

The King on the application of Stephen Yaxley-Lennon v Secretary of State for Justice



No Substantial Judicial Treatment

Court

King's Bench Division (Administrative Court)

Judgment Date

21 March 2025

Case No: AC-2025-LON-000650

High Court of Justice King's Bench Division Administrative Court

[2025] EWHC 695 (Admin), 2025 WL 00876618

Before: Mr Justice Chamberlain

Date: 21/03/2025

Hearing date: 20 March 2025

Representation

Alisdair Williamson KC and Carl Buckley (instructed by Reece Thomas Watson) for the Claimant.
Tom Cross and Alex Ustych (instructed by the Government Legal Department) for the Defendant.

Approved Judgment

Mr Justice Chamberlain:

Introduction

1. The claimant in this case is Stephen Yaxley-Lennon. He is currently detained at HMP Woodhill. He seeks permission to apply for judicial review of what he describes in his Claim Form as his "ongoing detention in solitary confinement and treatment". He contends that this is incompatible with his rights under [Articles 3 , 8 and 14 of the European Convention on Human Rights](#) ("ECHR") and therefore contrary to [s. 6 of the Human Rights Act 1998](#) . In addition, he challenges his continued segregation on public law grounds.

2. The claim was filed on 4 March 2025. Mr Yaxley-Lennon asked for an urgent rolled-up hearing. I made an order on 6 March 2025. I refused to fix a rolled-up hearing but directed that the application for permission be determined after a hearing, which was to take place today, and gave procedural directions.

3. Since then, in accordance with my directions, the Secretary of State has filed a single document containing her Summary Grounds of Resistance and Skeleton Argument for the hearing. She has also filed witness statements from Nicola Marfleet,

the Governor of HMP Woodhill, and Alex Worsman, Head of the Long-Term and High Security Prisons Group in the Ministry of Justice.

4. Each of the witness statements is accompanied by exhibits with documents relevant to the claim. Some of the documents contain the names of prison and healthcare staff. These have been redacted. The reason for the redaction is that disclosure of the names would give rise to a risk to the safety and wellbeing of the staff members concerned and, in any event, the names are not material to the issues in the case. The redactions are not opposed. I am satisfied that there was and is a good reason for the redactions applied in this case and I therefore give permission for the documents to be presented in redacted form.

Why Mr Yaxley-Lennon is in prison

5. The reason why Mr Yaxley-Lennon is in prison can be seen from the judgment of Mr Justice Johnson on 28 October 2024: [\[2024\] EWHC 2732 \(KB\)](#).

6. In 2018, Mr Yaxley-Lennon published videos in which he made allegations about a 15-year-old boy. The boy was a Syrian refugee. In the videos, Mr Yaxley-Lennon said, among other things, that the boy had participated in a violent assault on a young girl, causing her serious injuries. The videos were viewed almost a million times. The boy had to leave his school and his family had to leave their home.

7. The boy sued Mr Yaxley-Lennon for libel. The claim went to trial. On 22 July 2021, Mr Justice Nicklin gave judgment for the boy, who by then was 18: [\[2021\] EWHC 2008 \(QB\)](#). The judge found that Mr Yaxley-Lennon had failed to prove the truth of the allegations and that those allegations were false. Because Mr Yaxley-Lennon had threatened to repeat the allegations shortly before judgment was handed down, the judge, in addition to making an award of damages, granted an injunction restraining him from repeating them.

8. Mr Yaxley-Lennon complied with the injunction for a period but then started to repeat the allegations, by publishing a film called *Silenced* featuring himself and, separately, in three online interviews. On 7 June 2023, the Solicitor General brought proceedings for contempt of court. After those proceedings had been served, Mr Yaxley-Lennon repeated the allegations in further online interviews and by further sharing the film *Silenced*, including at a rally in Trafalgar Square.

9. On his return to the UK after a period spent abroad, Mr Yaxley-Lennon was arrested under a bench warrant and brought to court on 28 October 2024, before Mr Justice Johnson. Mr Yaxley-Lennon admitted ten breaches of the injunction, some of them committed after he had been served with the first contempt application. Mr Justice Johnson found him guilty of contempt of court. He noted that Mr Yaxley-Lennon has previous convictions, but details of these were not before him, so he did not take them into account. He did, however, take into account three previous findings of contempt of court. The judge imposed a sanction of 18 months' immediate imprisonment, less the 3 days he had spent in custody since his arrest.

