



**FOLKETINGETS
OMBUDSMAND**

5 May 2020

Thematic report 2019

from the Danish Parliamentary Ombudsman

Disciplinary cells

Contents

1. What has the theme led to?	5
2. What is a disciplinary cell, and what are the rules?.....	7
2.1. Conditions during placement in a disciplinary cell	7
2.2. The rules	9
2.2.1. The Sentence Enforcement Act.....	9
2.2.2. The Disciplinary Punishment Order	10
2.2.3. Guidance Note on Disciplinary Sanctions	11
2.2.4. Local guidelines	11
3. The background for the choice of theme	11
3.1. Harmful effects of solitary confinement	11
3.2. Recommendations from the UN and the European Council	12
3.3. International recommendations and resolutions	12
3.4. The Ombudsman's experience from previous monitoring visits	13
3.5. Significant changes regarding disciplinary sanction	13
3.6. Extent of disciplinary cell impositions	14
3.7. Choice of theme	16
4. What did the Ombudsman do?.....	16
4.1. How was the investigation organised?	16
4.2. What did the Ombudsman investigate?.....	16
4.3. How were the conditions investigated?	17
5. What did the Ombudsman find?	18
5.1. Are disciplinary hearings carried out appropriately and according to the rules?	18
5.1.1. Disciplinary hearings over the telephone.....	18
5.1.2. Dual roles when prison staff attend disciplinary hearings	19
5.1.3. Use of interpreter during disciplinary hearings	19
5.1.4. Guidance on rights.....	20
5.1.5. The right to be assisted or represented by others	20

Doc. No.
19/06022-
54/NMR/Ini

5.1.6. Correct guidance on complaint	20
5.2. Are disciplinary cell placements determined according to identical principles?	21
5.2.1. Combined sanction for several violations at the same time	22
5.2.2. Placement in disciplinary cell for the maximum of 4 weeks	23
5.2.3. Increased sanction for negatively strongly-controlling inmates (gang members, among others)	24
5.3. Is time in temporary exclusion from association deducted from a subsequent placement in disciplinary cell?	25
5.4. Does the documentation in the disciplinary hearing reports live up to requirements?	26
5.4.1. Presentation of the facts of the case	26
5.4.2. Assessment of evidence	27
5.4.3. Precise reference to broken rules and authority for disciplinary sanction.....	27
5.4.4. Grounds for determining sanctions.....	29
5.4.5. Indication of other reactions than disciplinary sanction	30
5.4.6. Continuous quality control by management	30
5.4.7. Connection between the disciplinary hearing report, the Disciplinary Punishment Order and the Guidance Note on Disciplinary Sanctions	30
5.4.8. Noting time of placement in disciplinary cell.....	31
5.5. Is evidence secured for use in the processing of complaint cases?	31
5.6. Handling of backlog of hearings and completion of disciplinary cell placements.....	32
5.7. Is there prevention of disciplinary cell placement and of harmful mental effects from placement in a disciplinary cell?	33
5.7.1. Prevention of the use of disciplinary cells.....	33
5.7.2. Prevention of harmful mental health effects resulting from the use of disciplinary cells	34
5.7.3. Prevention of harmful mental health effects resulting from prolonged solitary confinement by one or more placements in disciplinary cell, perhaps combined with exclusion from association	37
6. Summary of the Ombudsman’s general recommendations and deliberations regarding the theme	38

Appendix 1 – Visited institutions and recommendations	41
Appendix 2 – Rules.....	61
Appendix 3 – Opening letter	66
Appendix 4 – Check-up charts for review of disciplinary hearing reports.....	71

1. What has the theme led to?

Disciplinary cells are the most frequently used form of solitary confinement in Danish state and local prisons. It is a disciplinary punishment which is used towards inmates who break those rules which are included in Section 67 of the Danish Sentence Enforcement Act. In most cases, it concerns possession of a mobile phone or narcotics or is about incidents involving violence and threats.

In the period from 2015 till 2018 the use of disciplinary cells has risen by 84 per cent (in terms of the number of unconditional impositions of disciplinary cell placement).

Solitary confinement can have a harmful effect on a person's mental health. It is therefore important that there is a focus on the use of disciplinary cells and the possible harmful effects thereof, and that the legislation and rules governing the use of disciplinary cells are observed.

Against that background, the use of disciplinary cells was selected as theme for the visits to institutions for adults in 2019. The selection of the theme and the execution of the visits have been carried out in cooperation with the Danish Institute for Human Rights and DIGNITY – the Danish Institute Against Torture.

It was the general theme for the Ombudsman's visits to state and local prisons. The Ombudsman visited a total of 17 institutions where the theme was relevant. Appendix 1 shows a list of the institutions visited.

The Ombudsman's general assessment is

- that the legal rights of the inmates are not in all cases taken into account when the sanction of disciplinary cell placement is imposed,
- that prevention of psychological damage resulting from placement in disciplinary cell can be ensured to a greater extent,
- that on that basis, changes of guidelines and practice regarding disciplinary cell placements can be made to good effect.

The Ombudsman recommends, *i.a.*, that

- precise and adequate documentation in disciplinary hearing reports is ensured so that it shows clearly that the rules for imposing the sanction of disciplinary cell placement have been observed,
- a continuous quality control of the written documentation is carried out,

- guidelines are established on prevention of psychological damage resulting from placement in disciplinary cell,
- guidelines are established on prevention of psychological damage resulting from a prolonged overall solitary confinement due to one or more disciplinary cell placements, possibly combined with one or more exclusions from association,
- the physician or healthcare staff are informed of an inmate's placement in disciplinary cell, including the time of the placement and the expected duration of the placement,
- there is in disciplinary hearings an increased focus on the inmate understanding his or her rights and that an interpreter is used to a greater extent during disciplinary hearings,
- it is ensured that remand prisoners are not given erroneous guidance to the effect that they have a particularly easy access to judicial review of decisions regarding placement in disciplinary cell,
- guidelines are established on the principles applying to the imposition of disciplinary sanctions, including on imposition of placement in disciplinary cell,
- guidelines are established on how to manage an accumulation of cases where disciplinary hearings have not taken place or where imposed placement in disciplinary cell has not been served.

On the basis of the thematic report and its recommendations, the abovementioned list will be discussed with the Department of Prisons and Probation with a view to the Department's consideration and follow-up.

In addition, in connection with future monitoring visits the Ombudsman will follow up on the recommendations given in connection with the processing of the theme for 2019.

The Ombudsman is aware that the current disciplinary punishment system is being evaluated as part of the current multi-year agreement for the Prison and Probation Service which expires in 2021. The Prison and Probation Service will make proposals for necessary adjustments and examine the possibilities of introducing new kinds of disciplinary punishments, reactions and incentive solutions if the current system does not work according to intentions. The Minister of Justice has indicated to the Legal Affairs Committee that relevant professional recommendations will be included in the deliberations.

Recommendations given during the individual monitoring visits and in this thematic report are solely based on the current rules.

The result of the investigation of the theme for the Ombudsman's monitoring visits is set out in more detail below under Heading 5. Heading 6 contains a summary of the more general matters which the Ombudsman will discuss with the Department of Prisons and Probation.

2. What is a disciplinary cell, and what are the rules?

Placement in a disciplinary cell is a sanction used by the prison authorities when an inmate breaks the rules covered by Section 67 of the Sentence Enforcement Act.

This will often concern possession of a mobile phone or illegal narcotics (typically cannabis) or be about violence or threats (towards staff or fellow inmates). But also smoking in the inmate's cell or inappropriate language can result in placement in a disciplinary cell, according to rules laid down by the Minister of Justice or by the individual prison (regional office).

