental disorder, the impact of segregation on her health was monitored by professionals, including psychologists, and it was certified that she could be kept in that environment at all relevant times [124]. D's segregation had a legitimate aim and was not imposed for arbitrary reasons. The reality was that D posed an exceptionally high risk to others, including other prisoners [125]. D's segregation was kept under review on a regular basis and those authorities concluded 'in their professional judgment, which is based on extensive experience of prisons, that her continued |

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| | | | | | | segregation is necessary' [127].

Article 8(1) meant any interference with the right to respect for private life had to be justified under Article 8(2), including the requirement that it must be in accordance with the law. The initial period of segregation (21 September 2013- 4 September 2015) was not in accordance with the law because it was not authorised pursuant to PR 1999 [151-152]. There was a breach of Article 8(1) for that reason. The court held the segregation pursued a legitimate aim, because D was a very dangerous offender [55]. It was a proportionate response, for the reasons set out in the analysis of Article 3 [156].

There was no breach of Article 14 because D was treated no differently than she would have been if she had not had the mental health problems [163]. D's mental health problems had been taken into account at all material times.

The claim for judicial review was dismissed, except the judge declared that D's segregation was unlawful during 21 September 2013 to 4 September 2015; it was not in accordance with the requirements of PR 1999 [180]. |
| *R (Bourgass and another) (Appellants) v Secretary of State for Justice (Respondent)* [2015] UKSC 54 | 29/07/15 | Supreme Court | Bourgass: HMP Whitemoor

Hussain: HMP Frankland | In each of the two cases the claimant prisoner, following an incident with another prisoner, was segregated by order of the prison governor under R45(1) of PR 1999. After 72 hours each claimant's segregation was reviewed by a Segregation Review Board. Each claimant's segregation continued under that regime for several months until he was transferred to another prison. The reasons given for continuing the segregation included the | 7 months at least. | The lower courts dismissed the claims. On appeal to the Supreme Court (SC), the SC held that Rule 45(2) imposes specific duties on the Secretary of State, which could not be undertaken by the prison governor. Rule 45(2) was intended to provide a safeguard for a prisoner against excessively prolonged segregation. It could only be a safeguard if the segregation decision was considered by |

| | | | | maintenance of good order and discipline, investigation of the alleged involvement in the assault of another prisoner and the unacceptable risk which he posed to other prisoners. Both claimants challenged their segregation by way of judicial review on the grounds that the procedure adopted breached their rights under Article 6.1 ECHR and their common law rights to procedural fairness. | | officials who were independent from the prison [88-89]. The decision taken by the governor, to continue segregation, was therefore unlawful.

Common law fairness required that a prisoner should have a reasonable opportunity to make representations before a decision was taken by the Secretary of State under rule 45(2). He must normally be informed of the substance of the matters on the basis of which the authority of the Secretary of State was sought. That will require genuine and meaningful disclosure of the reasons why the authorisation was sought but not normally of primary evidence. The reasons provided for the claimants' continued segregation gave at best only the most general idea of the nature of the prison officers' concerns. More could and should have been said without endangering the legitimate interests which the prison authorities were concerned to protect. The imposition of prolonged periods of solitary confinement on the basis of what are, in substance, secret and unchallengeable allegations is unacceptable [98,100].

The Supreme Court reversed the Court of Appeal decision. It granted a declaration that the appellant's segregation was not authorised by the Secretary of State for Justice and was accordingly unlawful. |
| | | | High-security

Public

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| *R (on the application of MA) v Independent Adjudicator* [2013] EWHC 438 | 07/03/13 | High Court (QB) | Ashfield YOI

Private | On 2 February 2012, a 'mass move' took place involving a number of young persons at Ashfield. During the move, the claimants, along with numerous other young persons, entered the AstroTurf sports pitch. They said they were protesting against a decision to remove the toilet seats from the residential block. 14 | 4 days to 2 weeks | High Court granted the applications: (1) The five who had been restricted for three days had each been confined to their cells and permitted out alone, for a limited period, in order to shower, make a phone call or take exercise. That represented removal from |

| | M | young persons entered the pitch, some inflicted damage on the goal posts. Staff withdrew from the pitch, due to the risk posed by the young persons. Ashfield was shut down causing significant disruption and a command centre was opened. The boys armed themselves with pieces of the broken football goal and approached the laundry room, where they threatened a member of staff. Some threatened each other on the pitch. A few hours later, a team of officers in protective gear entered the pitch. The majority of the young persons surrendered. A handful refused to surrender. Two were subsequently taken to the Brunel Unit (segregation block) and five were segregated on their wing (i.e. confined in their cells in Phoenix Wing).

The claimants challenged:
i) Unlawful disciplinary measures [9];
-A shadow segregation regime referred to as 'restriction on the wing', was alleged to have taken place on Phoenix Wing between 3-6 February 2012. It was an informal scheme, lacking any of the safeguards applicable to the formal segregation regime (assessment, review and monitoring) and by reason of that, unlawful;
-Incentive and Earned Privileges Policy: the failure by the defendant to comply with its own IEP Policy and the Secretary of State for Justice's (SSJ) Guidance;
-Education: the unlawfulness of the restrictions placed on access to education;
-Gym ban: unlawful blanket restriction on physical education including a failure to follow Ashfield's own policy concerning access to the gym.

ii) Unfair adjudication process [10]: | association and was segregation by another name, outside the provisions of R49 YOI Rules and its critical safeguards. As to the deprivation of privileges, the national policy as contained within the SSJ's guidance (PSI 11/2011) permitted disciplinary proceedings and a review of privilege level, and so M could not argue that they had suffered double jeopardy by losing privileges as well as receiving additional days consequent to the adjudication process. The deprivation of education had occurred as a result of the gradual nature of M's reintroduction to their classes and was done to manage risk following the incident and did not breach R38(1). The length and nature of the two-week gym ban and the sole reason for its imposition having been damage to property showed that the measure was punitive in nature. As such it was outside the Rules and unlawful [36, 49, 59, 69]. (2) There had been a failure to comply with the requirements of the guidance in PSI 47/2011 in that relevant paperwork was not provided to M's solicitor, although steps were taken to rectify the position and the adjudications were quashed [78].

High Court granted the following declaratory relief: i) The defendant unlawfully, and in breach of R49 YOI Rules, removed MA, NB, HB, SD and GO from association for the period 3-6 February 2012; ii) The defendant unlawfully restricted the claimants' use of the gymnasium; iii) The defendant unlawfully and in breach of Article 6 ECHR failed to provide relevant adjudication paperwork to the legal representative of MB in advance of the hearing held by the IA on 1 March 2012. |

| | | | | -Failure to provide adjudication paperwork, including evidence and statements, to legal representatives when requested; -Failure to provide witness statements relied upon in relation to sentencing in advance of sentencing itself; -Absence of any system at Ashfield for ensuring that Independent Adjudicators (IAs) are made aware of punishments already imposed, thus failing to ensure that overall punishments arising from proven behaviour were proportionate and appropriate. Claimants' argued: Restrictions on the wing imposed upon the five claimants (MA, NB, HB, SD, GO) during 3-6 February 2012 were unlawful being based upon no rule or policy, and were without the safeguards of PSO 1700 e.g. assessment, review and monitoring. No records were kept by Serco Limited during the period of the wing restriction, a mandatory requirement of PSO 1700. As each of the claimants was contained within his cell save for access to a telephone, shower and limited time in the open air, this was removal from association. | | |
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| *Leslie Malcolm v Secretary of State for Justice* [2011] EWCA Civ 1538 | 14/12/2011 | Court of Appeal | HMP Frankland High Security Public M | 26 April-2 October 2007, M was detained in segregation. He was provided with 30 minutes of outside air each day, whereas under paragraph 2(ii) of PSO 4275 he should have been able to spend at least one hour in the open air each day. M claimed that the failure to secure his entitlement under PSO 4275 was unlawful and the prison officers: (1) were guilty of misfeasance in public office; and (2) acted in violation of his Article 8 ECHR right. This was dismissed, so M appealed. M appealed the finding relating to Article 8, arguing that the restriction on his access to open air amounted to an unlawful | 6 months | The High Court dismissed his entire claim. The Court of Appeal dismissed the appeal: M suffered no detrimental effects to his health or wellbeing. M 'chose from the outset, and for his own reasons, to get himself moved to another prison by staying in the Segregation Unit – rather than moving to a vulnerable prisoner wing where he would have been able to have more time in the fresh air. Despite the unreasonable nature of his actions, the Claimant's autonomy was respected' [14]. On the particular facts of this case, 'not least that he was the author of his own misfortune, any impact on the |