10. At [88] of his judgment, Mr Justice Johnson said that he had taken into account that:

"...there may be a particularly onerous impact on the defendant. He is well known. So are his views. They provoke considerable hostility. The prison governor has a legal obligation to take reasonable steps to keep the defendant safe. The discharge of that obligation may impact on the conditions in which the defendant is kept, reducing his ability to associate with others. In this respect, incarceration

may be more onerous for him than for others. I also take into account evidence that was read to me by [his counsel] about the effect that previous incarceration had on the defendant's mental health. This is a further factor to consider when determining the impact of prison conditions."

11. Mr Yaxley-Lennon's sentence expiry date is 24 April 2026. However, under [s. 258 of the Criminal Justice Act 2003](#), he is entitled to automatic release at the halfway point, on 26 July 2025. He is also facing trial for an offence under [s. 7 of the Terrorism Act 2000](#) and for breach of a stalking order.

How Mr Yaxley-Lennon has been treated in prison

12. The following account comes from the witness evidence of Ms Marfleet and Mr Worsman. On 28 October 2024, Mr Yaxley-Lennon was taken to HMP Belmarsh. On his first day there, he informed staff that "his conflict is with followers of Islam". He was placed in the Contingency Suite, a part of the prison which was then empty, for his own safety.

13. After he was admitted to that prison, a large volume of abusive and racist emails and telephone calls were received from his supporters. Some of these included threats towards the Governor, who is a black woman.

14. As a result, on 1 November 2024, Mr Yaxley-Lennon was moved to HMP Woodhill, which is a Category B Training Standard prison, housing Category B and C prisoners. Mr Yaxley-Lennon has been designated a Category C prisoner. There is no challenge to that designation in these proceedings.

15. [Rule 45 of the Prison Rules 1999](#) allows a governor to remove a prisoner from association with other prisoners where that appears desirable for the maintenance of good order or discipline or in the prisoner's own interests. It also sets out how and when segregation decisions must be reviewed. Segregation is initially for 72 hours. There must then be a review, after which segregation can be authorised for a further 14 days. There must then be further reviews every 14 days. Segregation beyond 42 days, and for each subsequent period of 42 days, also requires leave from the Secretary of State. Under the relevant Prison Service policy ("Segregation: PSO 1700"), requests for leave where the prisoner has been segregated for 6 months must be considered by a Prison Group Director or Deputy Director.

16. Mr Yaxley-Lennon's segregation was first reviewed in accordance with [rule 45](#) on 4 November 2024. It was noted that he was spending time in his cell writing emails and using the phone. He had a TV in his cell. He was going to order a stereo. He could go to the gym and had visits. Healthcare staff had said that he was fit for segregated conditions.

17. On 13 November 2024, a prison official went to speak to Mr Yaxley-Lennon. He was asked whether he wished to be relocated to the main part of the prison. He noted that about 35% of the prisoners in HMP Woodhill are Muslim, but said that it was a decision for the Governor. He was asked if he wished to relocate to a vulnerable prisoners' unit in another prison. He declined, saying that he "won't live with sex offenders". The Governor, Ms Marfleet, spoke to Mr Yaxley-Lennon in person and he confirmed this view to her. She nonetheless convened a risk assessment meeting with the senior leads from each of the relevant departments in the prison.

18. Ms Marfleet set out the matters considered at paragraph 33 of her witness statement:

"a. *Risks to the Claimant.* It was noted that the Claimant had been assaulted at HMP Woodhill during a previous sentence, and that the already-existing tensions between Muslim and non-Muslim prisoners within HMP Woodhill would likely be intensified by the Claimant's presence on normal location, and could increase the risk of harm to the Claimant.

b. *Risks to other prisoners.* The Claimant's presence on normal location would exacerbate the aforementioned tensions between Muslim and non-Muslim prisoners, increasing the likelihood of escalation of violence and clashes within the prison, therefore undermining the good order or discipline of the prison. Prisoners located with the Claimant could also be subject to greater risk of harm by association with the Claimant. The Claimant may also pose a risk by seeking to radicalise and/or influence other prisoners.

c. *Risks to staff and the establishment.* Risk of harm to staff and the good order and discipline of the prison due to the increased tensions and likelihood of violence above."