Placement in a disciplinary cell means that the inmate is basically placed in solitary confinement in a cell without the possibility of association with other inmates.

The rules on the use of placement in a disciplinary cell (and interrogation cell) are laid down in the Sentence Enforcement Act with related executive order and guidance note on disciplinary sanctions.

Below under Heading 2.1 there is a description of conditions for inmates in disciplinary cells, and under Heading 2.2 there is a brief presentation of the rules.

2.1. Conditions during placement in a disciplinary cell

As mentioned above, inmates in disciplinary cells do not have access to association with others and are generally only out of the cell for an hour a day in the prison's exercise yard which is also carried out without association with others.

Like other inmates in the Prison and Probation Service institutions, inmates placed in disciplinary cells are generally allowed to have visits and have access to healthcare treatment and to work in the cell. In addition, according to a concrete assessment, the inmate can have access to continued education and substance abuse treatment and to religious services.

During the visits the Ombudsman's visiting teams found that the implementation of disciplinary cell placements varies to some extent, due to the differences between the institutions.

Inmates placed in disciplinary cells in smaller local prisons had the least stringent conditions. Here, disciplinary cell placement takes place in the inmate's own cell. In these local prisons the inmates placed in a disciplinary cell would, among other things, often be allowed out for a couple of hours when the other inmates were confined to their cells. During these periods the inmates could for instance do their laundry or go to the gym. Often, they could also be allowed to go to the exercise yard for a smoke in connection with visits to the toilet, or have a brief chat with the staff.

In two large local prisons visited by the Ombudsman, conditions for inmates placed in disciplinary cells were more restrictive. Here, there was no possibility of getting out of the cell except for an hour in the exercise yard alone, and in connection with visits to the toilet. Access to exercise was only allowed if there were special reasons for it, for instance that the inmate placed in a disciplinary cell showed signs of harmful psychological effects.

In the two open state prisons visited by the Ombudsman, disciplinary cell placement also took place on slightly easier terms. Time served in a disciplinary cell took place in solitary confinement cells that were grouped together in a separate prison unit. The one hour allowed in the exercise yard was divided into intervals so that the inmates placed in disciplinary cells could for instance get out to smoke. According to the inmates placed in disciplinary cells with whom the Ombudsman's visiting teams spoke, they would in actual practise be allowed out to smoke to the extent that the staff had time to let the inmate out. In some cases, the inmate could have access to a mobile phone (without internet access) and a games console when in the disciplinary cell. For other inmates in disciplinary cells it was possible to phone once a day from the prison telephone.

Everyday life in the open state prisons when serving an ordinary sentence was characterised by much association with others, both in work groups and during leisure time where the inmates were not locked up. Being placed in a disciplinary cell was therefore markedly different for inmates in open state prisons compared with their usual everyday prison life, than it was for inmates in local prisons.

In 3 of the 4 closed state prisons visited (including the Immigration Detention Centre under the Prison and Probation Service), placement in a disciplinary cell took place, like in the open state prisons, in special cells in a solitary confinement unit of the prison, while it took place in the inmate's own cell in

one of the prisons. However, overcrowding in the solitary confinement unit in one of the first-mentioned prisons meant that disciplinary cell placement was sometimes effected in the inmate's own cell. There was generally little relaxation of the disciplinary cell regime. Access to getting out more frequently to smoke did, however, exist in one of the prisons while another was going to introduce the possibility to do so. Staff in the 4 closed state prisons stated that there was little contact with staff during the course of the day.

2.2. The rules

The rules on the use of disciplinary cells and interrogation cells as a disciplinary sanction toward inmates are laid down in Sections 67, 68, 70 and 71 of the Sentence Enforcement Act. These basic rules are enlarged in the Executive Order on Disciplinary Cells, Interrogation Cells and the Examination of Disciplinary Cases in State and Local Prisons (hereafter the Disciplinary Punishment Order) and a Guidance Note on Disciplinary Sanctions.

The relevant provisions in the Sentence Enforcement Act and the Disciplinary Punishment Order are outlined in Appendix 2.

2.2.1. The Sentence Enforcement Act

The Act states the conditions under which a disciplinary sanction can be imposed. Disciplinary sanctions can include a warning, a fine or a disciplinary cell placement. Disciplinary cell placement can only be imposed for more serious violations.

When placement in disciplinary cell is imposed as a disciplinary sanction, the duration is determined having regard to the character and extent of the violation, and for adults for a maximum duration of 4 weeks (for young people under the age of 18, generally for a maximum duration of 7 days).

If there is a reasonable suspicion that an inmate has violated provisions which must be assumed to result in disciplinary cell placement as a disciplinary sanction, the inmate can be placed in an interrogation cell if it is necessary for the purpose of carrying out investigations in the disciplinary case. The inmate cannot be held in the interrogation cell for more than 5 days at most, and the time spent in the interrogation cell must be deducted from the time in a disciplinary cell which is subsequently imposed. Furthermore, conditions in the interrogation cell must be the same as in the disciplinary cell.

The Act does not contain any detailed rules on the processing of disciplinary cases.

2.2.2. *The Disciplinary Punishment Order*

The Disciplinary Punishment Order stipulates, *i.a.*, that inmates placed in an interrogation cell or serving a disciplinary cell sanction have a right and an obligation to be employed and have access to attending religious services and spend time in the open air in accordance with the generally applicable rules for inmates in state and local prisons.

Limited association can be allowed if special circumstances in the individual case indicate it.

The Disciplinary Punishment Order also lays down rules on the processing of disciplinary cases.

In disciplinary cases which can lead to disciplinary cell placement, a disciplinary hearing must generally be held with the inmate and any witnesses before a decision is made. The inmate must

- be present during the disciplinary hearing,
- be informed of what has been reported and in general be briefed on what may have emerged during any disciplinary hearings, and
- be permitted to make statements in the case.

All disciplinary hearings must be observed by one of the Prison and Probation Service's staff members, and at the start of the hearing the inmate must be informed of his or her rights in connection with the processing of the case. These include, *i.a.*, the right to have somebody assist him or her and the right to make statements at any time.

If a violation has given cause for other measures pursuant to the Sentence Enforcement Act (for instance transfer to a closed prison or cancellation of permit for regular leave), apart from damages and confiscation, the choice of disciplinary sanction can take this into consideration according to circumstances.

A record must be made on the processing of the disciplinary case and entered into the IT system of the Prison and Probation Service, the Interrogation Module of the Client System. The record must contain, *i.a.*, a range of specified factual information, grounds and specification of the basis for the decision. If requested, a copy of the record must be given to the inmate.

Remand prisoners are covered by the same rules.

Disciplinary cases are decided by the relevant state or local prison but it is possible to complain about a decision to impose a disciplinary cell sanction to the Department of Prisons and Probation.

Inmates serving a sentence who have been sanctioned with placement in a disciplinary cell for more than 7 days can, in addition, demand that the Department bring the decision on disciplinary cell placement before the courts. Consequently, there is an especially easy access to judicial review. The same access to judicial review does not apply to serving inmates who have been sanctioned with placement in a disciplinary cell for 7 days or less, or to remand prisoners.

2.2.3. Guidance Note on Disciplinary Sanctions

The Guidance Note on Disciplinary Sanctions contains detailed instructions on, among other things, the case processing, the rights of the inmate, the access to a personal representative, the right to access to files, on consultation and on the extent and content requirements of the duty to take notes, including a report on the facts of the case and assessment of the evidence.

