Medical Justice
working for health rights for detainees

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Medical Justice's response to the consultation on DSO XX/2016 Removal from Association (DC Rule 40) and Temporary Confinement (DC Rule 42)

Dear Sir/Madam

We welcome the Detention Service Order on Removal from Association (DC Rule 40) and Temporary Confinement (DC Rule 42) and hope that it will contribute to ending the misuse of segregation in immigration detention and improve transparency and monitoring of the practice. The absence of centralised guidelines has contributed to differences between centres and practices not in line with the Detention Centre Rules. Medical Justice has been concerned about the use of segregation in immigration detention. Our report on the topic – "A Secret Punishment – the misuse of segregation in immigration detention" is annexed to this response.

We particularly welcome the introduction of mandatory medical assessments of all detainees located under Rule 40 and Rule 42 within 24 hours of being segregated as outlined in paragraph 41 as well as clearer documentation practices. We also welcome the introduction of multidisciplinary review teams and the inclusion of detainees themselves in these daily meetings.

However, we have concerns about the guidance and some suggestions for things which have been omitted in this draft:

- The guidance should stipulate that all segregation must be processed under Rule 40 and 42 of the Detention Centre Rules with appropriate guidance and safeguards that accompany this. All forms of de facto segregation, where detainees are segregated without the benefit of these safeguards, whatever the reason given or name applied, should be explicitly forbidden.
- As the guidance stipulates, segregation should be a last resort and Officers should be trained in de-escalation and mediation. The guidance should set out requirements that staff demonstrate and document that all other options have been exhausted before a detainee is placed into segregation. The exceptional circumstances justifying segregation, as well as efforts to find alternatives, must be thoroughly recorded in each case.
- It is crucial that detainees' legal representatives are also able to attend the multidisciplinary review meetings. In addition, appropriate assistance needs to be available to detainees who may lack capacity to understand and contribute fully to the review.
- Following *Bourgass v SSJ [2015] UKSC 54* the detainee has the right to make representations *before* the continued segregation decision is made. Whilst paragraph 22 provides that reasons must be given, it does not explicitly state that there is a right to representations or how those representations should be considered by the SSHD. There is therefore a risk that detainees are pushed to sign reasons without their being given adequate information about their right to make representations about the proposed decision.
- Paragraph 13 and 14 set out procedures for segregation beyond the maximum time limit of 14 and 3 days respectively. It is not appropriate for guidance to circumvent secondary legislation in

this way. By formalising mechanisms to exceed the set time limit this may encourage prolonged segregation. Segregation beyond 15 days has been demonstrated to cause permanent harm to physical and mental health and it has been proposed by the UN Special Rapporteur on Torture that it should be banned. WE are aware that there have been cases of detainees who were segregated for a virtually continuous period of 22 months. This is not acceptable. The guidance should also set out procedures protecting detainees from repeated segregation – e.g. IMB at Yarl's Wood reported the case of a clearly mentally ill woman who had been segregated on 8 separate occasions due to behaviour which should have been properly understood as a symptom of her mental health issues. In *MD v SSHD* [2014] EWHC 2249 (Admin) repeated segregation of a vulnerable woman detained at Yarl's Wood contributed to the High Court's finding that MD had been subjected to inhuman and degrading treatment. The maximum length of segregation must be communicated to detainees at the beginning of their period of segregation as the uncertainty of indefinite segregation compounds the negative impact of the isolation.