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| | | | | interference with his right to private life. | | Claimant's Article 8 right to respect for his private life did not attain the necessary 'level of seriousness' to amount to an interference to breach Article 8' [14]. |
| *Hassan v Secretary of State for Justice* [2011] EWHC 1359 | 27/05/2011 | High Court (QB) | HMP Full Sutton<br><br>High Security<br><br>Public<br><br>M | H was serving indeterminate sentences, at HMP Full Sutton, for attempted murder and wounding with intent. H had a history of self-harm and attempts at suicide. Prison staff believed H had been involved in an assault on another prisoner. H was segregated between 18 February-12 April 2010, for good order or discipline. A couple of days after being segregated, H smashed up his cell furniture and fittings. His segregation was reviewed at regular intervals and continued for over a month, because of his suspected involvement in the assault. H contended that his segregation was unlawful as he was segregated on the basis of an unsubstantiated assault allegation; that there was no justification for it under PR 1999 and PSO 1700; and, as procedural safeguards had not been applied, including those designed to protect inmates with mental health problems, his Article 3 and Article 8 ECHR rights had been breached. | 2 months | The High Court dismissed all grounds of his claim.<br><br>H had a 'record of violence in prison, of very disruptive behaviour and there was clear evidence' of his involvement in the assault. PR 1999 and PSO 1700 procedures were followed. The only issue was whether, as prescribed by PSO 1700, H was returned to normal location 'after the shortest possible time in segregation' [47].<br><br>The period of segregation was lawful. The Court recognised 'the difficulties which a prisoner may pose for the safe running of a prison; the experience which the governors have of dealing with them; and their knowledge of the risks of and limitations on what may practically be done. Their expertise, knowledge and experience in a testing environment warrant respect. I was struck by the absence of understanding shown in the Claimant's Grounds, Skeleton and oral arguments of the difficulties which Mr Hassan posed for the safety of other prisoners and staff, and to the good order and discipline of the prison' [49].<br><br>The 'duration of the period of compliance, evidencing a sufficient change in behaviour and attitude for a return to normal location to be possible' was a matter for governor and Board. Given H's background and behaviour in segregation, it was reasonable for the Board to decide that |

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| | | | | | | a longer period was necessary…Bearing in mind the offences which he had committed, especially in prison, his record of adjudications and disruption, the reasonably suspected assault followed by the violent disorder in segregation, and belated grudging compliance, there does not appear to be anything disproportionate in a period of just over 7 weeks in segregation in order to maintain good order and discipline in the prison' [57].<br><br>'The Claimant's arguments exaggerate his mental health problems, and under state, to the point of purblindly ignoring it, the effect of his behaviour on the safety of others and the order and discipline of the prison. There was no evidence during his time in segregation that it was having any adverse effect at all on his mental well-being' [60-61].<br><br>Article 3 and Article 8 claims failed [63] because the court was satisfied with the 'review Board system, its composition, the role of the IMB, the daily visits from the Chaplaincy, a member of healthcare, and a governor. The Claimant saw a member of the IMB 9 times. He showered and exercised regularly. He was provided with the means to keep fed, clothed, to attend to his personal hygiene, and to clean his cell. He could purchase goods on a weekly basis, and read books from the Library trolley. A variety of other items is allowed in the cells, including writing material, newspapers, radios and religious artefacts. There is a system of privileges and incentives which can ease the regime. He had access to his lawyers, he could make a telephone call at least once every three days, and could |

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| | | | | | | have two one hour visits a month, with more depending on the level of incentives and privileges earned. Conditions were not remotely near what would breach Article 3' [64]. |
| *R (Bary) v (1) Secretary of State for Justice (2) The Governor of HMP Long Lartin* [2010] EWHC 587 | 19/03/2010 | High Court (QB) | HMP Long Lartin<br><br>High Security<br><br>Public<br><br>M | Claim for judicial review by 6 Muslim men awaiting extradition from the UK and were detained in the Detainee Unit (DU) at Long Lartin. None of them had been accused or convicted of any crime in the UK, although all were accused or convicted of serious crimes abroad, all but one for alleged terrorist offences. Because of the risk they represented, they were classified as Category A prisoners. The governor decided to change the living and working regime in the Unit; he confined them to the premises of the DU for all purposes other than healthcare and family visits. They had previously been entitled to attend the general prison to participate in education, skills workshops, sports and religious worship. The change in regime was made following the transfer to the unit of one of the claimants (O), who had been characterised as representing a continuing and significant risk to national security and having a major influence on other Muslims.<br><br>Claimants' complaints:<br>(i) The decision to impose a restrictive regime was irrational, unreasonable, disproportionate or made for illegitimate aims. Even if the original decision could not be successfully challenged, there was a duty to keep it under review and this was not done in a proper manner.<br><br>(ii) Two of the claimants, Bary and Ahsan, who suffered mental illness, claimed the decision infringed their rights not to be | | High Court dismissed all claims.<br><br>Held that R45(1) PR 1999 did not apply here. The power was aimed at putting the prisoner in solitary confinement and did not contemplate this kind of regime [27].<br><br>Dismissed Article 3: the high threshold of Article 3 had not been reached. There was no intention to humiliate or debase the complainants. There was little evidence that the conditions had an inhuman or degrading effect. Importantly, the court said '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' [32]. The claimants posed such risk of violence that the regime was justified. Moreover, they still had contact with their families, medical and psychiatric services.<br><br>Court dismissed Article 8 claims. Any interference with the claimants' Article 8 rights was proportionate and necessary to the risks they posed. |

| | | | | subjected to inhuman or degrading treatment (Article 3 ECHR).

(iii) All claimants alleged that the decision infringed their right to respect their private and family life, contrary to Article 8(1) ECHR, which was not justified as being necessary for the prevention of disorder and crime. | | |
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| *R (Hair) v HM Coroner for Staffordshire* [2010] EWHC 2580 | 15/10/10 | High Court (QB) | HMP Stafford

Cat C

Public

M | H was detained in HMP Stafford. He had a history of disruptive behaviour on the wings and mental health issues. He was taken to the segregation unit in August 2006. He refused to leave the segregation unit and was charged with refusing a lawful order. As a consequence, he received 7 additional days punishment in cellular confinement. This pattern continued for several months. During such time, he assaulted prison officers, made threats and was disruptive in the unit. On each occasion he was awarded more time in the unit. On 13 December 2006, H was found unconscious in his cell, with a ligature around his neck. H was taken to hospital and died on 15 December 2006.