19. A number of options were considered. Relocating to a normal wing at HMP Woodhill was not appropriate, given the risks of conflict between Muslim and non-Muslim prisoners. Mr Yaxley-Lennon did not wish to be relocated to a vulnerable prisoners' wing in another prison and might pose a threat to prisoners there, given the nature of his activism on the subject of grooming gangs and sexual abuse. Allowing him to associate with a small number of other prisoners would be problematic because those other prisoners would have to return to a normal location and would be at risk because of their association with him. Relocation to a wing on an opposite regime to other prisoners would not be appropriate because of concerns about Mr Yaxley-Lennon's safety. Accordingly, continued segregation was necessary, but this would be kept under continual review.

20. On 15 November, and at 14-day intervals thereafter, there were further reviews at which Mr Yaxley-Lennon could raise concerns about his mental health and wellbeing. No such concerns were raised until 10 January 2025, when Mr Yaxley-Lennon indicated that he was concerned about how segregation might have an impact on his mental health over time. It was agreed that the segregation psychology lead would meet him and discuss his wellbeing strategy. This happened on 15 January 2025.

21. On 21 January 2025, Mr Yaxley-Lennon was placed on a waiting list for therapy, having reported a history of PTSD following segregation on a previous occasion and distressing dreams.

22. Mr Yaxley-Lennon was assessed by two NHS clinicians on 5 February 2025. He said that he was feeling "low and withdrawn in mood" and reported a significant deterioration in his mental health. The clinicians said that he was "struggling to cope with the current prison conditions".

23. The last review by the Governor was on 7 March 2025. This was the first occasion on which prison healthcare staff indicated that segregation may be giving rise to clinical concerns. Accordingly, a further and more detailed medical recommendation was completed. The conclusion was that segregation was appropriate, as further interventions from the prison psychology staff were awaited, there was no immediate risk of harm or suicide, and there was a risk to Mr Yaxley-Lennon if he were removed to the main location.

24. The Secretary of State gave leave for segregation to continue beyond 42 days on 12 December and again on 17 January 2025 and 28 February 2025.

25. Ms Marfleet explains that the fears about threats to Mr Yaxley-Lennon were not mere speculation. There was specific intelligence to the effect that two other prisoners were plotting to assault him to gain kudos and notoriety and a life sentence prisoner was planning to kill him.

26. Ms Marfleet describes Mr Yaxley-Lennon's daily regime as follows. Because he is a civil prisoner, he has three hours out of his cell per day (as compared to 1.25 hours for segregated prisoners serving criminal sentences). During this period, he uses the exercise yard, gym, shower and can use the laundry facilities. All this is done on his own. In addition, he is offered two hours, four times per week, for social visits. He has in fact had 80 social visits, not including those from family members. He had regular visits from family and friends. He has access to various personal possessions in his cell. He has a TV, a laptop which is pre-loaded with educational and other programmes, reading material, a notebook, a CD and a DVD player. He often uses the laptop to draft emails to friends and supporters. He has access to a telephone to make calls to friends and family during scheduled call times, which amount in total to 4 hours per day. He has made more than 1,250 social telephone calls. Once a week he has a visit from a member of the prison's chaplaincy staff for a Bible study session at which he discusses a text that he has read in advance. Separately, a member of the chaplaincy team visits him every day. While in segregation, he is checked hourly by prison staff and visited by a doctor or nurse every day.

27. As a civil prisoner, Mr Yaxley-Lennon is not required to work in prison. Initially, he said that he did not wish to do so. However, he has very recently decided to do painting and decorating, which should give him an additional 2.75 hours out of cell on 3 days per week, in addition to his usual 3 hours per day. I should say that, on instructions from Mr Yaxley-Lennon, Mr Williamson told me that what has in fact been offered is cleaning work, not painting and decorating, and this has been for only 1.5 hours, by himself.

28. Mr Worsman explains that consideration has been given to housing Mr Yaxley-Lennon in alternative accommodation. He has rejected the option of transferring Mr Yaxley-Lennon to a vulnerable prisoners' unit in another prison, because of his own views and because he may present a risk to other prisoners there. Transfer to a dispersal prison would be inappropriate given that he is a Category C civil prisoner and because this would pose risks to his safety. Other Category B Training prisons have been considered and rejected for a variety of reasons, including security, impact on other prisoners, staff resourcing considerations and the ability to manage a large volume of communications from outside the prison. A Category C prison would be inappropriate, given the reduced levels of physical and procedural security in the Category C estate. These prisons generally have transient populations, which may make it more challenging to identify and mitigate risk as it arises cause greater disruption to Mr Yaxley-Lennon, as it is likely to be necessary to move cells as the capacity needs of the prison ebbs and flows.

