

RECENT DEVELOPMENTS

HUMAN RIGHTS

Segregating prisoners: judicial review and complying with human rights' law

(R (Abu) v Secretary of State for Justice [2025] EWHC 3026 (Admin))

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Introduction

In November 2025, the Justice Secretary was found by the High Court to have transgressed both her public law powers and human rights obligations by segregating prisoners serving sentences for terrorist offences.¹ Importantly, the secretary (and her predecessor) was found to have breached Article 3 of the Convention (prohibition of inhuman and degrading treatment and punishment), in what is believed to be the first such ruling against a minister.² The decision is important with respect to the enforcement of prisoners' rights generally but also serves as a stark reminder to Ministers and the prison authorities to act within their legal powers and to take into consideration its duties under equality and human rights law.

The facts and decision in *Abu*

The prisoner is serving a minimum 19-year life sentence for terrorism offences and is suffering from mental illness. Under Rule 45 of the Prison Rules, he was segregated from all other inmates from April until October – save for a short period when he was permitted to associate with one other prisoner. The decision to segregate him and other prisoners followed an attack on three prison officers by another prisoner - a terrorist involved in the Manchester Arena bombing - at a different prison. Following that incident, prisoners who had previously been housed in separation centres because of concerns that they might radicalise other inmates were segregated until responsible prison staff could be provided with protective body armour.

As a result, the claimant prisoner was locked in his cell for 22 hours each day and had no contact with other prisoners, and very limited contact with prison staff, mental health nurses and chaplains. The prisoner, who had existing mental health difficulties, claimed that this prolonged segregation had been severely detrimental to his mental health, referring to auditory hallucinations, panic attacks, suicidal thoughts and acts of self-harm, as well as the lack of timely psychological intervention. The claimant relied on psychiatric evidence that he had manifested symptoms consistent with complex post-traumatic stress disorder. The claimant challenged the segregation decision on five grounds:

- it was *ultra vires* the Prison Rules 1998 (made under the Prison Act 1964) as the decisions were effectively made by the Secretary of State, instead of the Governors as the legislation required.
- it was a breach of the *Tameside* duty,³ due to failure to inquire into the effects of segregation on the claimant's mental health.

¹ *R (Abu) v Secretary of State for Justice [2025] EWHC 3026 (Admin)*.

² Haroon Sadique, 'Mahmood and Lammy breached human rights law over segregation of prisoner, judge finds', *The Guardian*, 19 November 2025.

³ From the test laid down in *Secretary of State for Education and Science v Tameside BC [1977] 1 AC 1104*

- it constituted a breach of Articles 3 and 8 (private life) of the European Convention on Human Rights 1950.
- it was a contravention of the public sector equality duty (PSED) under the Equality Act 2010 to have due regard to the disproportionate impacts of the segregation decisions on Muslim prisoners.
- and it constituted procedural unfairness due to a failure to provide the claimant with even a gist of the intelligence material relied upon to segregate him.

The judge upheld the *ultra vires* claim because the decisions to segregate were not taken independently by the governors, and because decisions to segregate after a short period were effectively an implementation of the Secretary's policy on segregating terrorist prisoners. Thus, it was not open to the governor to make any other decision without the approval of the Secretary of State. Further, in the judge's view, the court found that the language and structure of Rule 45 required a segregation decision to involve consideration of the circumstances of any prisoner who was removed from association. Hence, Rule 45 referred to "prisoner" in the singular, and in the context, it was clearly intended to refer to the prisoner as a specific individual. As a matter of common law, procedural fairness would require that an individual had the right to know why they were being segregated and to have meaningful input in that decision, which included their individual circumstances. Further, even where the regime applied, the governor had the discretion to permit the prisoner to associate with one or more prisoners.⁴

With respect to the *Tameside* appeal, it was held that, considering research showing the deleterious effects of segregation on mental health as reflected in prison policy documents, there was no doubt that a prisoner's health, including their mental health, was a mandatory relevant consideration for segregation decisions. Also, the claimant was known by governors to potentially have mental health issues, including trauma in his early life requiring trauma-related work. Thus, it was essential, and not just merely sensible or desirable, for a *Tameside* inquiry into the claimant's mental health condition to be undertaken. The Court noted that those working in the separation centres knew that the claimant might have mental health issues, so it was essential to obtain further information about his mental health condition and ensure that an assessment was carried out expeditiously. Thus, no reasonable decision-maker could have failed to seek further information from shortly after the claimant was put on the segregation regime.⁵