An inquest took place in April 2008, which explored the circumstances of H's death. H's mother brought a claim for judicial review, concerning the adequacy of the inquest into H's death. Mrs H sought a quashing order of the inquisition and a new inquest. She complained that the inquest was in breach of the UK's obligations under Article 2 ECHR, to carry out a proper investigation into the circumstances of her son's death. | | The High Court allowed the application for judicial review and quashed the inquest. It ordered a new inquest. The Coroner failed to adequately sum up the case, failed to draw material documents to the jury's attention, and failed to call all relevant witnesses. |
| *R (KB) v Secretary of State for Justice* [2010] EWHC 15 | 13/01/10 | High Court (QB) | Wetherby YOI

Public | The claimant, aged 17, was detained at Wetherby Young Offender Institution. Wetherby published and operated a system of 'Discipline Incident Reports' ('DIR'). The claimant contended that the DIR system was unlawful: (i) it was ultra vires, and/or contrary to Prison Service policy; and (ii) it offended Article 8 of | 3.5 months | The High Court dismissed the claim challenging the IEP policy at Wetherby [80]. It also dismissed the Article 8 part of the claim, as the IEP policy involved no loss of 'association'. It was a loss of free time which was different to that envisaged by R49 YOI Rules ('removal |

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| | | | M | the ECHR [1].<br><br>Wetherby also published and operated an 'Incentives and Earned Privileges Policy' ('IEP policy'). The claimant argued the policy operated to curtail the opportunity for association between trainees and it was unlawful in that: (i) it was ultra vires; and/or (ii) it offended Article 8. | | from association') which prohibits an inmate from coming into contact with, or interacting with, other inmates [74]. The IEP system allowed an extra period of 'free time' which allowed additional association. It was therefore lawful. There was no engagement with Article 8. If there was any engagement, it was justified and proportionate to the purpose of the IEP scheme [78].<br>Allowed the claim which challenged the DIR system, and declared that system to be unlawful [80]. There was no legal rule supporting the imposition of the DIR system. It gave rise to 'lawless and arbitrary punishment' [46]. The DIR system 'permits the most junior rank of uniformed officer to be both the witness and accuser, in some situations also the 'victim' …and in some situations the arbitrator of the punishment' [53]. The process at Wetherby was outside the YOI rules, and was actually or potentially arbitrary in the characterisation of the offences to which it applied, and lacked minimum essential safeguards for the imposition of punishment [55]. The Article 8 part of this claim failed on the basis that there was no loss of association and therefore no interference with Article 8. |
| *The Prison Officers Association v Iqbal* [2009] EWCA Civ 1312 | 04/12/09 | Court of Appeal | HMP Wealstun<br><br>Cat C<br><br>Public<br><br>M | Claimant alleged he had been falsely imprisoned on 29 August 2007. Prison officers took unlawful strike action leaving him confined to his cell all day, without access to normal activities. As a consequence of the strike, the Governing Governor ordered all prisoners to be confined in their cells.<br><br>The court at first instance held that the Prison Officers Association (POA) was responsible for false imprisonment and damages were awarded. The Judge assessed damages at £5, | 1 day | Court of Appeal allowed the POA's appeal. The first instance judge was wrong to hold that any prison officers, and hence the POA, was liable for the tort of false imprisonment. The failure of the officers to work at the prison, whilst potentially a breach of their employment contracts, involved no positive action on their part. The POA could not be held liable for the tort of false imprisonment as the result of a failure or refusal to release the claimant from confinement in the absence of a specific |

| | | | | partly because the claimant's description of the distress he suffered was 'something of an exaggeration' and partly because the declaration the Judge made provided 'the claimant with just satisfaction'.<br><br>The POA appealed the finding of liability for false imprisonment, and the claimant cross-appealed the quantum of damages. POA argued the prison officers took no positive steps to shut the claimant in his cell, or even to force him to stay in his cell; they merely did not report for duty at the prison, as a result of which the prison governor decided the claimant had to be confined to his cell; in those circumstances, there was no liability to the claimant for false imprisonment. | | duty to do so. Moreover, whilst there was a causal link between the officers' decision to strike and the prisoners' confinement in their cells, the direct and immediate cause of the claimant's confinement was the governor's order and not the prison officers' decision to strike. |
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| *R (N) v Secretary of State for Justice* [2009] EWHC 1921 | 28/ 07/ 2009 | High Court of (QB) | HMP Belmarsh<br><br>High Security<br><br>Public<br><br>M | The claimant was detained in a single cell, for two weeks between 29 April-13 May 2008, at HMP Belmarsh.<br><br>N was a UK citizen who converted to Islam. He spent time in Syria where he was imprisoned and mistreated, including spending time in solitary confinement. N suffered post-traumatic stress. N was deported by the Syrian authorities to the UK, where he was subjected to a 12 month control order, due to the Secretary of State's belief that N had participated in terrorist related activities. N breached his control order and was remanded in prison. N was initially placed in a single room on a normal wing. He later attempted suicide and was transferred to the healthcare centre. N had been categorised as a Category A prisoner. He was first placed in a shared cell for category A prisoners. However, the prison became concerned about N converting other prisoners to a strand of violent Islam. He was then removed to a single cell for two weeks. N challenged the legality of the decision to detain him in the single cell. | Two weeks. | N's application was refused.<br><br>Article 3 ECHR: the segregation of a prisoner for security, discipline or protection did not in itself constitute a breach of Article 3. The conditions in which N was detained fell very far short of torture or inhuman or degrading treatment. It was a proportionate response to a genuinely and reasonably held security concern. There was no breach of Article 3.<br><br>There was no breach of Article 8. There was no evidence of any significant interference with N's Article 8 rights.<br><br>There was no breach of the positive obligations. The system and regime provided to N was perfectly adequate to uphold his rights. |

| | | | | N argued his detention in the single cell violated Article 3 ECHR because it subjected him to inhuman and degrading treatment. Secondly, and in the alternative, he claimed his treatment constituted an unjustified interference with his right to private life under Article 8 ECHR.

In the further alternative the claimant submitted that if the negative obligations cast by Articles 3 and or 8 were not violated, his placement in a single cell was unlawful because it exposed him to a real and immediate risk of violation of his rights under Articles 3 and 8 and the defendant's actions in placing and keeping him in a single cell were disproportionate; and the defendant did not take reasonable and proportionate measures to minimise or eliminate the risk of a breach of obligation. The claim was for declaratory relief, damages and costs. | | |
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| *R (Karl Lewis) v HM Coroner for Mid and North Division of the County of Shropshire* [2009] EWHC 661 | 03/04/09 | High Court (QB) | Karl Lewis: YOI Stoke Heath, Public

Paul Calvert: HMP Pentonville, Cat B, Public

Stephen Woods: HMP | Three linked applications, in which the relatives of prisoners who hanged themselves whilst in custody, sought judicial review of rulings/directions given by the defendant coroners in the course of the subsequent inquests.

SW was the only one held in segregation. There was evidence that SW had not been adequately observed, that a proper assessment of his risk of self-harm did not take place, and that the prison officers responsible for SW's care had not been adequately trained, in particular regarding the requirement for hourly observations. There were a number of factual elements (causal ones) which the claimant argued should have been put to the jury at the inquest. As such, valuable and important comments about practices, procedures and omissions in prison could not be considered and therefore a proper investigation | NA | The application on behalf of SW was dismissed. Article 2 did not require an investigation of, or expression of the conclusions upon, events and matters that neither caused nor contributed to the death in question in order to render the inquest Article 2 compliant. |

| | | | Bullingdon, Cat B/C, Public<br><br>M | required by Article 2 ECHR could not take place. | | |
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| *S.P. v Secretary of State for the Home Department* [2004] EWHC 1418 (Admin) | 23/06/04 | High Court (QB) | New Hall YOI<br><br>Public<br><br>W | SP was 17 and held in New Hall YOI. Between 25 September and 15 October 2003 she was removed from association and held within a segregation unit. This decision was taken in response to threats SP made on the wings, particularly that she would like to harm others with a razor blade [3].<br><br>She sought judicial review: (i) whilst she was segregated, she was not provided with the hours of 'purposeful activity' referred to in PSO 4950; (ii) she was not given an opportunity to make representations before the decision to segregate was made. | 3 weeks | High Court held there had not been a breach of the PSOs which governed the availability of education and purposeful activity [34]. The PSOs require that the regime should be as 'full as possible' but could be limited in order to protect the prisoner or to maintain the good order of the establishment; the prison was not required to provide the full regime as would have been inconsistent with that necessity [29-30]. The PSOs encouraged a flexible approach and it was for the governor to determine what was appropriate for 'purposeful activity' [30].<br><br>High Court upheld her claim regarding the right to make representations. Fairness required that SP should have been given the opportunity to make representations before an order for segregation was made, unless reasons of good order, discipline or urgency or other relevant circumstances required otherwise. Here, urgency was not a problem and the claimant could have been told about the reasons for her segregation. The governor did not satisfy the court that there were good reasons for refusing her an opportunity to make representations [57-58]. |
| *R (on the application of BP) v Secretary of State for the Home Department* [2003] | 17/07/03 | High Court (QB) | Onley YOI<br><br>Public<br><br>M | B, a 17-year-old detainee at Onley YOI, sought a declaration that his treatment on two separate occasions, whilst in the segregation unit, was unlawful and contrary to YOI Rules 2000 and Articles 3 and 8 ECHR. | Various (but 9 days on one occasion) | The High Court dismissed most of the claim but upheld part.<br><br>B's confinement in the segregation unit was not in itself a breach of the YOI Rules or the applicable code of practice |