Mr Yaxley-Lennon's claim

29. In his Statement of Facts and Grounds, Mr Yaxley-Lennon relies heavily on a report by a clinical psychologist, Dr Theresa Connolly, prepared on 26 February 2025 after a 2.5-hour interview and a review of his medical records up to 12 February 2025. In that report, Dr Connolly found that he met the diagnostic criteria for adult ADHD; that between 2018 and 2021 (following release from solitary confinement on a previous occasion) he met the criteria for complex PTSD; and that although the complex PTSD had resolved, it was now being reactivated by segregation. She noted that he had expressed fears for his safety, fears for his family's safety, leading to excessive panic, worry and checking on their safety, sleep disturbance, irritability and quickness to anger, negative self-perceptions and difficulties in sustaining interpersonal interactions (for example during visits). Aspects of solitary confinement were likely to be particularly difficult for a person with ADHD.

30. Under Ground 1, Mr Yaxley-Lennon alleges that the conditions in which he is being held amount to a breach of his right under Article 3 ECHR not to suffer inhuman and degrading treatment. He accepts that solitary confinement does not, in and of itself, give rise to a violation of Article 3. He submits, however, that it is unclear why, as a civil Category C prisoner, he is being held within the maximum-security estate and in *de facto* solitary confinement. He complains that his visits were being restricted without justification. He argues that these measures are not being based on any risk that the Claimant may pose to others and are arbitrary and punitive. They are set to last for the whole of the sentence and the suffering, distress, and hardship of segregation exceeds that which is inherent in any prison sentence. Having regard to the report of Dr Connolly, there is a demonstrable and significant negative effect on the Claimant's mental health, and this is likely to worsen.

31. Under Ground 2, Mr Yaxley-Lennon alleges that the same treatment amounts to a disproportionate interference with his rights under Article 8 ECHR to respect for his private and family life. In this respect, he relies in particular on the cancellation of visits from friends and associates and restrictions on telephone calls. When visits from friends are cancelled, he is offered the opportunity to replace these with a family visit instead, but this is not always possible for weekday visits because his children are at school and other family members are at work.

32. Under Ground 3, Mr Yaxley-Lennon complains that he is being treated less favourably than others because of his political opinions and that this constitutes discrimination for the purposes of Article 14. Since the discrimination falls within the ambit of Articles 3 and 8, it is prohibited unless justified; and no sufficient justification has been given.

33. Under Ground 4, Mr Yaxley-Lennon points to a letter sent by the Governor to his legal representatives on 13 December 2024, in which she said this: "whilst his continued segregation will remain under review, with continuing ongoing consideration as to potential alternatives, none is currently envisaged to meet the needs of suitability managing the aforementioned risks". It is submitted that this amounts to a fettering of discretion and that the promise to keep matters under review was not a meaningful one.

34. Under Ground 5, Mr Yaxley-Lennon initially complained that he had been denied the opportunity to make meaningful representations before decisions are taken to maintain his segregation. In the light of the disclosure provided recently, this ground is no longer pursued and I need say no more about it.

Discussion

35. Before turning to Mr Yaxley-Lennon's grounds of challenge, there are four preliminary matters relevant to this claim.

36. First, permission is required to rely on the expert report of Dr Connolly. I granted that permission at the start of the hearing. I have read the report carefully. It does not say that Mr Yaxley-Lennon is experiencing a mental health crisis or is at risk of suicide or self-harm. Nor does it say that continued segregation is likely to lead to an imminent and significant deterioration in Mr Yaxley-Lennon's mental health. It does highlight the significance of Mr Yaxley-Lennon's ADHD and complex PTSD diagnoses. However, healthcare staff based at HMP Woodhill and NHS mental health staff, including a senior forensic psychologist and a consultant psychiatrist, have taken full account of the diagnoses set out in Dr Connolly's report in formulating his treatment plan.

37. Secondly, the Statement of Facts and Grounds repeatedly asserts that HMP Woodhill is a Category A dispersal prison. In fact, it is not a Category A prison, nor a dispersal prison. Within the Category B estate, dispersal prisons tend to house higher risk prisoners. HMP Woodhill, by contrast, is a Category B Training Standard prison, which houses both Category B

and Category C prisoners. At the time when Mr Worsman made his statement, it housed 32 Category C prisoners, including Mr Yaxley-Lennon. As I have noted, Mr Yaxley-Lennon does not challenge the decision to designate him as a Category C prisoner.