In finding a breach of Article 3 ECHR, the judge found that the regime had subjected him to intense mental suffering which went way beyond the inevitable element of suffering inherent in segregation. Further, the mental health support provided to him had not mitigated his symptoms of trauma and distress. Although the segregation regime had a legitimate aim — to ensure the good order of the prison pending the arrival of protective body armour — the impact on the prisoner was so severe that it outweighed the risk that he posed to staff. In the judge's view, although the same segregation regime would not have contravened article 3 in the case of a prisoner who had an ordinary level of mental health, it did so in these circumstances. Thus, given the cumulative conditions experienced by the Claimant over a period of six months to the date of the hearing, including over four months in which he has not been permitted to associate with any other prisoner, and in the context of a prisoner who has a history of trauma and where there was a failure to obtain an assessment of his needs even though he was known to have mental health issues, and a failure to provide him with any therapeutic treatment to address his trauma, a contravention of Article 3 was made out. Thus, there had been a breach of his art.3 rights from 21 August onwards, when he had written to staff to say that he would self-harm.⁶

⁴ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 230-236. However, relief was refused as the judge felt that the governors would have made the segregation decisions even if the central steer policy had not applied.

⁵ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 266-268.

⁶ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 299-304, citing *Ahmad v United Kingdom* (2013) 56 EHRR 1

The court also found a breach of Article 8 as the unlawfully made decisions were not in ‘accordance with law’ or justified in the circumstances, as required by Article 8(2). In the court’s views, the segregation regime interfered with the claimant’s right to private life as he had been deprived of the normal associations an individual would have in prison, as well as the opportunities for personal development that were ordinarily available to prisoners.⁷

With respect to the breach of the PSED, the judge noted that **none** of the segregation decisions made specific reference to the PSED, and no evidence was presented showing explicit consideration was given to it in making the decision to segregate or continue segregating the claimant. Thus, although the claimant’s needs as a Muslim was not completely ignored (he had access to an Imam and a Qur’an), there was an absence of consideration at the macro level as to whether the segregation decisions had an impact on the equality duty, and of the real and perceived impacts of Islam being treated in a particular way.⁸

Finally, with respect to procedural unfairness, the judge found that the secretary and the governors had failed to present a gist of material obtained from Dynamic Risk Assessment Meeting (a multidisciplinary meeting including counter-terrorism analysts, an Imam, and a governor) so that the claimant could have made meaningful representations.⁹ However, the judge refused relief on the basis that the “central steer” policy meant that there was nothing the claimant could have realistically said which would have made a substantial difference.¹⁰

Commentary and conclusions

Under Rule 45 prisoners may be segregated from other prisoners for their own safety or to promote good order and discipline within the prison:

Removal from association

(1) Where it appears desirable, for the maintenance of good order or discipline or in his own interests, that a prisoner should not associate with other prisoners, either generally or for purposes, the governor may arrange for the prisoner’s removal from association [for up to 72 hours]

(2) Removal for more than 72 hours may be authorised by the governor in writing who may authorise a further period of removal of up to 14 days.

(2A) Such authority may be renewed for subsequent periods of up to 14 days.

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

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

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

(3A) In giving authority under paragraphs (2) and (2A) and in exercising the discretion under paragraph (3), the governor must fully consider any recommendation that the prisoner resumes

⁷ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 305.

⁸ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 318.

⁹ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 324, citing *R (King) v Secretary of State for Justice* [2015] UKSC 54.

¹⁰ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 325.

association on medical grounds made by a registered medical practitioner or registered nurse working within the prison.