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| EWHC 1963 | | | | B had a history of self harm and attempted suicide. B contended that on the first occasion no heating was provided and he was not given anything to do. As a consequence, he felt odd and paranoid when he returned to his normal unit. On the second occasion B alleged that he was deprived of education, training and physical education for a period of nine days. B also argued that the Secretary of State had, contrary to Article 3, failed to investigate or ensure there was an effective investigation into his allegations that three inmates had raped him at another YOI. | | (PSO 1700). However, in failing to provide education, training and physical education to B whilst in the unit, the institution had breached the YOI Rules. In depriving B of his minimum regime activities there was also a failure to have regard to his best interests and to his inherent vulnerability.<br><br>However, a declaration was not appropriate since the institution had subsequently changed the regime in the segregation unit following a review of the conditions.<br><br>The facilities afforded to B within his cell including the number of visits, the length of time which he was kept there and the penal purpose of the segregation precluded a finding that his treatment was in breach of Article 3 ECHR. There was also no evidence that B's physical and psychological integrity were violated in breach of Article 8. In light of the evidence, no criticism could be made against the institution in its response to the complaint of rape made by B. |
| *Nolan v Premier Prison Services Ltd* [2001] 7 WLUK 55 | 03/07/01 | County Court | Prison (no details) | N brought a claim against the Prison Authorities (P) for losing his personal property during his removal to the segregation unit. The property had been put into bags and recorded by prison officers, the loss coming to light when the bags were later restored to N. N had signed a disclaimer removing from P responsibility for personal property in N's possession. N contended that the disclaimer did not apply since, in the circumstances, he had been unable to physically protect his property. P contended that, in a prison environment where personal property was at high risk, a wider approach towards the | NA | The County Court held in favour of P.<br><br>A duty of care could be established because: (1) it was foreseeable that N's property was at high risk of going missing; and (2) there was sufficient proximity between N and P to create an obligation on P to safeguard N's property. However, it was not fair, just and reasonable that P be responsible for N's loss for reasons of public policy. If prison authorities were to be held responsible for such losses, which were a frequent occurrence in |

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| | | | | establishment of a duty of care should be adopted. | | prison, the eventual effect would be to severely restrict the possessions which prisoners were allowed to have. |
| *Keenan v United Kingdom* (2001) 33 EHRR 38 | 03/04/2001 | European Court of Human Rights | HMP Exeter<br><br>Cat B<br><br>Public<br><br>M | The applicant's mentally ill son (X) committed suicide in Exeter prison where he was serving a sentence of four months imprisonment for assaulting his girlfriend. A fortnight after assaulting two prison officers and only nine days before his expected release date, he had been given a disciplinary punishment of seven days segregation in the punishment block and an additional 28 days imprisonment.<br><br>X had been receiving ant-psychotic medication and staff had been made aware of his mental health problems.<br><br>Within 24 hours of the decision to segregate X, X hung himself.<br><br>The applicant complained that the prison authorities had failed to protect her son's right to life (Article 2), that he had been subjected to inhuman and/or degrading treatment in the period before his death (Article 3) and that there had been no effective remedy in respect of her complaints (Article 13). She also claimed just satisfaction under Article 41. | Ordered to 7 days segregation, but died within 24 hours | ECHR held that:<br>(i) There was no violation of Article 2 (right to life): the prison authorities responded in a reasonable way to X's conduct, they placed him in hospital care, under watch, when he evinced suicidal tendencies. He was under daily medical supervision by the prison doctors, who found X fit for segregation [99].<br><br>However, there was a violation of Article 3 (subjected to inhuman and/or degrading treatment). The court was 'struck by the lack of medical notes concerning Mark Keenan who was an identifiable suicide risk and undergoing the additional stresses that could be foreseen from segregation and, later, disciplinary punishment. From 5 May to 15 May 1993, when he died, there were no entries in his medical notes. Given that there were a number of prison doctors who were involved in caring for Mark Keenan, this shows an inadequate concern to maintain full and detailed records of his mental state and undermines the effectiveness of any monitoring or supervision process' [144]. 'The lack of effective monitoring of Mark Keenan's condition and the lack of informed psychiatric input into his assessment and treatment disclose significant defects in the medical care provided to a mentally ill person known to be a suicide risk. The belated imposition on him in those circumstances of a serious disciplinary punishment – seven days' segregation in the punishment block and an |

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| | | | | | | additional twenty-eight days to his sentence imposed two weeks after the event and only nine days before his expected date of release – which may well have threatened his physical and moral resistance, is not compatible with the standard of treatment required in respect of a mentally ill person' [116].<br><br>There was a violation of Article 13 (right to an effective remedy). The coroner's inquest had been inadequate as it had not provided a remedy for determining the liability of the authorities in respect of the treatment of X nor had it provided a remedy by way of compensation. The ECHR granted the application and awarded £10,000 compensation. |
| *Russell (and others) v Home Office* [2001] 3 WLUK 43 ('Russell') | 02/03/01 | High Court (QB) | HMP Whitemoor<br><br>High-security<br><br>Public<br><br>M | In 1994 the three Claimants, Andrew Russell, Gilbert (Danny) McNamee and Liam McCotter were prisoners in HMP Whitemoor. On the evening of 9 September 1994 they took part in an escape from the Special Secure Unit ('SSU'). They were recaptured in the vicinity of the prison. Each claimed he was subjected to unlawful violence by prison officers in the course of his recapture and that unlawful restraint and force was used in the 'special cells' of the segregation unit afterwards. Each sought damages, including aggravated and exemplary damages, from the Home Office.<br><br>The Claimants' claims were pleaded in assault and battery, alternatively in misfeasance of public office, but both causes of action covered the same ground. | Unknown | High Court upheld the claims. The court awarded £1500 in general damages and £1000 for aggravated damages. On the facts, the use of special cells, along with the prolonged use of handcuffs and the removal of clothing had been necessary. However, unreasonable and gratuitous force had been used by the prison officers in the segregation unit. However, R's conduct 'disentitled' him to an award of exemplary damages. |