2.2.4. Local guidelines

Apart from Copenhagen Prisons, none of the visited state or local prisons had drawn up internal guidelines on conditions for inmates placed in disciplinary cells.

In Copenhagen Prisons detailed guidelines were established in May 2018 on longer-duration disciplinary cell placements, meaning longer than three weeks. According to the guidelines, staff must make weekly notes on a number of conditions, such as the inmate's mental health condition, the inmate's relationship with the staff, the inmate's activities (court hearings, meetings with lawyer, etc.), the use of exercise in the prison yard and the inmate's contact with health care staff, social worker and religious staff.

There are in addition local rules in the shape of the so-called Normal Reaction forms (specifying which sanction any given transgression must normally result in). These rules are mentioned in more detail under Heading 5.2 below.

3. The background for the choice of theme

3.1. Harmful effects of solitary confinement

Scientific research has shown that solitary confinement has a negative impact on the people's mental health. There may be memory problems, lack of a sense of time and space, and in more serious cases anxiety, depression,

and an increased risk of suicide. This appears for example from solitary confinement surveys from 1994 and 1997 (Ministry of Justice (1994): 'Isolationsundersøgelsen. Varetægtsfængsling og psykisk helbred' (*The solitary confinement study. Pre-trial detention and mental health*) and Ministry of Justice (1997): 'Efterundersøgelsen – en opfølgingsundersøgelse af danske varetægtsarrestanter' (*The after-examination – a follow-up survey of Danish pre-trial detainees*).

3.2. Recommendations from the UN and the European Council

The Danish authorities' use of disciplinary cell placement has led to recommendations for change in Denmark, both from the UN and from the European Council.

In 2016 the *UN Committee against Torture* (CAT) recommended, *i.a.*, to the Danish authorities that legislation and practice be brought into line with international standards so that solitary confinement of young people as a disciplinary sanction was abolished, and that the longest allowed duration of time spent in solitary confinement was limited to 15 days.

In connection with its visits to Denmark in 2008 the *European Committee for the Prevention of Torture* (CPT) also gave recommendations on the use of disciplinary cell placement as a disciplinary sanction. In particular, the CPT suggested that solitary confinement of young people as a disciplinary sanction should be abolished, and that the longest time allowed in solitary confinement should be limited to 14 days.

3.3. International recommendations and resolutions

The Danish Government has acceded to the European Prison Rules from 2006 as well as the UN Standard Minimum Rules for the Treatment of Prisoners, also called the Nelson Mandela Rules, from 2015.

Both these sets of rules are so-called 'soft law' which do not in themselves create legal obligations for Danish authorities.

Both sets of rules contain provisions on the duration of solitary confinement and on health checks of persons who are in solitary confinement.

The European prison rules state, *i.a.*, that solitary confinement must only be imposed as a sanction in quite specific cases and only for a specified duration which must be as brief as possible, and that there must be a daily health check of persons in solitary confinement. The Danish Government has reserved its position on the rule of daily health checks.

The Nelson Mandela Rules state, *i.a.*, that disciplinary cell placement must never be extended for longer than 15 consecutive days and that there must be daily health checks.

3.4. The Ombudsman's experience from previous monitoring visits

In 2018 the Ombudsman's theme for his monitoring visits was exclusion from association of inmates in the Prison and Probation Service institutions. In that context the Ombudsman's visiting teams also received information on the use of disciplinary cells.

In connection with monitoring visits in 2018 the monitoring teams were informed, *i.a.*, that there had been a sharp increase – in some places a trebling – in the number of unconditional impositions of disciplinary cell placements from 2016 to 2017, and a continued increase in 2018. The explanation given for the increases was often a tightening of the rules on smoking, use of mobile phones and a ban on 'foul language'. Another reason given was that the clientele consisted of a far larger number of gang-related inmates.

It was also found during monitoring visits in 2018 that a couple of institutions had disciplinary cell placements which exceeded 28 days, as several impositions of disciplinary cell placement were completed in immediate succession of each other. However, apart from one individual case, the number of days in disciplinary cell that were meted out in the individual decision did not exceed the 28 days which is the maximum allowed according to the Sentence Enforcement Act.

3.5. Significant changes regarding disciplinary sanction

The rules on disciplinary sanctions have been tightened several times in recent years.

By Act No. 641 of 8 June 2016, the provision in Section 67(1) of the Sentence Enforcement Act was amended from 'can' to 'shall' so that a disciplinary sanction must now be imposed for disciplinary violations. At the same time, Section 775 of the Administration of Justice Act was amended so that the limit to the number of days a placement in a disciplinary cell can be imposed on remand prisoners at a time were raised from 15 to 28 days.

In continuation of the change in legislation, the disciplinary sanction for possession of a mobile phone in state and local prisons was raised from 5 to 15 days in a disciplinary cell.

By Act No. 1726 of 27 December 2016 it was expressly stipulated in the Sentence Enforcement Act that a disciplinary sanction shall be imposed for violation of the rules or instructions applying to *smoking* in the institution. At

the same time, the inmates' right to decide whether smoking is allowed in the cell was abolished.

According to the Prison and Probation Service's Normal Reaction Forms, disciplinary cell placement is imposed when the ban on smoking is violated for the fifth time.

In addition, on 27 July 2017 the Department of Prisons and Probation laid down new guidelines for *language and behaviour* in state and local prisons. In consequence, it is now stipulated that inappropriate language and behaviour is sanctioned with an unconditional placement in a disciplinary cell for 3-5 days the first time this violation takes place. At the same time, the normal reactions for violence and threats of violence were also made more stringent.

As part of the implementation of the Government's Anti-gang package III ("Bandepakken III") from 2017, the disciplinary sanctions for inmates with a *concrete negatively strongly-controlling behaviour* have been increased by 50 per cent for, *i.a.*, violence, threats of violence and inappropriate behaviour/language.

3.6. Extent of disciplinary cell impositions

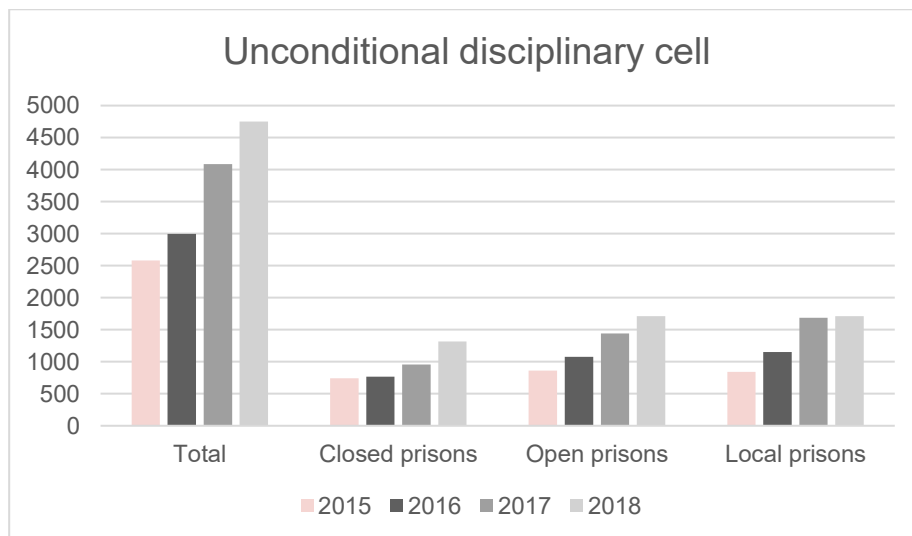


Table 1 – number of unconditional disciplinary cell placements imposed

a) Total number of unconditional disciplinary cell impositions

As it appears from table 1, there has in the Prison and Probation Service institutions been the following overall development in the number of impositions of unconditional disciplinary cell placement:

2015 – 2579
 2016 – 2995
 2017 – 4085
 2018 – 4753

Thus, the number of disciplinary cell impositions rose by 84 per cent from 2015 till 2018. The rise from 2015 till 2018 follows after a period from 2007 till 2015 in which the number has fluctuated between about 2500 and 3000 impositions.

b) Duration of disciplinary cell placements

The duration of placements in disciplinary cells does not appear from the Prison and Probation Service's published annual statistics. In a special publication, 'Tal fra kriminalforsorgen – januar 2019' (*Figures from the Prison and Probation Service – January 2019*, in Danish only), page 9, the following information about the duration is shown:

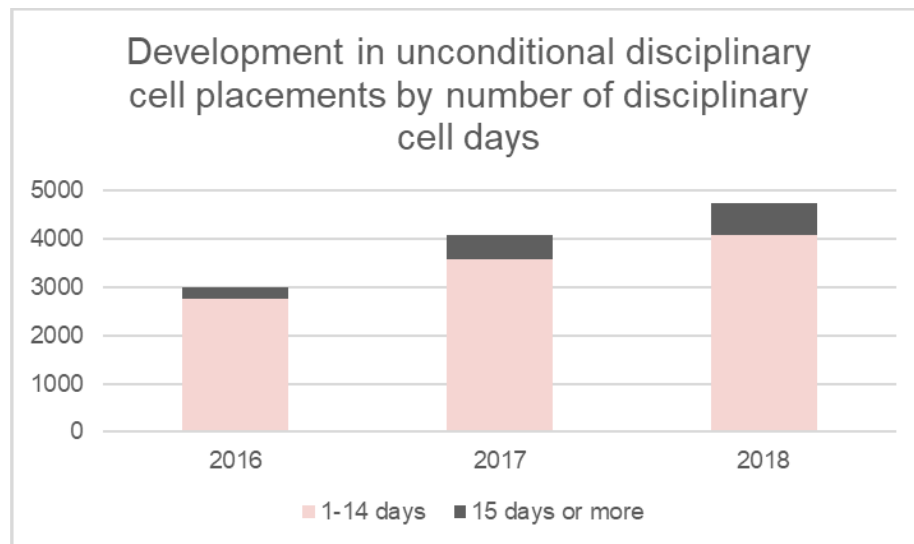


Table 2 shows the development in the number of impositions of unconditional disciplinary cell placements distributed by the duration of the imposed sanction

There has thus been the following development in the number of impositions of unconditional disciplinary cell placements distributed by the duration of the imposed sanction:

Number of days	2016	2017	2018
1-14 days	2772	3574	4078
15 days or more	223	511	674

3.7. Choice of theme

Based on the conditions described, and in collaboration with the Danish Institute of Human Rights and DIGNITY – Danish Institute Against Torture, the Ombudsman found that there were grounds for using the monitoring visits to the institutions for adults in 2019 to shed a more detailed light on the use of disciplinary cell placements and on conditions for inmates placed in disciplinary cells.

4. What did the Ombudsman do?

4.1. How was the investigation organised?

The theme was investigated through 17 visits to institutions under the Prison and Probation Service: 3 closed prisons, 2 open prisons, 11 local prisons and the Prison and Probation Service's Detention Centre Ellebæk.

When selecting the 17 institutions weight was given to, *i.a.*, which institutions scored highest with regard to the number of decisions on disciplinary cell placement. However, some institutions were selected because the Ombudsman had not visited them for some time.

The monitoring visits were carried out as part of the Ombudsman's general monitoring activities pursuant to Section 18 of the Parliamentary Ombudsman Act and as part of the Ombudsman's task of preventing that persons who are or who can be deprived of their liberty are exposed to for instance inhuman or degrading treatment, cf. the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment.

The Ombudsman's work to prevent degrading treatment, etc. pursuant to the Protocol is carried out in cooperation with the Danish Institute for Human Rights and with DIGNITY – Danish Institute Against Torture. DIGNITY and the Institute for Human Rights contribute to the cooperation with special medical and human rights expertise, meaning *i.a.*, that staff with expertise in these two fields participate on behalf of the two institutes in the planning and execution of and follow-up on monitoring visits.

4.2. What did the Ombudsman investigate?

Under the year's theme the following subjects, *i.a.*, were investigated:

- Does the documentation in the cases regarding imposition of disciplinary cell placement show that the imposition has been made on a correct basis?
- Does the documentation show that the rules have otherwise been observed?

- What has been the development in the number of disciplinary cell impositions over the last 3 years?
- What information do management receive on the use of disciplinary cells and how do management use that information, including with regard to preventive measures?
- Do the institution's management systematically ensure that staff is familiar with correct prevention, follow-up and writing of reports?
- How does the institution prevent and handle the imposition of placement in a disciplinary cell?
- What observations do staff make of the inmate during the disciplinary cell placement, and how are possible harmful effects of the solitary confinement countered?
- Has the prison imposed disciplinary cell placement lasting more than 28 days?
- Are there health checks of inmates placed in disciplinary cells?

4.3. How were the conditions investigated?

Before each visit the Ombudsman asked the individual institution for disciplinary cell reports, interrogation reports and other relevant material for the three longest impositions of disciplinary cell placement within the previous year.

The institutions were then asked for a series of statistical data concerning impositions of disciplinary cell placements, for accounts of the development in the use of disciplinary cells and the reasons therefore, about the use of interpreters during interrogations, about information to management on the imposition of disciplinary cells and about management's follow-up on that information.

Appendix 3 shows an opening letter with the information which the institutions are asked to send prior to the Ombudsman's visit.

Based on the rules on the documentation required in disciplinary cases, the Ombudsman has drawn up a check-up form for review of the institutions' interrogation records (notes). The check-up form is enclosed as Appendix 4.

During the monitoring visits the Ombudsman's monitoring teams were provided with clarification of the written information through interviews with management, staff, including medical doctor and prison chaplain, and with the inmates.

Management and staff were interviewed on, among other things, compliance with the applicable rules, how interrogations were carried out in practice, about conditions for the inmates during their stay in a disciplinary cell and

about checks on inmates placed in disciplinary cells, including checks performed by health care professionals.

In addition, the Ombudsman's monitoring teams discussed with management the outcome of the review of the 3 interrogation reports on disciplinary cell placement sent to the Ombudsman, and interviewed management on its use of statistical data and quality assurance of the writing of reports.

The inmates were interviewed on how the interrogation and the disciplinary cell placement were carried out in practice, as experience tells that there can be differences in the way staff and inmates see it.

During the year's thematic visits the Ombudsman's monitoring teams spoke with a total of 212 inmates, including 53 inmates who were or had been placed in a disciplinary cell in the institution in question.

5. What did the Ombudsman find?

5.1. Are disciplinary hearings carried out appropriately and according to the rules?

It was found in the course of the monitoring visits that in several places disciplinary hearings did not comply with all the applicable rules and that in some cases hearings were not carried out in an appropriate manner.

Recommendations given in connection with the monitoring visits are set out below together with the Ombudsman's general recommendations.

5.1.1. Disciplinary hearings over the telephone

Inmates have the right to be present during a disciplinary hearing. During one monitoring visit the monitoring team was informed that the Prison and Probation Service will carry out disciplinary hearings of inmates over the telephone. This may be for practical reasons if the inmate has been transferred to another institution than the institution which is to conduct the hearing.