38. Thirdly, [rule 45](#) of the Prison Rules and the associated policy document together set out a very detailed procedural regime for decisions to segregate prisoners, requiring review by the Governor of the prison and by senior staff in the Ministry of Justice at prescribed intervals. The reviews in this case were carried out in accordance with this procedural regime and the documents recording the conclusions reached are before the court. This enabled me to base my review of Mr Yaxley-Lennon's grounds of challenge on what the relevant officials were saying at the time, rather than relying solely on the evidence filed in response to this claim.

39. Fourthly, and importantly, Mr Yaxley-Lennon claims that he has suffered violations of rights protected by the [Human Rights Act](#) and that the challenged decisions are vitiated by public law errors. The rights he relies on include the right guaranteed by Article 3 ECHR not to suffer inhuman and degrading treatment. Claims of this kind against state authorities warrant a prompt and rigorous inquiry by the court, even when made by an individual who finds himself in detention because he has shown contempt for the processes and orders of the court. The expedited process leading to the hearing on 20 March 2025, just over three weeks after this claim was issued, has enabled me to carry out such an inquiry.

Ground 1

40. Article 3 ECHR provides that no-one shall be subjected to torture or inhuman or degrading treatment. The principles applicable are not in dispute. To engage Article 3, treatment must reach a minimum threshold of severity. In assessing whether that threshold has been reached by reason of treatment in prison, the court must undertake a holistic examination of the conditions of detention. The factors to be considered include: "the presence of premeditation; that the measure may have been calculated to break the applicant's resistance or will; an intention to debase or humiliate an applicant, or, if there was no such intention, the fact that the measure was implemented in a manner which nonetheless caused feelings of fear, anguish or inferiority; the absence of any specific justification for the measure imposed; the arbitrary punitive nature of the measure; the length of time for which the measure was imposed; and the fact that there has been a degree of distress or hardship of an intensity exceeding the unavoidable level of suffering inherent in detention...": see the decision of the European Court of Human Rights in *Ahmad v United Kingdom* (2013) 56 EHRR 1, at [178] .

41. Both sides agree that Article 3 does not impose an absolute prohibition on segregation. So, for example, solitary confinement for 8 years did not violate Article 3 in *Ramirez-Sanchez v France* (2007) 45 EHRR 49 and segregation for 56 months did not violate Article 3 in *Shahid v Scottish Ministers* [2015] UKSC 58, [2016] AC 429 .

42. In assessing whether the applicable regime gives rise to an arguable violation of Article 3, five features of the evidence are significant.

43. First, as Mr Williamson accepts, there is nothing to suggest that the decision to segregate Mr Yaxley-Lennon was taken for the purpose of breaking his resistance or humiliating or debasing him. On the contrary, all the evidence shows that it was taken for his own protection and in the interests of preserving the safety of other prisoners and staff. It was not mere speculation that he would be at risk from Muslim prisoners. He himself had said, when first detained at HMP Belmarsh, that he had a "conflict" with the followers of Islam. On 13 November, at HMP Woodhill, when the prospect of a move to the main part of the prison had been mooted, he had mentioned the significant number of Muslim prisoners. It was thus understandable that the Governor should be concerned that Mr Yaxley-Lennon's presence might foment unrest or violence

between Muslim and non-Muslim prisoners. There was also specific intelligence of two potential threats to him, one of which was a threat to his life.

44. Secondly, the decision was regularly reviewed in accordance with [rule 45](#) and with the applicable policy documents. Each such review involved input from an NHS clinician. The outcome of each review was properly recorded. The Governor of HMP Woodhill has given detailed evidence in response to the claim setting out the reasons for the decisions she made. There is and could be no challenge to the veracity of those reasons.

45. Thirdly, there are several aspects of the regime which ameliorate the effect of segregation on Mr Yaxley-Lennon. He is permitted some 3 hours per day out of his cell, which is more than twice the time allowed to convicted prisoners held in segregation. He can use the gym and shower every day. He has recently started work, which gives him some additional time out of his cell on some weekdays, albeit still on his own. He has 2 hours for visits from friends and family, 4 times per week. He has 4 hours per day for telephone calls to friends and family and uses these. He speaks to prison officers, healthcare staff and staff from the chaplaincy daily and has a weekly Bible study session. Such a regime is very far removed from those found to violate Article 3 in the case law.