| Case | Date | Court | Details | Facts | Party | Decision |
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| *R v Governor of Frankland Prison Ex p. Russell* (Right to Meals) [2000] 1 WLR 2027 ('Ex Parte Russell') | 10/07/00 | High Court (QB) | HMP Frankland<br><br>High-security<br><br>Public<br><br>M | R, a serving prisoner, challenged the prison governor's policy that prisoners within the segregation unit who, in protest, refused to wear prison clothing would be barred from collecting their daily three meals from the servery, but be provided with one meal a day brought to their cell by prison staff. The prison governor justified the policy on the basis that 'giving in' to the prisoners' protests would undermine discipline and control within the prison.<br><br>R sought a declaration that those prisoners affected by the policy were entitled to have all three meals brought to their cell, contending that the right to the provision of food was absolute and that no restriction or limitation could be placed upon it. In the alternative, R submitted that no restriction which constituted an interference with Article 3 ECHR could be imposed. | Various | High Court granted the application in part.<br>(1) The prison governor's policy was unlawful and a potential breach of Article 3 ECHR. The prison governor could lay down restrictions regulating a prisoner's access to food provided that policy satisfied an obligation to provide adequate food meeting the nutritional needs of the prisoner pursuant to R24 PR 1999. One meal a day did not meet the nutritional needs of prisoners. Moreover, the right to adequate food could not be withdrawn as a punishment. The policy had been introduced in an ad hoc manner and contained no provision to safeguard prisoners' health. The obvious alternative open to the prison governor had been the provision of adequate food to the prisoner in his cell.<br><br>(2) R was entitled to such food as was adequate under the provisions of R24, rather than a guarantee of three meals a day. It followed that the declaration sought would not be granted.<br><br>The court quashed the policy but refused to grant the declaration. |
| *Racz v Home Office* [1994] 2 WLR 23 | 16/12/93 | House of Lords | HMP Leeds<br><br>Cat B<br><br>Public<br><br>M | R alleged that he had suffered ill-treatment at the hands of prison officers whilst he was a remand prisoner.<br><br>On 11 March 1988 '[H]e was transferred to a cell in the segregation unit. While located in the cell prison officers interfered with the plaintiff's food by tipping it on the floor of the cell and ordering the plaintiff to clean it up. The plaintiff went on hunger strike in protest'. During this time, the plaintiff was only given a nylon/canvas 'dress' to wear and had to sleep on | Unknown | The House of Lords allowed the appeal in part.<br>(i) The Home Office could be vicariously liable for acts of prison officers that amounted to misfeasance in public office.<br>(ii) The paragraph of R's statement of claim alleging misfeasance of public office could not justifiably be struck out unless it was the inevitable result of proof that the unauthorised acts were so unconnected with the authorised duties as to be independent of and outside |

| | | | | the floor with the covering of a single blanket. He received no medication. The plaintiff complained he was subjected to intolerable conditions and/or cruel and unusual punishment contrary to the Bill of Rights 1688, caused by negligence on the part of the defendant, its servants or agents (p. 50).<br><br>R sought general, aggravated and exemplary damages for assault, battery negligence and misfeasance in public office.<br><br>On the defendant's application, Ebsworth J. struck out the part of the claim based on misfeasance in public office and rejected the plaintiff's submission that the action should be tried by a jury. The Court of Appeal dismissed an appeal by the plaintiff, holding that in law the Home Office could not be vicariously liable for misfeasance in public office by prison officers.<br><br>R appealed to the House of Lords. The main issue was whether the Home Office could be vicariously liable for prison officers. | | them, which was a question of fact and degree.<br>(iii) In all the circumstances, the case was not one where jury trial ought to be ordered. |
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| *H v the Home Office* [1992] WL 12678558 | 30/04/1992 | Court of Appeal | HMP Albany<br><br>Cat B<br><br>Public<br><br>M | In March 1988 H was at HMP Albany. He was an ordinary prisoner in a single cell, he worked in the workshops, was a member of a 'food boat' and able to cook meals in the evening, and enjoyed exercise and recreational facilities.<br><br>Owing to a failure on the part of the prison authorities to take adequate precautions, a computer print-out showing details of H's previous convictions came into the hands of a particular prisoner and, through him, became known to a number of the other prisoners. Those details showed H had eight previous convictions for sexual offences. On 28th March 1988 the plaintiff was assaulted by two other prisoners in circumstances which showed that his assailants knew of his previous convictions. H | At least 4 weeks | The Court of Appeal dismissed H's appeal and allowed the cross appeal of the Home Office.<br><br>There was no question of malice and the complaint was only based on carelessness, and since there was also no question of 'intolerable conditions' the claim based on negligence must fail insofar as it seeks damages for segregation under R43 (not the assault). Any other conclusion would be contrary to Hague (see below). The court allowed the cross-appeal of the Home Office (rejecting the plaintiff's appeal) and reduced £300 to £50. |

|  |  |  |  | suffered minor injuries-black eye and bruising to the face. The judge held that this assault was a direct consequence of the prison authorities' negligence in allowing the computer print-out to come into the hands of another prisoner, and the plaintiff was entitled damages of £50. Against this finding there was no appeal.<br><br>Following this assault the plaintiff was, at his own request and for his protection, removed from association under R43 of the Prison Rules 1964. As a result he was locked in a single cell for 23 hours per day, had no opportunity to work, his prison earnings dropped to the basic amount, was unable to cook his own meals, and his educational and recreational facilities were severely limited. At the end of April 1988 he was offered a transfer to HMP Dartmoor, which he refused, unreasonably as the judge held.<br><br>£300 damages were awarded for the reduced quality of the plaintiff's life at Albany from the date of the assault until the end of April 1988, and for the continuation of some feelings of risk and vulnerability on the part of the plaintiff which would have continued even if he had accepted the transfer to Dartmoor.<br><br>The plaintiff appealed against the level of damages awarded for this part of his claim, contending that £300 was inadequate to compensate him for the damage he suffered by having to go under Rule 43. The Home Office cross-appealed on the basis that a prisoner's segregation under Rule 43 could not, as a matter of law, give rise to a cause of action in negligence. This contention was based on the decision of the House of Lords in *R. v. Deputy Governor of Parkhurst Prison, ex parte Hague* [1992] 1 AC 58. |  |  |
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| *R v Deputy Governor of Parkhurst Prison and Others, Ex parte Hague* [1990] 3 WLR 1210<br><br>Reversed in part by Court of Appeal (Civil Division); 25 May 1990 [1990] 3 W.L.R. 1210<br><br>Appealed to the House of Lords [1992] 1 A.C 58 | 25/05/90 | House of Lords | HMP Parkhurst/ Wormwood Scrubs<br><br>Cat B<br><br>Public<br><br>M | H was serving a 15-year prison sentence at HMP Parkhurst. In July 1988, the deputy governor, with permission from the Secretary of State, transferred H to Wormwood Scrubs and continued to segregate him from other prisoners. He was denied association and other privileges. H was segregated under R43(1) of the Prison Rules 1964. H's internal applications for redress were unsuccessful and he sought judicial review of the deputy governor's decision to transfer and segregate him, claiming declarations and damages for false imprisonment.<br><br>The Divisional Court of the Queen's Bench Division dismissed his application.<br><br>The Court of Appeal allowed his appeal in part, but held that a breach of the 1964 Rules did not found a private-law claim. H appealed.<br><br>The grounds of the application were: (1) the deputy governor of Parkhurst had acted with an unlawful purpose or erred in law or acted in breach of the rules of natural justice by failing to provide the applicant with reasons for his transfer to Wormwood Scrubs; and had failed to allow him to make representations (orally or in writing). (2) By authorising the applicant's continued segregation in Wormwood Scrubs (under Rule 43) the board of visitors had erred in law or acted in breach of the rules of natural justice, by failing to make any effective inquiry into the reasons for H's segregation, and gave no reasons for his segregation, and had failed to consider whether a lesser period of time was justified and had failed to permit H to make any representations (page 66-67). | 1 month | House of Lords dismissed H's appeal.<br><br>(i) The legislature intended the Prison Act 1952 should deal with the administration and management of prisons, but had not intended to confer on prisoners a cause of action in damages. The Prison Rules 1964 were regulatory in nature to govern prison regime, but not to protect prisoners against loss, injury, or damage nor to give them any right of action, nor was r.43 intended to confer a right of action.<br><br>(ii) While a prisoner was subject to the 1952 Act and the 1964 Rules and to the authority of the governor and his officers, he had no residual liberty. Accordingly, no action could lie against the Secretary of State or a prison governor for unlawfully depriving him of such liberty. |