Disciplinary hearings over the telephone are not mentioned either in the Disciplinary Punishment Order or in the Guidance Note on Disciplinary Sanctions. There are therefore not any detailed written guidelines for when a hearing over the telephone can be used and for how it must be used.

The Ombudsman has not previously had any comments regarding the use of disciplinary hearings over the telephone, provided the inmate has consented. The usual procedural rules are still applicable, including the rule that a staff member must be present at the hearing (see also Heading 5.1.2).

In order to ensure the rights of the inmates and a uniform practice, the Ombudsman recommends that the Department of Prisons and Probation consider establishing guidelines for the use of disciplinary hearings over the telephone. Such guidelines can, for instance, determine whether the inmate must consent to the hearing over the telephone and how it can be ensured that a staff member is present at the hearing and that an interpreter can be used during the hearing, if need be.

5.1.2. Dual roles when prison staff attend disciplinary hearings

It follows from the Guidance Note on Disciplinary Sanctions that a staff member who has reported a disciplinary matter or has otherwise been involved in the matter cannot be the lead interrogation officer.

All disciplinary hearings must be attended by a staff member, cf. Section 7(3) of the Guidance Note on Disciplinary Sanctions. It follows from the Guidance Note that the person who has reported the matter and others who have been involved in the matter cannot attend the disciplinary hearing.

During the monitoring visits the Ombudsman could see that documentation that all these rules had been observed was not present in all cases. In 2 out of 17 monitoring visits management were recommended to ensure that the staff member who attended the disciplinary hearing did not report or was involved in the disciplinary matter.

5.1.3. Use of interpreter during disciplinary hearings

In a number of the visited institutions, the use of interpreters in connection with disciplinary hearings was limited. Instead, staff or fellow inmates translated what was being said during the disciplinary hearing. During the monitoring teams' interviews with inmates who did not speak fluent Danish, it was stated several times that the inmates had not understood what was being said during the disciplinary hearing.

It is important that the inmate understands what is being said during a disciplinary hearing so that the inmate has a chance to reply relevantly to questions and make use of his or her rights and to defend him- or herself.

Therefore, the Ombudsman generally recommends that the institutions' management ensure an increased focus on the inmate understanding what is being said during the disciplinary hearing, and that interpreters are being used to an increased extent during disciplinary hearings. This recommendation was given in 6 out of 17 monitoring visits.

5.1.4. Guidance on rights

It appears from all disciplinary hearing reports received in connection with the monitoring visits that the inmates have received guidance on their rights during the hearing. However, at some of the monitoring visits it appeared during interviews with inmates that they did not think that they had received guidance on their rights.

In order to ensure that inmates receive guidance in such a way that they in fact understand their rights during disciplinary hearings, the Ombudsman generally recommends that the institution's management ensure an increased focus on the inmate being clearly advised of each individual right during the disciplinary hearing, cf. also Chapter 4 of the Guidance Note on Disciplinary Sanctions. This recommendation was given in 4 out of 17 monitoring visits.

5.1.5. The right to be assisted or represented by others

As mentioned under Heading 2.2 above, the inmate is entitled to have a chosen representative present at any time during the processing of the case.

This point has been elaborated in the Guidance Note on Disciplinary Sanctions from which it appears that, as it is important for the decision in a disciplinary case that the party participates in person, an inmate cannot let him- or herself be represented by others during an interrogation. The personal participation requirement does not, however, mean that a chosen representative cannot be present.

The inmates' use of assistance varies in practice. In 7 out of 17 visited institutions, the inmates seldom or never used a chosen representative. In 6 out of 17 visited institutions, management stated that the inmates either used a chosen representative 'often' or in 25 to 50 percent of the cases.

In several of the visited institutions management stated that it was typically other inmates who acted as chosen representatives, for instance the spokesperson for the inmates. Management at 2 institutions raised the question of the risk of social control between the inmates, if other inmates are used as chosen representatives.

The Ombudsman will discuss with the Department of Prisons and Probation whether it may be a more general problem that inmates exercise social control when they assist each other during disciplinary hearings, and what can be done about it, if need be.

5.1.6. Correct guidance on complaint

As mentioned under Heading 2.2, decisions on placement in disciplinary cell can be appealed to the Department of Prisons and Probation. Inmates who

have had disciplinary cell placement imposed for more than 7 days can in addition demand that the Department's decision be brought before the courts. This right does not apply to inmates on whom disciplinary cell placement for 7 days or less has been imposed, or for remand prisoners.

During the monitoring visits the Ombudsman was informed that the disciplinary hearing reports in the Client System of the Prison and Probation Service contain 2 ready printed complaint guidelines. One is produced in connection with imposition of disciplinary cell placement for more than 7 days and mentions the easy access to judicial review. The other is produced in connection with imposition of disciplinary cell placement for 7 days or less and does not mention the easy access to judicial review.

It was also stated during the monitoring visits that it is not directly possible to make changes in the ready printed complaint guidelines.

It appeared from all disciplinary hearing reports received in connection with the monitoring visits that the inmates had received guidance on the possibility of appealing to the Department of Prisons and Probation. In some cases remand prisoners were in addition advised of the possibility of demanding that the Department's decision be brought before the courts, even though they were not entitled to it.

The Ombudsman generally recommends to the institutions' management to ensure that the verbal complaint guidance on the possibility of demanding that the Department's decision be brought before the courts is correct. A corresponding recommendation was given in connection with 8 out of 17 monitoring visits.

Furthermore, the Ombudsman recommends that the Department of Prisons and Probation make changes in the Client System so that the ready printed complaint guidelines take into account that remand prisoners are not entitled to demand that the Department's decision be brought before the courts.

5.2. Are disciplinary cell placements determined according to identical principles?

As mentioned under Heading 2.2 above, imposition of disciplinary cell placement as a disciplinary sanction is determined for a duration of a maximum of 4 weeks, taking into account the nature and extent of the violation.

Neither the Act, the Disciplinary Punishment Order or the Guidance Note on Disciplinary Sanctions prescribe more detailed rules on the principles for determining a disciplinary sanction.

In practice, in addition to the nature and extent of the violation, other general penalty-determining factors from Chapter 10 of the Criminal Code are taken into account. These are, *i.a.*, the inmate's personal and institutional circumstances and any previous disciplinary sanctions.

In addition, locally in the Prison and Probation Service institutions several different lists of 'Normal Reactions' to the more frequent disciplinary violations have been drawn up. The lists are called 'Normal Reaction Forms'.

It is for instance normal to impose placement for 15 days in a disciplinary cell for unlawful possession of a mobile phone in a local prison or a closed state prison. The second time an inmate is found in unlawful possession of a mobile phone, placement in a disciplinary cell for 21 days is normally imposed.

The Department has informed the Ombudsman that new Normal Reaction Forms are under preparation.

In continuation of his monitoring visits the Ombudsman has identified a number of questions on the determining of disciplinary sanctions which is either handled differently in practice in the institutions or where there is a risk that it will be handled differently. These questions are presented in more detail below.

The Ombudsman recommends that in order to ensure a uniform practice the Department of Prisons and Probation considers drawing up central written guidelines on the principles that apply to the determining of disciplinary sanctions, including when determining a disciplinary cell placement.

5.2.1. Combined sanction for several violations at the same time

The Prison and Probation Service does not have written guidelines for which principles to follow when a disciplinary sanction is to be determined for several violations at the same time.

The Department of Prisons and Probation has informed the Ombudsman over the telephone that absolute cumulation is not used when determining a disciplinary sanction for several violations. This means that the sanction for each individual violation is not added to each other. A combined sanction is determined instead.

This is in accordance with the principles of Section 88 of the Criminal Code which can be found in Chapter 10 of the Act.

