

CASE NOTES

Prisons – prisoners – segregation – closed supervision centres – judicial review – human rights – compensation

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

Administrative Court

Introduction

In *R (Abu) v Secretary of State for Justice* [2025] EWHC 3026 (Admin), the High Court found, inter alia, a breach of Article 3 of the European Convention (prohibiting inhuman and degrading treatment and punishment); the first finding of Article 3 in the prison context in the domestic courts (See Steve Foster, 'Segregating prisoners: judicial review and complying with human rights law' (2025) 30(2) *Coventry Law Journal* 53). In addition, the government has faced other defeats in the domestic courts with respect to segregating prisoners in domestic prisons. As with the decision in *Abu*, in the present case – *Awale* – the Court upheld all the prisoners' claims on illegality, procedural unfairness, breach of his human rights and failure to comply with their equality duties under the Equality Act 2010. In addition, the government was ordered to pay compensation to the prisoner for breach of his Convention rights, together with substantial legal fees.

The facts and decision in *Awale*

The claimant is a prisoner and was serving a life sentence for the murder of two teenagers. In 2013, in consequence of his involvement in a serious incident involving taking a prison guard hostage, he was referred to a Closed Supervision Centre (CSC), and in 2014, he was made subject to a direction under Rule 46 of the Prison Rules 1999, which provides that where it was desirable, a prisoner should not associate with other prisoners. Under Rule 46(2) a monthly review of whether the original direction should be reviewed must be made and Rule 46(3) then provides that the Secretary of State can direct that such a prisoner resume association with other prisoners.

While subject to CSC, the claimant was subsequently permitted to associate with another prisoner outside his cell, but that ended on 13 April 2022 when the other prisoner was relocated. In June 2022, association with another prisoner was suggested, but the claimant, who was black and Muslim, was concerned about being racially abused. In September 2022, the claimant raised his lack of association with the prison and asked whether he could be considered for a transfer, which was refused. Thus, other than a six-week period between January and March 2023, the claimant had not associated with any other prisoner; the defendant explaining that there was no suitable placement in which association could be facilitated. The consequence was that the claimant had been locked in his cell for almost 23 hours a day for that relevant period.

The issues for the Court were as follows: whether the claimant's continued removal from association was unlawful under Rule 46 because of the lack of review; whether the claimant had not been provided with reasons for the decision, preventing him from having a meaningful opportunity to make representations; whether the claimant's right to private life under Article 8 of the European Convention had been breached; and whether the defendant had breached her public sector equality duty (PSED) under s. 49 of the Equality Act 2010.

The High Court granted the application on all four grounds. With respect to the defendant's compliance with Rule 46(3), the Court held that a direction within that Rule had not been

provided in the claimant's case. Although such a direction need not take a particular form, its terms had to be both express and clear, as anything short of those basic requirements left the need, which was imposed by Rule 46(2), for renewal of a Rule 46(1) direction unclear. Thus, there had been no direction under Rule 46(3) and no monthly review of the Rule 46(1) direction relating to the claimant's removal from association in accordance with Rule 46(2).

With respect to the giving of reasons for the decision, the Court held that a prisoner should normally have a reasonable opportunity to make representations before a decision was taken by the Secretary of State. Further, a prisoner's right to make representations was largely valueless unless he knew the substance of the case being advanced in sufficient detail to enable him to respond, although fairness did not require the disclosure of information which could compromise the safety of others. It would, therefore, be sufficient to inform the prisoner in general of the gist of the reasons. In the instant case, the claimant had not been provided with adequate reasons enabling him to make representations regarding his continued removal from association, including as to why he could not be transferred, and any administrative burden on the prison service in doing so was outweighed by the importance of procedural fairness.

The Court then ruled on the legality of the segregation with respect to Article 8 of the European Convention. It noted that under s. 6 of the Human Rights Act 1998 for a public authority to act in a way which was incompatible with a Convention right. In this case, Article 8, guaranteeing the right to private life, was engaged by the prisoner's removal from association, and therefore had to be justified in accordance with Article 8(2), as a necessary and proportionate restriction for a legitimate aim. In this case, the claimant's removal from association from April 2022 had not been in accordance with domestic law, as required by Article 8(2). The claimant contention that the legal framework relating to removal from association itself ran contrary to Article 8 was upheld. In the Court's view, the process by which Rule 46 operated set out in an operating manual, and in so far as the manual related to association and its removal, it was sparse and did not provide for external scrutiny of decisions regarding continued removal from association. Hence, that legal framework lacked clarity as to the manner of the exercise of the discretion to remove a prisoner from association and did not require that the prisoner be involved in the decision-making process to a degree sufficient to provide them with the requisite protection of their interests and was accordingly in breach of his Article 8 rights.

Finally, the Court ruled on whether the defendants had public sector equality duty, imposed on public authorities by s. of the Equality Act 2010. In finding a breach of that provision, the court held that the equality impact assessments undertaken had not considered whether the known presence of a significant body of racist prisoners in the CSC disproportionately impeded the ability of non-White prisoners to associate or progress. Thus, in failing to have made enquiries as to the impact of that body of racist, Islamophobic prisoners, the defendant had not had due regard to her duties with respect to the PSED.