46. Fourthly, Mr Yaxley-Lennon's mental health is properly and regularly monitored by professionals from the prison's psychology service and the NHS. He is visited every day by an NHS doctor or nurse. His treatment plan has been formulated with input from a senior forensic psychologist and a consultant psychiatrist. Dr Connolly's report has been considered and taken into account by them.

47. Fifthly, Mr Worsman's witness statement makes clear that there has been a careful consideration of the alternatives to HMP Woodhill. Category B dispersal prisons would be inappropriate because the same or greater risks would arise there. Category C prisons have lower staffing ratios and more transient populations, making the risks more difficult to manage. As a Category C prisoner (a designation that is not challenged), a Category D prison would not be a possible destination.

48. Finally, it is worth noting that the conditions of Mr Yaxley-Lennon's detention are subject to challenge before an independent tribunal – namely, this court. The challenge has been promptly and rigorously considered.

49. In the light of these features, it is not accurate to refer to Mr Yaxley-Lennon's regime as "solitary confinement" at all. I accept that the absence of association with other prisoners has an effect on his mental health, but it is not arguable that the regime as a whole gives rise to a breach of Article 3.

50. Ground 1 is not arguable.

Ground 2

51. There is no doubt that the decisions to segregate Mr Yaxley-Lennon and to maintain that segregation gave rise to interferences with his right to respect for his private life within the meaning of Article 8 ECHR. However, the five features I have already mentioned show that the interferences are not as grave as the claim suggests. Moreover, the evidence of Ms Marfleet and Mr Worsman make clear that alternatives have been carefully considered and rejected at each stage. Given the decision to impose a custodial sanction, and the risks involved in detaining a person with Mr Yaxley-Lennon's profile, there

is no obvious or feasible way of detaining him which would give a lesser interference. The interference with his Article 8 rights was therefore proportionate. The contrary is not arguable.

52. Insofar as the complaint is based on any lack of contact with family and friends, it is manifestly not well-founded. Two hours of visits four times per week is substantially more than other prisoners are entitled to. Mr Yaxley-Lennon is also able to speak to family and friends on the telephone for up to 4 hours per day. The cancellation of visits and curtailment of calls with associates believed to run social media platforms is a proper response to the need to avoid the use of his incarceration for campaigning purposes.

53. Ground 2 is therefore not arguable.

Ground 3

54. As to Article 14, the decision to segregate Mr Yaxley-Lennon was taken because of risks to himself and others. The fact that those risks arose because of his well-known political views does not mean that he has been adversely treated because of those views. The point can be tested by asking the following question. Would the Governor have segregated someone with quite different political views, if those views led to similar risks to himself and others and the risks could not be safely managed without segregation? On the evidence, which Mr Williamson did not seriously challenge, there is only one answer: "Yes". In other words, what drove the segregation decision were the risks, not the ideology or perceived ideology which gave rise to them.

55. That being so, this is not a case where Mr Yaxley-Lennon can point to any direct discrimination at all. The complaint is not put as one of indirect discrimination. If it were, it would be necessary to show that those espousing Mr Yaxley-Lennon's views were more likely to be accommodated in segregated conditions than those espousing other political views. There is, however, no evidence that this is so. Even if there were, any indirectly discriminatory treatment would be proportionate in view of the five features I have mentioned under Ground 1 and the additional matters mentioned under Ground 2.

56. Ground 3 is not arguable.

Ground 4

57. This ground is based on a quotation from the Governor's letter of 13 December 2024. However, even the part of that letter which I have quoted made clear that Mr Yaxley-Lennon's segregation would remain under review. The subsequent documentation disclosed shows that it did remain under review, at the intervals prescribed by the Prison Rules and applicable policy. There is nothing to justify the suggestion that the Governor has confirmed that "this position [i.e. the segregation] will not change". In fact, at each stage, she has affirmed that the situation would remain under review. In any event, this claim is brought not against the Governor, but against the Secretary of State, whose leave is required for continued segregation every 42 days. There is nothing at all to suggest that the Secretary of State has fettered her discretion as to whether to grant that leave.

58. Ground 4 is not arguable.

Conclusion

59. For these reasons, permission to apply for judicial review is refused.

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