Example:

An inmate has both been in possession of a mobile phone and threatened a fellow inmate. The normal reaction to possession of a mobile phone as a first offence is 15 days. The normal reaction for threats against a fellow inmate is 10-15 days. The inmate will not be sanctioned with disciplinary cell placement for 25-30 days but will instead receive a smaller, combined sanction for the two violations.

None of the visited local and state prisons used absolute cumulation. It was stated in one institution, however, that absolute cumulation could be used in serious cases.

The visited local and state prisons used different principles for the determination of a combined disciplinary sanction for several violations at the same time.

In 7 institutions management stated that the combined sanction for several disciplinary violations corresponds with the normal reaction to the most serious of the violations. In 8 other institutions it was stated that the combined sanction corresponds to the normal reaction for the most serious of the violations, added with a smaller sanction for the other violations.

In the last-mentioned 8 institutions, there is also a variation in the principles for determining the sanction in addition to the sanction for the most serious violation. In one institution the monitoring team was told that the sanction for the other violations constitutes 50 per cent of the normal reaction for those other violations. In the other 7 institutions the sanction for the other violations is determined according to a concrete assessment.

5.2.2. Placement in disciplinary cell for the maximum of 4 weeks

The Department of Prisons and Probation has informed the Ombudsman that in practice the Sentence Enforcement Act is interpreted in such a way that an inmate can only be placed in a disciplinary cell for a maximum of 4 weeks when determining several violations in the same decision.

During the monitoring visits conducted in 2019 the Ombudsman did not receive any disciplinary hearing reports where a disciplinary sanction of more than 28 days was determined.

There are no details in the Disciplinary Punishment Order or in the Guidance Note on Disciplinary Sanctions on what principles to follow when determining disciplinary sanctions in several consecutive decisions on disciplinary sanctions. Nor does it say how the requirement for a duration of a maximum of 4 weeks is to be understood when it concerns several consecutive decisions.

See also under Heading 5.7.2 and 5.7.3 on prevention of psychological damage.

5.2.3. Increased sanction for negatively strongly-controlling inmates (gang members, among others)

In a letter of 30 June 2017 the Department of Prisons and Probation asked the Prison and Probation Service regional offices to incorporate an increase in the institutions' Normal Reaction Forms on disciplinary sanctions for breach of the rules of order and security committed by inmates with a negatively strongly-controlling behaviour.

It appears from the letter that the increased reaction is to be implemented on the basis of concrete negatively strongly-controlling behaviour. For breaches of discipline such as violence, threats of violence, inappropriate behaviour or language and a lack of compliance with prison staff's instructions, it is assumed that the concrete behaviour of bikers and other gang members is an expression of a negatively, strongly-controlling behaviour. It applies correspondingly if the disciplinary violation has been committed in collusion by more than one inmate with membership of a biker or other gang grouping.

Inmates who are not members of a biker or other gang grouping will also be included in an increased disciplinary sanctioning if they exhibit a specific behaviour which is considered negatively strongly-controlling.

The Ombudsman has been able to establish that the guidelines on increased sanctioning for negatively strong inmates have not been implemented equally in the Normal Reaction Forms which the Ombudsman has received.

It appears, for instance, from one Normal Reaction Form that if the disciplinary violation is connected with gang or biker affiliations, the sanction will be increased by 50 per cent. Under concrete reactions, increased sanctions are stated for violations committed by an inmate with gang or biker affiliations. It appears in general that the reaction, as hitherto, must be determined according to a concrete assessment and an estimate of whether

there are extenuating or aggravating circumstances. It does not, however, appear clearly that it depends on a concrete assessment whether the violation constitutes negatively strongly-controlling behaviour, and that for inmates with gang or biker affiliations it is solely a presumption that it involves a negatively strongly-controlling behaviour.

As mentioned above under Heading 5.2, the Ombudsman recommends that the Department of Prisons and Probation consider drawing up written central guidelines on the principles applying to the determination of disciplinary sanctions in order to ensure a uniform practice.

5.3. Is time in temporary exclusion from association deducted from a subsequent placement in disciplinary cell?

The time which an inmate has spent in an interrogation cell is deducted from the time to be served in a disciplinary cell. This appears from Section 71(3) of the Sentence Enforcement Act. The Ombudsman's monitoring teams learned during the monitoring visits that interrogation cells are not used much in practice.

According to information, it does, however, happen more often that the inmate is temporarily excluded from association prior to being placed in a disciplinary cell. Temporary exclusion from association can for instance have been used if staff has had to assess whether the inmate should be excluded for a longer period of time because the inmate has exhibited a serious or repeated inappropriate behaviour which is manifestly incompatible with a continued association with other inmates.

The Ombudsman has not previously had any comments regarding the temporary exclusion from association of inmates prior to serving a disciplinary cell placement, provided the conditions for excluding the inmate temporarily have been met.

In this context, the Ombudsman has stressed that it is general practice in the Prison and Probation Service that the time the inmate has been temporarily excluded from association prior to placement in a disciplinary cell is deducted from the time to be spent in the disciplinary cell. The general practice corresponds to the rules for preceding placement in an interrogation cell.

The general practice does not, however, appear from the Disciplinary Punishment Order or from the Guidance Note on Disciplinary Sanctions.

Apart from one of the visited institutions, the general practice was followed. Management in the one institution stated that deduction was made in 95 per cent of the cases.

The Ombudsman recommends that the Department of Prisons and Probation consider drawing up written guidelines on deduction of time spent in temporary exclusion from association when determining the subsequent time served in a disciplinary cell. This will better ensure that, in accordance with general practice, there will always be a deduction of time spent in temporary exclusion from association when determining the duration of a subsequent placement in disciplinary cell.

5.4. Does the documentation in the disciplinary hearing reports live up to requirements?

As mentioned under Heading 2.2 above, there are a number of detailed requirements pertaining to the documentation in the disciplinary hearing reports.

The Ombudsman recommends in general that the institutions' management ensure precise and adequate documentation in disciplinary hearing reports so that it is clearly apparent that the rules for the imposition of disciplinary cell placement have been observed. The Ombudsman also recommends that the institutions' management ensure a continuous quality control of the written documentation. The more detailed background to the recommendations is set out under the headings below.

In addition, under some of the headings the Ombudsman recommends that the Department consider taking concrete measures with a view to ensuring a precise and adequate documentation in the disciplinary hearing reports.

5.4.1. Presentation of the facts of the case

The disciplinary hearing report must contain a presentation of those case facts which have been important in making the decision, including an account of the reported matter and the statements given. It appears from the Guidance Note on Disciplinary Sanctions that there must be an independent presentation of the information present in the case, and that it will therefore not be correct to present information on the case facts solely by referring to an underlying report.

In 11 out of the 17 monitoring visits the visiting teams gave one or more recommendations on presenting the facts in a case.

In 7 out of these 11 monitoring visits the visiting teams recommended that management ensure an increased focus on, *i.a.*, stating the actual facts in the case presentation, including circumstances presented in underlying reports and witness statements.

In 6 out of the 11 monitoring visits the visiting teams recommended that it be stated when the presented case fact is based on an underlying report. And in

9 out of the 11 monitoring visits the visiting teams recommended that it is stated by whom – and perhaps when – the underlying report has been prepared.

5.4.2. Assessment of evidence

It must appear from the disciplinary hearing report what is considered to be proven and not proven. Furthermore, the disciplinary hearing report must contain an assessment of the inmate's objections, if these are relevant to the decision (including the determination of the sanction). This appears from Chapter 9 of the Guidance Note on Disciplinary Sanctions.