With respect to relief for the claimant, the Court noted that no award of damages was to be made under s.8 of the Human Rights Act 1998 unless the court was satisfied that the award was necessary to afford just satisfaction to the claimant. It then noted that the finding of a violation of Article 8 not in itself constitute just satisfaction. Accordingly, the court granted declaratory relief to the effect that the claimant's Article 8 rights had been breached and that the defendant had breached her duty under the Equality Act. It then determined that, in the absence of agreement between the parties, the Court would assess an award in respect of non-pecuniary damages payable to the claimant by reason of the violation of his Article 8 rights. Subsequently, Awale was awarded £7,500 in damages as just satisfaction for non-pecuniary loss by the High Court relating to his prolonged solitary confinement.

Commentary

The power of prison authorities to segregate prisoners, for their own or others' safety or as part of a punishment, are contained in Rules 45 and 46 of the Prison Rules 1999 and impact on

prisoners' rights, whether at common law or under the Human Rights Act 1998. Decisions on segregation are intended to uphold good order and discipline in prisons and to protect other prisoners from harm or exploitation and are essential in managing prison safety and order. Segregation is capable of breaching the prisoner's Convention rights to private life (under Article 8), and not to be subject to inhuman or degrading treatment or punishment (Article 3), in addition to their public law rights in judicial review. actions in judicial review.

The breadth of remedies available to prisoners with respect to wrongful segregation is illustrated in *Awale*, where the Court found both substantive and procedural breaches of the Prison Rules 1999, a breach of his Article 8 rights, a breach of the Secretary's equality duty under the Equality Act 2010. The prisoner's treatment in that case is typical of the challenges made to segregation decisions, where in an effort to protect other prisoners from physical and other harm, the executive often ignore the substantive and procedural limits placed on the use of such powers, and the basic rights of prisoners who are subject to the consequences of segregation.

The decision in *Awale*, together with previous cases, re-iterates that any segregation or removal of association must be within the law. Thus, if a decision to segregate or restrict association is *ultra vires*, then not only is the decision reviewable in public law, 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 interfere (See *R (Bourgass and another) v Secretary of State for Justice* ([2015] UKSC 54), and *Shahid v Scottish Ministers* [2015] UKSC 58).

Although the courts are prepared to insist on full and fair procedure in challenging such decisions, they are often unprepared to offer a real and effective remedy (*Bourgass* and *Shahid*, above). 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, and where we may reach the position of systemic failures. The availability of damages in *Awale*, and the previous decision in *Abu*, might, therefore concentrate the minds of the Secretary and the Prison Service to pay more attention to their public law duties, and thus respect the rights of these vulnerable prisoners.

The findings in the present case display the wide number of grounds that a decision on segregation 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.

The finding of a breach of Article 8 is particularly relevant, as the harm caused by a breach of public law duties needs to be supplemented by a separate action in order for the court to grant compensation; either in tort or under the Human Rights Act 1998. will not usually cross the threshold required to find a breach of Article 3. Under ss. 7 and 8 of the Human Rights Act 1998, domestic courts must consider to the European Court's jurisdiction of providing just satisfaction for Convention breaches, and in this case just satisfaction of £7500 was awarded, and the government was faced with a bill for legal costs of over £200,000.

In addition to the cases cited above, there have been other decisions in this area recently, not all successful, but showing that this is a fertile area of prisoner litigation, and that the prison service's rules on segregation either need reform, or closer attention being paid to their detailed restrictions. For example, in *R (on the application of De Silva) v Secretary of State for Justice* [2025] EWHC 128 (Admin), the High Court found that the decision-making committee placing the prisoner in a separation centre (created to address extremism and terrorism in prisons and involving further

restrictions on the prisoner's movement, association and activities) breached several aspects of procedural fairness. Thus, the authorities had failed to consider the prisoner's submissions on allegations made against him, had failed to hold an oral hearing, had taken an unlawful approach to factual disputes, and had not provided adequate reasons for its decision. In that case, the court also found that Article 8 of the European Convention was engaged because of the potential psychological harm caused by his segregation, and that his segregation could not be justified within Article 8(2), as it was not in accordance with law – the lack of consultation and fairness in this case rendering the segregation unlawful.

On the other hand, if the prisoner is to succeed in these claims, there must be evidence that they have cooperated with the authorities with respect to the enforcement of the rules. Thus, in *R. (on the application of Thakrar) v Secretary of State for Justice* ([2026] EWCA Civ 503), the Court of Appeal found that prisoner's prolonged segregation within a close supervision centre under Rule 46 was lawful and did not breach his Convention rights, as his persistent refusal to engage with psychological assessments prevented the prison authorities from assessing the risks he posed to staff and other prisoners.

Conclusions

Cases such as *Awale* and *Abu* demonstrate the potential for prisoner litigation in this area and the vulnerability of the Prison Service and the government to legal challenge. The courts are no longer displaying unconditional deference to the Prison Service or the Secretary of State on the location and management of prisoners, with respect to their efforts to attain good order and discipline in prisons and insist on them following (their own) regulations to ensure fairness and legality. Further, the courts' willingness to award damages to prisoners affected by unlawful segregation should send a clear warning to both that procedural and substantive justice must be provided to prisoners in such cases.

This is, by no means, an enviable task for the prison service and the government in an area of prison life that calls for the securing on good order and discipline and the safety of other prisoners and prison staff. However, the courts have made it clear that these aims do not justify breaches of their public law duty to act legally and in compliance with natural justice. Further, the availability of damages (and high legal costs) are further reasons for the authorities to ensure that prisoner segregation marries safety and prison order with the rule of law.