| | | | | | | |
|---|---|---|---|---|---|---|
| *Weldon v Home Office* [1990] 3 WLR 465 | 28/03/1990 | Court of Appeal | HMP Leeds<br><br>Cat B<br><br>Public<br><br>M | W was a prisoner detained in HMP Leeds. He complained of two incidents which occurred on 9 and 10 May 1984.<br><br>On 9 May 1984, the plaintiff alleged he was falsely imprisoned and unlawfully assaulted and battered by prison officers. He was dragged out of his cell, onto the landing, then down the stairs (despite his request to walk) and placed in a cell in the punishment block. He was then removed to a strip cell where his clothes were taken from him. He remained there until the morning; during this time, the plaintiff was further assaulted by the same prison officers. He sought damages for false imprisonment and assault.<br><br>On 10 May 1984, the plaintiff was subjected to further assaults and batteries but he alleged no further false imprisonment [467].<br><br>The Assistant Recorder refused to strike out the application, a decision which the Home Office appealed.<br><br>The appeal by the Home Office raised the question of whether it was possible for a prison officer to falsely imprison a convicted prisoner (who was in lawful custody). The Home Office, in the appeal, sought to have the claim of false imprisonment struck out. | Unknown | The Court of Appeal dismissed the appeal by the Home Office: (1) a prisoner, while lawfully confined in a prison, was entitled to the protection of the law for his residual liberty, namely, such personal liberty as had not been lawfully taken away from him; (2) the alleged facts disclosed an arguable case of false imprisonment; (3) accordingly, the claim should go to trial. |
| *A v United Kingdom* (1984) 6 EHRR CD576 | 01/01/1984 | European Court of Human Rights | HMP Wakefield<br><br>High security<br><br>Public | Whilst in Wakefield Prison, on 29 July 1978, the applicant killed two fellow prisoners and was charged with murder on which he was convicted on 16 March 1979, by Leeds Crown Court, and sentenced to life imprisonment. He gave no reasons for these murders, and none was apparent, except that he stated that he was depressed. From 29 July 1978 to the date of the hearing, the applicant had been in F Wing at Wakefield Prison, in a special | 6 years | ECtHR concluded that Article 3 was manifestly unfounded and the risk posed by the claimant justified his exceptionally restricted treatment.<br><br>'It is clear from the applicant's past behaviour that he is an extremely dangerous prisoner…the applicant has in the past, when able to associate with other prisoners, |

| | | | | M | cell. He was removed from association pursuant to Rule 43(b) of the Prison Rules 1964 (p.1).

The applicant complained that he spent 23 hours each day in his cell, the remaining hour being spent in an exercise yard. He said he was never allowed to associate, or speak to, or see any other prisoner in the prison. His only human contact was with figures of authority. His cell, which he described as a 'cage' since it had a cage-like door made of steel mesh, measured approximately 2 metres by 4 metres. The applicant had no frame for his bed, which consisted of four mattresses on the floor, the remaining furniture consisted of one cardboard chair, one cardboard table and one cardboard corner fitting. The window of the cell was approximately 2 metres from the ground and the glass was approximately 1 centimetre thick, and frosted so that it was opaque. Whenever he left his cell he was accompanied by a total of five prison officers but a privacy door separated him from them while he had a bath; the applicant contended that this was not effective to grant him privacy (p.1).

He complained that the conditions of his imprisonment (lack of privacy, oppressive regime, extreme isolation) constituted inhuman and degrading treatment contrary to Article 3 ECHR. In particular, he was not subject to adequate psychiatric examination, and his psychiatric condition has not been reassessed since March 1979 (p.2). | | repeatedly been involved in extremely violent assaults on other inmates, with an attempted murder in 1976, and three specific murders, including two of fellow prisoners in 1978' (p.3).

'Clearly the degree of the applicant's isolation is extreme and affects all aspects of his daily life including the rare occasions on which he leaves his cell, for example for visits and baths' (p.4). However, 'the respondent Government's duty to ensure the safety and the welfare of the prison population as a whole extends beyond the conditions of the applicant taken in isolation, to include that of other inmates, and the prison staff. In the light of the applicant's unpredictable and violent behaviour and the wholly exceptional risks which he represents to the whole of the population of Wakefield Prison, the Commission must regard the conditions of his isolation as the implementation of a legitimate objective' (p.4). |

# Annex Two – GOoD reasons

| Name | Time in segregation (days) | Code | Reason for segregation[88] | Type[89] | Outcome |
|---|---|---|---|---|---|
| Imran | 37 | GOoD | Segregation to segregation transfer. High-risk terrorist offence. | Preventative | Returned to wing. |
| Wayne | 109 | GOoD | Segregation to segregation transfer. Violence at previous prison. | Preventative | Refused to return to wing. Transferred to segregation unit in another prison. |
| Mark | 249 | GOoD | Segregation to segregation transfer. Violence at previous prison. | Preventative | Refused to return to wing. Transferred to segregation unit in another prison. |
| Patrick | 98 | GOoD | Some intelligence that P had access to mobile phones. Was located on GOoD in the Unit while this was investigated. | Preventative: pending investigation | Refused to return to wing. Still in segregation at end of fieldwork. |
| Ali | 49 | GOoD | Segregated on GOoD. Involved in a 'serious incident on an exercise yard. Incident still being investigated. Risk to GOoD unknown at this time'. | Preventative: pending investigation | Wished to return to wing. Still in segregation at end of fieldwork. |
| Kelvin | 49 | GOoD | Segregated on GOoD. Involved in a 'serious incident on an exercise | Preventative: pending investigation | Wished to return to wing. Still in segregation at end of |

[88] As stated in the prisoners' personal files.

[89] Assigned as follows: *Preventative* to those identified by the prison as high risk, based on conduct at previous prisons (and/or their sentence i.e. a terrorist offence). *Pending investigation:* to those awaiting the outcome of the prison's investigation into alleged violence or misconduct. *Instrumental*, to those who engineered a move to the Unit or who, once there, refused to return to normal location. *Punishment*, to those who were involved in rule violations, violence or disruption on the wing. *Protection*, to those who were at risk of violence on the wings or vulnerable due to mental illness, self-harm or suicide attempts. These were not always mutually exclusive. For example some individuals, segregated for punishment, refused to leave the Unit and their segregation had an instrumental value.

| | | | | | |
|---|---|---|---|---|---|
| | | | yard. Incident still being investigated. Risk to GOoD unknown at this time'. | | fieldwork. |
| Johnny | 3 | GOoD | 'Prisoner is to be held in the seg while facts of a serious incident are established ...under GOOD…pending further inquiries. | Preventative: pending investigation | Returned to wing. |
| Marcus | 51 | GOoD | Jumped on netting – progression. | Instrumental, non-violent | Refused to return to wing. Still in segregation at end of fieldwork. |
| George | 605 | GOoD | Drugs on wings. | Instrumental, non-violent | Refused to return to wing. Still in segregation at end of fieldwork. |
| Kamil | 47 | GOoD | Jumped on netting – progression. | Instrumental, non-violent | Refused to return to wing. Transferred to segregation unit in another prison. |
| Jamal | 29 | GOoD | Jumped on netting – progression. | Instrumental, non-violent | Refused to return to wing. Transferred to normal location in another prison. |
| Norman | 326 | GOoD | Drugs on wings. | Instrumental, non-violent | Refused to return to wing. Transferred to normal location in another prison. |
| Daniel | 65 | GOoD | Kissed an officer. | Punishment | Wished to return to wing. Transferred to normal location in another prison. |
| David | Not available | GOoD | Violent incident with another prisoner. | Punishment | Returned to wing. |