- Where segregation is extended beyond the initial period, this decision should be undertaken by an official outside the IRC. The rules purpose is to ensure that segregation does not continue for a prolonged period without independent oversight.
- The DSO introduces a definition of 'refractory' for the first time. The Shaw review rightfully pointed out that it is an archaic term and recommended updating it to more contemporary language. However, the definition supplied in the draft DSO, as 'stubborn, unmanageable or disobedient' is inappropriate and risks encouraging inappropriate use of segregation. HMIP have criticised the use of segregation as an *"'unofficial sanction' for non-compliance rather than as a strategy for managing specific risk factors or as a 'cooling-off' facility when a detainee is being non-compliant and obstructive, even when there is no risk of harm to staff or detainees"* (HMIP Haslar 2009) and pointed out that segregation is used *"on a daily basis as a punitive response to disruptive or non-compliant behaviour and not on the basis of assessed risk of harm in concordance with the Detention Centre Rules."* (HMIP Brook House 2010). This practice is arguably unlawful as if it fails to *"ensure detainees are only removed from association "if they genuinely pose a threat to safety and security, and not simply as a result of being non-compliant"* (HMIP Yarl's Wood 2011).
- The DSO fails to provide detailed guidance on how detainees should be supported out of segregation. In contrast, the policy in use in prisons (PSO 1700) sets out expectations that segregation unit staff focus on helping prisoners manage their behaviour and problems rather than simply focus on segregation as punishment. These draft guidelines fail to engage with how to support detainees in such a way as to move them off segregation.
- This approach is reflected in the description of the medical assessment. The threshold for medical advice set out in paragraph 45 is far too high. It does not define what is meant by 'seriously detrimental' but goes on to specify 'life threatening'. This is a completely inappropriate threshold. Further, even then the multidisciplinary team need only 'consider' this advice. This is an irresponsible and unacceptable approach. The PSO 1700 in prisons states that "The primary purpose of this [health] screen is to assess a prisoner's ability to cope with the effects of being segregated". The PSO 1700 Initial Health Screening aims to determine if there are any apparent clinical reasons to advise against the use of segregation. The detrimental impact of segregation is well established. Segregation has the potential to cause severe persistent harm to the mental and physical health of vulnerable detainees and this needs to be reflected in the medical screening. All medical interactions must be thoroughly recorded and added to medical notes of detainees.
- The draft guidance allows for limited use of segregation as a tool to manage persons at risk of suicide and self harm and with open ACDTs. Segregation should not be used to manage

detainees at risk of self-harm, as this removes such vulnerable persons in crisis from social contact with peers and so can contribute to the risk of further self-harming behaviour. Further, persons with serious mental health problems are a much wider class. Custodial staff may naturally be focused on the challenging behaviour rather than the vulnerabilities so the guidance needs to provide a clear steer which states that those with mental health problems should not be placed in segregation. The Shaw report is unequivocal that mental health issues are made worse by detention. As a person's mental health deteriorates their behaviour often becomes more challenging. This behaviour, which is often rooted in ongoing mental health disorders, is in our experience often wrongly categorised as 'behavioural issues' and confrontational behaviour which are managed through the use of segregation (see, for example, the case of *MD* referenced above). Segregation is an entirely inappropriate and non-therapeutic environment which only contributes to the continued deterioration of the detainee's mental health and wellbeing. Segregation must not be used as an alternative to release for detainees whose needs cannot be met in detention.

- The guidance needs to set out clear provision for monitoring the use of segregation, provide for centralised independent overview of its use and these comprehensive statistics must be made public on a regular basis and should be regularly reviewed by an independent auditor to ensure oversight and transparency around the use of segregation in IRCs.

Other issues

Paragraph 6 suggests that maintaining order and safety are opposing concerns that need to be balanced against each other. This does not make sense.

Paragraph 12 refers to 'planned occurrences' of segregation. If there is an anticipated need to segregate an individual this should normally be avoided by mitigating other factors rather than preparing for the segregation. Segregation must be a last resort and only to maintain safety and security of centre and persons.

Paragraph 18 says staff should decide on the most appropriate accommodation for those on Rule 40. Those held under Rule 40 should only ever be held in rooms certified for this use, as set out in paragraph 17.

Paragraph 20 should stipulate that the segregation unit must always be staffed as HMIP have documented cases where units have been left unstaffed at times. This is unacceptable.

Medical Justice, July 2016