In such cases, the authorities must comply with the necessary procedures, ensuring that the prisoner is not subject to segregation or confinement for inadequate or irrelevant reasons, and receives procedural justice before the decision is made. Such decisions can, therefore, be subject to judicial review to ensure that the authorities have acted legally (*intra vires*), rationally, and in compliance with the rules of natural justice and fairness. In addition, decisions on segregation must comply with the prisoner's human rights, found in the European Convention on Human Rights, as given effect in domestic law through the Human Rights Act 1998. Thus, such decisions must not pose an unnecessary risk to the prisoner's life (under Article 2 of the Convention); or subject the prisoner to torture or inhuman or degrading treatment or punishment (Article 3); or amount to an unnecessary interference with their right to private life (Article 8) or the right of association with others (Article 11). Consequently, any public law challenge (judicial review) will examine the legal powers to make that decision and their enforcement by the relevant public authorities to see whether the power has been exercised as Parliament wished. Further, whether there is a breach of any Convention rights will be determined by the national and European Courts; considering all the facts and whether the treatment exceeds the necessary effect and consequence of imprisonment and thus constitutes a violation (and whether it can be justified under any of the qualifying provisions in the Convention).

The present decision, together with previous cases, re-iterates that any segregation or removal of association must be within the law. Thus, if the decision to segregate or restrict association is *ultra vires*, then not only is the decision reviewable at common law, but this might also lead to a breach of article 8 ECHR, as the decision (and the interference with the prisoner's private life was not 'in accordance with law' so as to justify any interference with his Convention rights. For example, in *R (Bourgass and another) v Secretary of State for Justice*,¹¹ it was held that the decision to segregate two prisoners had been unlawful under Rule 45(2) because the Secretary had not authorised the segregation and had purported to delegate that task to a Segregation Board. Similarly, in *Shahid*,¹² a case where a prisoner has spent a total of 56 months in segregation, it was held that as several orders made on behalf of the ministers authorising Shahid's continued segregation had been granted after the period of 72 hours which was permitted under the relevant Prison Rules had expired; his segregation, therefore, was unlawful.

Breaches of the common law can also impact on the proportionality of the decision and in *Shahid* the Supreme Court noted that consideration should have been given to moving him to another prison elsewhere in the UK and that no meaningful plan for his reintegration into the prison population had been put in place until he had already been in segregation for more than four and a half years. Further, the Supreme Court noted that fairness at common law required that prisoners should usually have a meaningful opportunity to make representations before a decision was made by the secretary of state. This was because of the serious consequences of further segregation for 14 days and the common law insistence that the exercise of administrative power should be fair. In that case, therefore, as neither prisoner had been provided with sufficient information about the central aspects of the basis of their segregation, the prisoners were entitled to the gist of those reasons. However, as is our present case, in *Shahid*, the Supreme Court refused to grant any damages as just satisfaction as it considered that the prisoner had not suffered any prejudice; if the Article 8 violations had not occurred then there was no evidence to show he would have been returned to the general population sooner. Additionally, the extent to which his right to respect for his private life under Article 8 had been infringed was limited considering the negative attitudes other prisoners had towards him.

Although the courts are prepared to insist on full and fair procedure in challenging such decisions, they often fail to defend the prisoner's procedural rights when they are unprepared to offer a real

¹¹ [2015] UKSC 54.

¹² *Shahid v Scottish Ministers* [2015] UKSC 58.

and effective remedy. A simple finding of a violation of both common law (and Convention rights) has some use in that it reminds the authorities of the limits of their powers. However, that finding loses its utility if lessons do not appear to be learnt; perhaps leading to the situation that the authorities know that in each and every case where they do not follow the rules, and as a consequence breach prisoners' common law and Convention rights, they will not be forced to pay real compensation, but will simply be asked to make the decision again, but this time follow the right procedure.

The findings in the present case display the wide number of grounds that a decision on segregation – or decisions impacting on other restrictions imposed on prisoners – can be challenged. In this case, the Secretary's general policy on segregating such prisoners took the decision away from prison governors and was thus *ultra vires* as the Rules envisioned governors making individual decisions. However, such a breach did not provide a public law remedy as the court found that the governors would have made the same decisions had they acted individually and thus lawfully. So too, the procedural breach failed to afford a remedy for the same reason – the prisoners could have said nothing significant had they been given the gist of the reasoning and an opportunity to argue against the segregation. This shows the flexibility and discretion of public law remedies, which can consider the proper functioning of public duties, rather than breach of individual rights.