| | | | | | |
|---|---|---|---|---|---|
| Theo | 30 | GOoD | Possession of mobile phone. | Punishment | Returned to wing. |
| Leroy | 5 | GOoD | Pinched female member of staff on the arm (assault). | Punishment | Returned to wing. |
| Billy | 93 | GOoD | Involved in 'serious incident' ('riot') on the wing. Intended to remain in segregation, pending transfer. And awaiting outcome of investigation | Punishment (and pending investigation) | Refused to return to wing. Still in segregation at end of fieldwork. |
| Henry | 68 | GOoD | Involved in 'serious incident' ('riot') on the wing. Intended to remain in segregation, pending transfer. And awaiting outcome of investigation. | Punishment (and pending investigation) | Returned to wing. |
| Shawn | 93 | GOoD | Involved in 'serious incident' ('riot') on the wing. Intended to remain in segregation, pending transfer. And awaiting outcome of investigation. | Punishment (and pending investigation) | Refused to return to wing. Still in segregation at end of fieldwork. |
| Ricky | 21 | GOoD | Involved in 'serious incident' ('riot') on the wing. Intended to remain in segregation, pending transfer. And awaiting outcome of investigation. | Punishment (and pending investigation) | Wished to return to wing. Transferred to normal location in another prison. |

| | | | | | |
|---|---|---|---|---|---|
| Joe | 227 | Own interest | Segregated due to 'risks of self harm and potential drug taking on main location'. | Own protection – mental health | Refused to return to wing. Still in segregation at end of fieldwork. |
| Aiden | 299 | Own interest | Paranoid on wings, self-harm, suicide attempts. | Own protection – mental health | Refused to return to wing. Still in segregation at end of fieldwork. |
| Sam | 94 | Own interest | Under threat on wings - 'Muslim Brotherhood'. | Protection – from others | Refused to return to wing. Still in segregation at end of fieldwork. |
| Nazeer | 102 | Own interest | Under threat on wings - 'Muslim Brotherhood'. | Protection – from others | Refused to return to wing. Transferred to normal location at another prison. |
| Eric | Not available | Own interest | Under threat on wings - 'Muslim Brotherhood'. | Protection – from others | Refused to return to wing. Transferred to normal location at another prison. |

# Annex Three – Interview schedules

## Interview schedule for prisoners

**Introductions**
Explain about me – PhD student in the prisons research centre. Research is in segregation units. I am curious about how law works in prison, in segregation. Will be spending a few months here at Whitemoor, observing, making notes, chatting to staff and prisoners.

**Consent Matters:**
- Discussions kept confidential (except if risk to yourself or someone else) and anonymise names. Taking part won't have any bearing on segregation status or sentence generally.
- Explain PhD thesis.
- You can withdraw your consent at any time.
- If there's anything you say that you'd like me not to include, let me know.

Will cover a few general questions about you and then move on to focus a bit more on your time in segregation and your experience here.

Perhaps we can start with you telling me a bit more about yourself.
- Where are you from?
- How old are you (if you don't mind me asking)?
- What are you interested in (films, books, hobbies)?
- What do you feel most proud of in your life?
- Tell me about your life before prison – what did you do before?

**Segregation decision:**
- How did you come to be in the segregation unit?
- How long have you been in this segregation unit? How long would you say you've been in segregation in prison as a whole?
- What was the process for moving you to segregation? How was the decision made?
- Were you given reasons for the move to segregation? What were they?
- How did you feel about the segregation decision at the time? (when the decision was made)?
- Has your mind changed since? OR do you still feel the same? Explore how he feels about seg now.
- Do you think the situation could have been handled differently? If so, how? (or in your mind is seg the best option for you?)
- Do you think there were any other options available?

**Experience of segregation:**
- Could you talk to me in some detail about a full day in seg, right from when you get up to when you go to bed:
  - What does a day in segregation look like?
  - How do they pass the time? How many hours in cell? Activities in cell?
- What is the segregation review board like? How often do you go? What was the experience?
- What has been the best thing that has happened [to you] in segregation? Is that typical?
- What has been the worst thing that has happened [to you] in segregation? Is that typical?
- What do you like most and least about segregation?
- How would you describe your experience here?
  - Language of emotions – safe, calm, anger, anxious, lonely.
- Is your segregation experience in Whitemoor similar to elsewhere? Or are there any differences here?
- How much interaction do you have with staff? How does that interaction usually go?
- What is your experience with staff? How much contact do you have with them? How do you perceive staff?
- How do you think staff perceive you?
- Do you feel respected here [by staff]?
- Do you feel like you have a voice here?

- What do you think governs your experience of segregation? [to elaborate: what do you think impacts your experience here? The staff? do you think it is the law? Do you think its prison rules, or guidance like PSO, or local norms and customs, local culture, staff attitudes?]
- If you had to give segregation an identity e.g. punitive, caring, rehabilitative, a respite? And why?
- Do you see segregation as a choice?
- What do you think segregation is for?
- Do you want to leave segregation?
- Do you know what you need to do to leave segregation?  What?
- Would you change segregation? If so, how?

**Legal questions**
- Can you describe a time in seg, when you felt your rights had been violated.  [Then describe in more detail, when and how often it occurred, who was involved, how it was experienced and how they responded to it. How, if at all, it ended.]
- If you had a complaint here (link to any of the above negative answers) – how would you deal with it? Prompts could follow e.g. would you complain to staff? To the IMB? The prison ombudsman? Your solicitor?
- Would you make a legal complaint? Why? Why not? Would you know how to go about it?
- If not using law, how would you settle dispute?
- What is the law for? Do you think it is useful in prison for resolving disputes?
- What has the law done for you? Do you feel supported by the law, by legal mechanisms (e.g. procedures, PSIs)
- The law has been described as a shield (as a protector) but also a sword (able to inflict damage) – would you agree with that? Would you see it as one or the other? How do you see law here?
- Would you say you are aware of your legal rights and/or legal obligations?
- Have you ever sued the prison? what do you think about prisoners that sue? What would they think about you? What do staff think about prisoners that sue?
- Do staff follow the rules here?
- What do rules feel like in segregation?
- Where do you think your legal knowledge comes from? Peers in prison, previous experience, legal advisers?

**Final practical questions**
- What's your nationality?
- How long is your sentence? And how long have you served?
- [What is your sentence?]
- Anything else you'd like to tell me?

<h1 style="text-align:center">Interview schedule for staff</h1>

## Introductions

Explain about me – PhD student in the prisons research centre.  Research is in segregation units. I am curious about how law works in prison, in segregation.  Spending a few months here at Whitemoor, observing, making notes, chatting to staff and prisoners.

## Consent Matters:

- Discussions kept confidential and anonymise names.
- You can withdraw your consent at any time.
- If there's anything you say that you'd like me not to include, let me know.

Will cover a few general questions about you and then move on to focus a bit more on your work in segregation and your experience here.

Perhaps we can start with you telling me a bit more about yourself.

- Where are you from?
- Age?
- What do you feel most proud of in your life?
- What do you like to do outside prison?
- What is your role? (prison officer, SO)
- How long have you worked for the Prison Service? For Whitemoor? And In segregation?
- How were you recruited into seg?

## Working in Segregation:

- What does a day working in segregation look like, from start, including lunch, to end of day?
- How much interaction do you have with prisoners? How does that interaction usually go?
- How do you think the prisoners perceive you? How do you perceive them?
- Do you feel respected?
- What has been the best thing that has happened [to you] in segregation?
- What has been the worst thing that has happened [to you] in segregation?
- What do you like most and least about working in segregation?  What do you find challenging? What brings you joy?
- How would you describe your experience here? [Do you feel safe? Calm? Anxious? Confident?]
- [If worked in the Prison Service/ elsewhere in W: Is your segregation experience in whitemoor, similar to elsewhere? Or are there any differences here?]
- what do you think impacts your experience here?
- If you had to give segregation an identity e.g. punitive, caring, rehabilitative, a respite?
- Do you see segregation as a choice?
- What do you think segregation is for?