In 15 out of the 17 monitoring visits the visiting teams recommended that management ensure an increased focus on, among other things, stating what is considered proven. In 14 of these 15 monitoring visits it was also recommended that the report state why it is considered proven, and include a statement that the inmate's objections has been expressly considered.

It appeared in one disciplinary hearing report that the evidence assessment had given weight to the inmate's negative attitude during the hearing. The visiting team recommended that management ensure that the inmate's negative attitude during the hearing not bear any weight in the evidence assessment of whether a disciplinary violation has been committed. The inmate's behaviour during the hearing can enter into the interrogation officer's concrete assessment of, *i.a.*, the inmate's credibility during the hearing. But the behaviour should not in itself be considered evidence that a violation has been committed.

5.4.3. Precise reference to broken rules and authority for disciplinary sanction

The disciplinary hearing reports must state what regulations are considered to have been violated. This must be done by stating the Act, Executive Order or the in-house rule and with precise specification of section, sub-section, clause or paragraph, cf. Chapter 9 of the Guidance Note on Disciplinary Sanctions.

In 38 out of the 52 disciplinary hearing reports which were reviewed by the visiting teams, there were either an imprecise reference to the violated provision or reference to an incorrect provision. By way of example, a reference would be made to 'Section 67(vii), cf. the Sentence Enforcement Act'. In such instances it is not possible to see which penalty clause has been violated.

The monitoring teams also saw instances where reference was made to obsolete provisions – for example 'Section 67(viii), breach of rules laid down by the head of the institution'. Section 67(viii) does no longer have this content. Instead, it now appears from Section 67(ix) of the Sentence

Enforcement Act that a disciplinary sanction must be imposed for violation of rules laid down by the Prison and Probation Service when the rules stipulate that a violation can result in a disciplinary sanction.

In 16 out of 17 monitoring visits the visiting teams recommended that management ensure an increased focus on, *i.a.*, a precise indication of which provision has been violated.

In some instances a breach constitutes a violation of more than one provision. This applies to, for instance, unlawful possession of a mobile phone in local prisons and closed prisons, as this is both a breach of Section 2(xi) of the Executive Order on Inmates' Personal Property, cf. Section 67(viii) of the Sentence Enforcement Act, and section 124(5) of the Criminal Code, cf. Section 67(vii) of the Sentence Enforcement Act.

The Department of Prisons and Probation has previously informed the Ombudsman that reference is made to violations of the provision in the Criminal Code, if the matter is also reported to the police.

The Ombudsman's visiting teams noted a variation in practice regarding which provision was referred to when a violation had breached more than one provision.

The Ombudsman recommends that the Department consider laying down central guidelines for which provision(s) must be referred to when a violation constitutes a breach of more than one provision.

Incorrect, imprecise or varying references are important to, *i.a.*, management's ability to follow developments in the violations committed. This is because the recording of the violated provision in the disciplinary hearing report in the Client System of the Prison and Probation Service impacts the list of disciplinary violations which can be pulled from the electronic Client System. Read more about the Ombudsman's recommendation on follow-up by managements under Heading 5.7.1.

No monitoring visits gave cause for recommendations regarding a lack of documentation that a violation constituted a breach of a provision which can result in a disciplinary sanction.

However, during one monitoring visit the visiting team did question a disciplinary hearing report where an inmate had been sanctioned with 15 days in a disciplinary cell. The inmate had received the disciplinary sanction for, *i.a.*, shouting out of the window in order to communicate with a fellow inmate. There was not, however, a rule that forbade this but only a rule that forbade inmates to communicate out of windows with persons outside the

local prison. Following the monitoring visit, the inmate therefore had his prison sentence reduced as compensation for the wrongful disciplinary cell placement.

During the monitoring visits the Ombudsman did, furthermore, become aware that there can be some doubt as to which provision(s) give authority to disciplinary sanctions when remand prisoners bypass monitoring of own letters, visits and phone calls. As part of the follow-up on the theme, the Ombudsman will ask the Department of Prisons and Probation to state which provision(s) to be considered violated when remand prisoners bypass monitoring of own letters, visits and phone calls.

The precise authority to impose a disciplinary reaction to a violation of a given provision must also be stated in the disciplinary hearing reports.

In 41 out of 52 disciplinary hearing reports there was no precise reference to the authority for the disciplinary sanction, and in 12 out of 17 monitoring visits the monitoring teams recommended that management ensure an increased focus on, *i.a.*, precisely specifying the authority for the disciplinary sanction.

5.4.4. Grounds for determining sanctions

The disciplinary hearing report entry must contain grounds which meet the grounds requirements in the Danish Public Administration Act, and a presentation of factual information of importance to the decision in the case. This follows from Chapter 9 of the Guidance Note on Disciplinary Sanctions.

It is also stated in Chapter 9 that the basis for any deviation from usual practice with regard to determination of sanctions must be indicated. It does not, however, appear that it must be indicated whether or when the inmate has previously committed a similar violation.

There are also detailed specifications in the Normal Reaction Forms of what the level of sanctions are for repeat offenders and for how long a previous violation can continue to impact on the sanction.

When it is not stated in the disciplinary hearing report that a similar violation has been committed previously, and when that violation has been committed, it is not possible on the basis of the grounds for the sentencing in the disciplinary hearing report to assess whether the sentencing corresponds to practice as set out in the Normal Reaction Forms.

During one monitoring visit the Ombudsman recommended that management ensures an increased focus on precise and adequate documentation in the disciplinary hearing reports in relation to stating whether it is a repeat incident.

In continuation of another monitoring visit, an inmate complained of receiving a disciplinary sanction of 7 days for being in possession of a pill. According to the Normal Reaction Form, the sanction was at the same level as for a third offense. There was no indication that the inmate had previously committed a similar offense, and it was consequently not possible to see in the disciplinary hearing report whether this sanction was in accordance with the Normal Reaction Form.

The Ombudsman recommends that the Department of Prisons and Probation consider stipulating guidelines to the effect that it must be stated in the disciplinary hearing report whether, and if so when, similar offences have been committed previously which have a bearing on the determination of the disciplinary sanction.

5.4.5. Indication of other reactions than disciplinary sanction

The disciplinary hearing report must state whether there has been a decision on other reactions than disciplinary sanctions. This appears from Chapter 10 of the Guidance Note on Disciplinary Sanctions. These may be for instance exclusion from association, leave quarantine or transfer to another institution.

In 6 out of 17 monitoring visits the monitoring team recommended that management ensure an increased focus on, *i.a.*, indications of other reactions than disciplinary sanctions.

5.4.6. Continuous quality control by management

The Prisons and Probation Service institutions should stipulate detailed rules on supervision of disciplinary cases. This appears from Chapter 2 of the Guidance Note on Disciplinary Sanctions.

As it appears under Heading 5.4.1-5.4.5, the requirements for documentation in disciplinary hearing reports were not met in all cases. To ensure that the documentation meet these requirements, the Ombudsman generally recommends that the institutions' management provide a continuous quality control of the written documentation. The monitoring teams gave a similar recommendation in 13 out of 17 monitoring visits.

5.4.7. Connection between the disciplinary hearing report, the Disciplinary Punishment Order and the Guidance Note on Disciplinary Sanctions

The requirements for documentation in disciplinary hearing reports appear from the Disciplinary Punishment Order and the Guidance Note on Disciplinary Sanctions. See more on this under Heading 2.2 and Heading 5.4.1-5.4.5. There are also in the disciplinary hearing report in the Client System given a number of headings above the boxes to be filled in the report.