However, the decisions on the other grounds have found substantive breaches of the prisoners' rights (under Articles 3 and 8) and the court will have a separate hearing to consider compensation for such breaches. The finding of a breach of Article 3 is particularly relevant as the harm caused by a breach of public law duties will not usually cross the threshold required to find a breach of Article 3. Further, it is rare for a breach of Article 3 to be found with respect to general prison conditions; and the fact that the prisoner had specific mental problems which were ignored by the Secretary were instrumental in this case. Under ss. 7 and 8 of the Human Rights Act 1998, domestic courts must take into account to the European Court's jurisdiction of providing just satisfaction for Convention breaches, and as it has already found a breach of Article 3, the damages awarded to this prisoner are likely to be substantial; or at least with respect to compensation under the Act for breach of Convention rights.¹³

This finding under Article 3 is especially important in that in most Article 3 claims with respect to detention, the courts, including the European Court of Human Rights, are unwilling to find a violation in the absence of treatment or conditions that clearly exacerbate the normal discomfort experienced by detention. Thus, the Court has found that inhuman treatment involves severe physical or mental suffering that causes intense physical or mental suffering, and degrading treatment that is grossly humiliating and undignified, causing a feeling of fear, anguish, and inferiority that debases the victim.¹⁴

Whether there has been a breach of Article 3 in the context of imprisonment depends on the particular conditions of detention, including the stringency of the measure, its duration, the objective pursued and its effects on the person concerned. Further, the Court has ruled that solitary confinement does not of itself constitute a violation of Article 3.¹⁵ This is despite the Court accepting that it is:

... one of the most serious measures which can be imposed within a prison and, as the Committee for the Prevention of Torture has stated, all forms of solitary confinement without appropriate mental and physical stimulation are likely, in the long term, to have damaging effects, resulting in deterioration of mental faculties and

¹³ In 2003, in *McGlinchy v United Kingdom*, Application No. 50390/99) decision of the European Court, 29 April 2003, the Strasbourg Court awarded 1150 Euros in just satisfaction, to a prisoner who had received inadequate treatment and care to deal with her mental illness and her drug addiction whilst in prison.

¹⁴ See *Ireland v United Kingdom* (1978) 2 EHRR 25.

¹⁵ *Ahmad v United Kingdom* (2012) 56 EHRR 1. See Steve Foster, *Ahmed v United Kingdom: extradition and prison conditions* (2010) 15(1) *Coventry Law Journal* 30.

social abilities. Indeed, as the Committee's most recent report makes clear, the damaging effect of solitary confinement can be immediate and increases the longer the measure lasts and the more indeterminate it is.¹⁶

Despite that initial observation, the Court held that the prohibition of contact with other prisoners for security, disciplinary or protective reasons does not in itself amount to inhuman treatment or punishment, and that whilst prolonged removal from association with others is undesirable, whether such a measure falls within the ambit of article 3 of the Convention depends on the particular conditions, the stringency of the measure, its duration, the objective pursued and its effects on the person concerned.¹⁷ Although the court has never laid down precise rules governing the operation of solitary confinement (it has never specified a period of time beyond which solitary confinement will attain the minimum level of severity) required for article 3, it has emphasised that solitary confinement, even in cases entailing relative isolation, cannot be imposed on a prisoner indefinitely.¹⁸

Thus, the threshold is not easily met in the context of solitary confinement, or imprisonment generally. For example, in *Kuda v Poland*,¹⁹ the European Court dismissed an Article 3 claim by a prisoner with pre-existing psychological conditions. Although the Court accepted that the very nature of the applicant's psychological condition made him more vulnerable than the average detainee and that his detention may have exacerbated to a certain extent his feelings of distress, anguish and fear (and that he was kept in custody despite a psychiatric opinion that continuing detention could jeopardise his life because of a likelihood of attempted suicide), on assessing the relevant facts as a whole, the Court did not find that the applicant was subjected to ill-treatment that attained a sufficient level of severity to come within the scope of Article 3 of the Convention.

It should be pointed out, however, that *Kuda* was not a case involving segregation, and that the court in the present case was able to distinguish the present case with the decisions of the European Court in both *Ahmad* and *Kuda*. Thus, the court held that it had to weigh in the balance the effects of the segregation regime on the claimant with the regime's aim.²⁰ This proportionality test is usually only found in cases involving a conditional right, such as the right to private life; where the court has to determine that the violation is within the law and necessary in a democratic society to achieve a legitimate aim (such as public order). Although Article 3 is an absolute right, the Strasbourg Court nevertheless employs a proportionality test where the measure in question is not in violation of the Convention *per se* but can be excused if carried out for a good reason, and does not, in the round, cause excessive suffering.