## Law

- Can you describe a time in seg, when you felt your rights had been violated.
- If you had a complaint here how would you deal with it?
- Would you make a legal complaint? Why? Why not? Would you know how to go about it?
- If not using law, how would you settle dispute?
- What is the law for? (Do you think it is useful in prison for resolving disputes?) Have you found the law useful here?
- What has the law done for you? Do you feel supported by the law, by legal mechanisms (e.g. procedures, PSIs)
- The law has been described as a shield (as a protector) but also a sword (able to inflict damage) – would you agree with that? Would you see it as one or the other? How do you see law in prison?

- How do legal complaints make you feel? When made by a prisoner? Have you had much to do with them in the past?
- Would you say you are aware of your legal rights and/or legal obligations?
- Where do you think your legal knowledge comes from?
- What do rules feel like in segregation?
    - E.g. Extra blanket? Curtain removal?
- Would you change segregation? If so, how?

## Final practical questions
- Anything else you'd like to tell me?

# Annex Four – Participant information sheet and consent form

## Participant information sheet

This form provides an overview of the PhD project which you may wish to participate in. The purpose of this form is to explain the motivation and aims of the study, in terms of my interests as a researcher and also the relevance to the broader field of criminological research. The form is designed to provide information on the purpose of the interview and how the interview data will be used. If you require any further information or have any questions concerning this form (or the research project more generally) please feel free to contact me using the details provided and I will be happy to discuss further.

My background
- I completed an MSc in Criminology and Criminal Justice at the University of Oxford in 2016. I then moved to the University of Cambridge and commenced a PhD in Criminology in October 2017.
- My research interests are focused on the intersection between law and practice, particularly in understanding how law may filter in to prison life.

This project
- Aims to understand the relationship between law and segregation in English prisons, particularly in how the law may (or may not) impact the usage and experience of segregation.
- Three key questions will be explored: (i) how is segregation used in English prisons; (ii) how is it experienced by both prisoners and prison staff; and (iii) how does the law impact such usage and experience.
- The project involves two phases: (i) document review; and (ii) interviews.

Document review
- If you are happy for me to do so, I would like to review documents associated with your segregation decision such as: your segregation unit daily logs, segregation daily memo notes, segregation daily diary sheets, pre-transfer information sheets, daily adjudications records etc.
- One part of the project involves considering the process behind moves to segregation. Viewing the documentation, related to your move, would help me understand processes and how decisions are made in prison.

Purpose of the interview
- The interview is intended to explore the views of people who have experienced segregation in some way. This means participants will comprise: (i) individuals detained in segregation units; (ii) individuals recently released (previous 3 months) from segregation back to normal location; (iii) staff working in segregation units; and (iv) managers at the prison involved in segregation processes and decisions.
- I am seeking to understand how segregation is used, the reasons for segregation and how it is experienced by individuals from a range of backgrounds and roles.
- I hope to explore how 'present' the law is in segregation practices and whether the law impacts the use and experience of segregation.

Format of the interview
- The interview will begin by exploring your background and journey so far.
- The interview will then explore a number of themes. The interview will be semi-structured, meaning questions will follow a schedule of topics relevant to the study.
- That said, I am happy for the interview to develop organically. I am interested in your experience, perspectives and opinions and do not want to limit the interview in any rigid way.
- If you are comfortable, I would like to audio record the interview.
- I am happy for you to identify any matters that you do not wish to be recorded during the interview. Please make this clear during or after the interview.
- You may, at any point, withdraw from the interview and research project. Please just let me know.

Use of data
- Notes from the document review will be held solely by myself.

- Audio recordings will be held solely by myself.
- I will download recordings from my recorder at the first opportunity.
- These will not be stored on any shared computer, only on my personal PC, with appropriate password protection.
- The interview will either be transcribed by myself or a professional third party (a transcriber). Any professional transcriber would be expected to sign a contract agreeing to the terms of confidentiality and anonymity promised below.
- The data will be stored for a minimum of three years from publication of the research.
- The document and interview data will culminate in a PhD thesis and will (subject to the confidentiality requirements below) form the content of articles published in academic journals.

Confidentiality and anonymity
- You will be given an alias and nothing will be reported in a manner which identifies you as an individual.
- If we discuss anything that you feel may make you identifiable, and you would rather exclude this from the research, please inform me during or after the interview.
- If I am in any doubt when writing up my thesis I will contact you to see if you are happy for a specific point to be reported.
- Matters discussed in the interview will be kept confidential and will not be disclosed, other than in accordance with the above anonymity provisions. That said, if you disclose anything that suggests an intention to cause serious harm to yourself or others, or if you reveal information pertaining to a security risk, I would be obliged to report this to senior individuals in the prison.

General
- Please be aware that participation in the research will have no bearing on your current circumstances (positively or negatively), in terms of segregation status, sentence or release conditions and you can choose to withdraw at any time.
- If the interviews reveal sensitive or distressing content and you feel like you would like to discuss anything further, please be aware that Listeners, the Safer Custody Team and/or the prison chaplain are on hand to provide further support. Alternatively, the Samaritans can be contacted on 116123 and will provide help and support if needed.


Name of researcher:    Ellie Brown

Address: Institute of Criminology, Sidgwick Avenue, Cambridge, CB3 9DA

Email address: eb631@cam.ac.uk

# Consent form

*Please read the above information sheet, then answer the following questions by ticking the response that applies.*

1. I have read the Information Sheet for this study and have had an opportunity to ask questions. ☐

2. I understand that my participation is voluntary and that I am free to withdraw at any time and without giving any reason, without any consequences to my segregation status, sentence or release conditions, rights or privileges. ☐

3. I understand how my data will be stored, used and that I am able to refuse use of this data. ☐

4. I understand how my anonymity will be ensured in the reporting of any data drawn from the study. ☐

5. I agree to take part in the study under the conditions set out in the information sheet. ☐


Name of participant: …………………………………………………………………………………

Signature:…………………………………………………………………………………………………

Date:………………………………………………………………………………………………………

# Statutes and Rules

Draft of rules proposed to be made under the Prison Act 1898

Draft of rules proposed to be made under the Prison Act 1899

Legal Aid, Sentencing and Punishment of Offenders Act 2012

Prison Service Instruction 03/2013 (Medical Emergency Response Codes).

Prison Service Instrument 15: Visits Function (2011).

Prison Service Instrument 49: Prisoner Communication Services, (2011).

Prison Service Order 1700.

The European Convention on Human Rights 1950

The European Prison Rules 2006

The Human Rights Act 1998

The Penitentiary Act 1779

The Prison Act 1898

The Prison Act 1952

The Prison Regulations 1840

The Prison Rules 1964

The Prison Rules 1999

The Young Offender Institution Rules 2000

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules).

Resolution adopted by the General Assembly on 17 December 2015, 70/175 Stat. (2015).

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R (Hair) v HM Coroner for Staffordshire [2010] EWHC 2580

R (Karl Lewis) v HM Coroner for Mid and North Division of the County of Shropshire [2009] EWHC 661

R (KB a child, by his litigation friend LW) v Secretary of State for Justice [2010] EWHC 15

R (MA and others) v Independent Adjudicator and Director of HMYOI Ashfield [2013] EWHC 43

R (N) v Secretary of State for Justice [2009] EWHC 1921

R (Osborn) v Parole Board [2013] UKSC 61

R (P) v Secretary of State for the Home Department [2004] EWHC 1418

R (SP) v Secretary of State for the Home Department [2004] EWCA Civ 1750

R (Syed) v The Secretary of State for Justice [2017] EWHC 727

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R v Deputy Governor of Parkhurst Prison and Others, Ex parte Hague [1992] 1 A.C 58

R v Governor of Frankland Prison Ex p. Russell (Right to Meals) [2000] 1 WLR 2027

R v Secretary of State for the Home dept ex p Doody [1994] 1 AC 531

Racz v Home Office [1994] 2 WLR 23

Roberts v Secretary of State [2005] UKHL 45

Russell (and others) v Home Office [2001] 3 WLUK 43

The Prison Officers Association v Iqbal [2009] EWCA Civ 1312

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