Returning to this case, the judge's view, the cumulative conditions experienced over a period of six months to the date of the hearing, including over four months in which he has not been permitted to associate with any other prisoner, and in the context of a prisoner who has a history of trauma and where there was a failure to obtain an assessment of his needs even though he was known to have mental health issues, and a failure to provide him with any therapeutic treatment to address his trauma, a contravention of Article 3 is made out.²¹ In the judge's view, the suffering that the claimant has experienced goes way beyond the inevitable element of suffering that relates to segregation. Although segregation will inevitably suffer isolation and an element of distress and anxiety, what the claimant experienced was much more severe than that: he is suffering from post-traumatic stress disorder, brought on (at least in part) by the segregation. Further, the mental health support provided to the Claimant has not mitigated his symptoms of trauma and distress, and will not do so for some time, if at all, if he remains within the full strictures of the segregation regime.²² Further, the evidence did not demonstrate that it was impossible to relieve the Claimant

¹⁶ *Ahmad v United Kingdom* (2012) 56 EHRR 1, at 207.

¹⁷ *Ahmad v United Kingdom* (2012) 56 EHRR 1, at 208-209.

¹⁸ *Ahmad v United Kingdom* (2012) 56 EHRR 1, at 210.

¹⁹ *Kudla v Poland* (2002) 35 EHRR 11.

²⁰ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 299.

²¹ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 300.

²² *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 301.

of the stresses, or at least some of the stresses, of the segregation regime without unduly compromising the safety of the staff working with him.²³

Conclusion

It is surprising that given the number of cases brought before the superior courts in this area, that the prison authorities and the Government have learned little from those decisions, and continue to breach both the rules of administrative law and the Convention rights enforceable under the Human Rights Act 1998. Recently, in *Awale*,²⁴ the High Court found that a prisoner's detention in a close supervision centre had been unlawful because he had been confined to his cell for almost 23 hours a day and where his detention had not been subject to monthly reviews as required by Rule 46. The High Court also found that the prisoner's Article 8 rights had been violated because the legal framework lacked clarity as to the manner of the exercise of removing a prisoner from association. In other words, that process was not clearly 'prescribed by law' as required by Article 8(2), irrespective of whether the detention was necessary and proportionate.²⁵

The decisions in *Abu*, and *Awale*, tell us a great deal about public and human rights' claims in cases involving prisoners. Primarily, that ministers and other prison authorities owe legal and moral duties to act fairly and to comply with human rights and statutory obligations when making decisions that impact on individuals (and in this case prisoners). If they do that, then the court is likely to give them a good deal of discretion to balance those rights with the management of prisons and prisoners. In this case, however, government policy allowed those authorities to ignore their duties to follow the law and to consider the rights of individual detainees. This was because the Secretary felt that the protection of prison officials and public safety overrode any consideration of the prisoner's public and private law rights. The court therefore stepped in and provided a remedy to those affected by that breach – albeit a limited one given the finding that most breaches were nominal and that the decisions were ones that could have been made lawfully.

The finding on Article 3 in *Abu* was particularly brave, and rare in cases of unlawful segregation, and it will be interesting to see what damages the court awards for breach of the claimant's Convention rights, although they may be nominal with respect to Article 8. That finding might focus the government's mind on following the law and its legal duties in the future, particularly if the court's approach to Article 3 is followed in cases involving general prison conditions.²⁶

²³ *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), at 302.

²⁴ *R (Awale) v Secretary of State for Justice* [2024] EWHC 2322 (Admin)

²⁵ The court also found that the policy breached the public sector equality duty under s.49 of the Equality Act 2010, and had failed to provide reasons to the prisoner, as required by the common law rules of fairness. In this case the court held that the breach of Article 8 should be compensated by damages, under s.8 of the 1998 Act, to be assessed at a later date.

²⁶ See *Steve Foster, 'HMP Wandsworth: illegal conditions' (2024) 174 (8060) New Law Journal, 13-14*