The Guidance Note on Disciplinary Sanctions does not contain any clear indication of where in the report the individual information, etc. must be given. For instance, it does not appear from Chapter 9 of the Guidance Note that the evidence assessment should be stated in connection with the specification of the provisions which the inmate is considered to have violated. In practice, the evidence assessment is typically given under the heading 'Evidence assessment' and the violated provisions are given in the box 'Decision and grounds'.

It is not indicated in the disciplinary hearing report, either, what must be cited under the individual headings. The review of the disciplinary hearing reports has shown, for instance that it can in practice give rise to doubt as to what to put under the heading 'Grounds' in the disciplinary hearing report. The Department has previously informed the Ombudsman that there is to be given grounds for the determination of the disciplinary sanction here.

On that basis, the Ombudsman recommends that the Department of Prisons and Probation consider stipulating guidelines for what to enter into the individual boxes in the disciplinary hearing report. This can be done for instance in a guidance note or directly in the Client System.

5.4.8. Noting time of placement in disciplinary cell

A note must be made of the date and hour when a placement in disciplinary cell has been implemented, cf. Section 2(5) of the Disciplinary Punishment Order. It was stated during the year's monitoring visits that this information is entered into the interrogation module of the Client System. However, the times entered do not appear when the disciplinary hearing report is printed out.

This means, among other things, that the inmate who asks for access to the disciplinary hearing report does not receive this information.

The Ombudsman therefore recommends that the Department of Prisons and Probation consider making sure that when a new Client System is designed or when the existing Client System is adjusted, a print-out of the disciplinary hearing report will show the date and hour of placement in a disciplinary cell and the termination thereof.

5.5. Is evidence secured for use in the processing of complaint cases?

There is a varying practice for securing evidence for use in the Department of Prisons and Probation's processing of a possible complaint concerning a disciplinary sanction decision. In some institutions there was attention on keeping evidence until the deadline for complaint had expired or the Department had finished processing the complaint case. In other institutions there was no clear practice for securing evidence.

Due to the variation in practice, the Ombudsman recommends that the Department of Prisons and Probation consider stipulating guidelines for securing and storing evidence for use in the processing of complaint cases.

5.6. Handling of backlog of hearings and completion of disciplinary cell placements

Two out of 17 institutions experienced or had previously experienced problems with a backlog of cases in which hearings are to be carried out and decisions on disciplinary cell placement are to be made. One of the institutions – Horserød Prison – had at the time of the monitoring visit solved the problem by training more interrogation officers. The other institution – Western Prison – prioritised the cases so that the most serious were processed first. If a case became more than one month old, it was not taken any further.

In 7 out of 17 institutions visited it was stated that there were or had been problems with completion of disciplinary cell placements. The problems are handled in different ways.

In 2 local prisons there had been a few cases where an inmate could not serve an imposed disciplinary cell sanction. The reason was that the inmates, due to overcrowding, were placed in double occupancy cells and that it was not possible to move the inmates to a single occupancy cell where the inmates in question could serve the disciplinary cell sanction in solitary confinement. In addition, one of the local prisons had in one instance transferred an inmate for placement in a disciplinary cell in another institution.

According to information, there could in Storstrøm Prison be a lack of available cells in the solitary confinement unit. If necessary, imposed disciplinary cell placement was served in the inmate's own cell. The management of Horserød Prison stated that it could be a long time before a decision of disciplinary cell placement was put into effect. In Renbæk Prison a waiting queue had been introduced, and conversion of disciplinary cell placement to a fine could be used as an exception.

At the Detention Centre Ellebæk, cases were prioritised so that persons who had for instance committed violence were placed in a disciplinary cell immediately. The Centre had also cancelled some very old decisions on placement in disciplinary cell and transferred the foreign national to another institution due to an accumulation of cases on disciplinary sanction. Management pointed to the fact that it was not crucial which institution the detained inmates were in as long as they were in solitary confinement.

Western Prison also prioritised in carrying out imposed disciplinary cell placements. The most serious violations were prioritised. If more than one month passed, the sanction was cancelled.

Due to the variation in practice, the Ombudsman recommends that the Department of Prisons and Probation consider stipulating guidelines on the handling of an accumulation of cases where there has not been a hearing or where imposed disciplinary cell placement has not been carried out, including the question of whether a time limitation can set in.

5.7. Is there prevention of disciplinary cell placement and of harmful mental effects from placement in a disciplinary cell?

5.7.1. Prevention of the use of disciplinary cells

The use of disciplinary cells can be prevented, *i.a.* by seeking to avoid that disciplinary violations are committed. In practice, this can be done in many different ways. In connection with violence and threats of violence there can for instance be a need for conflict prevention measures among the inmates, and in connection with violations of the ban on smoking there can for instance be a need for stop-smoking courses, etc.

In the assessment of the Ombudsman's visiting teams, all the visited institutions were to some extent focused on avoiding the use of disciplinary cells. The visits therefore did not prompt any recommendations on an increased focus on avoiding the use of disciplinary cells.

However, it can be relevant for the individual institution's management to have an overview of the sort of violations committed in the institution when management have to assess which preventive measures are relevant and necessary.

Consequently, the Ombudsman generally recommends that the institutions' management follow developments in the number of decisions and disciplinary cell days and – to the extent that it is possible – analyse the cause of the development. This recommendation was also given in 5 out of 17 monitoring visits.

Furthermore, as part of his follow-up on the disciplinary cells theme the Ombudsman will discuss with the Department of Prisons and Probation how the Department follows up on the development in the use of disciplinary cells in the Prison and Probation Service, including whether the development is analysed.

During the visits it has turned out that the annual statistics for the number of imposed disciplinary cell placements of which the Department informs the

Ombudsmen are not consistent with the surveys of decisions on disciplinary cell placements which the individual institutions can extract from the Client System.

According to information received, this is among other things because a decision on imposing a disciplinary cell placement can include several violations in the same decision, whereas surveys from the Client System concerns decisions on the individual violations.

This gives the individual institutions an imprecise picture of how many people have been placed in a disciplinary cell over a given period.

On that basis, the Ombudsman recommends that the Department of Prisons and Probation consider ensuring that the institutions are given the possibility of extracting from the Client System both surveys of decisions about the individual violations and of the number of people placed in disciplinary cells.

5.7.2. Prevention of harmful mental health effects resulting from the use of disciplinary cells

Both exclusion from association and placement in a disciplinary cell mean that the inmate is placed in solitary confinement.

An inmate must not be excluded from association if the exclusion would be a disproportionate measure according to the purpose of the measure and the infringement and discomfort which the measure must be presumed to cause. In addition, exclusion from association must be effected as considerately as circumstances allow.

Additionally, rules are laid down on special rights and offers which an inmate is entitled to after 14 days of involuntary exclusion from association. This could for instance be an offer of increased contact with staff, checks by a doctor, including a psychiatrist, association with one or more inmates in the cell or during outdoor exercise in the prison yard, the possibility of working in association with other inmates, leisure time activities with one or more fellow inmates or with staff, and offers of regular talks of longer duration with for instance a religious representative, doctor or psychologist.

Furthermore, the Prison and Probation Service must at least once a week consider whether to wholly or partially terminate an exclusion from association and making a note thereof (the so-called weekly notes).

There are no corresponding provisions in the rules on disciplinary cell placements. For inmates serving a disciplinary cell placement, the only rule applying is that limited association can be granted if special circumstances in the individual case indicate it, cf. Section 2 of the Disciplinary Punishment

Order. There are thus no rules on, *i.a.*, measures which can alleviate the harmful mental health effects of being in solitary confinement.

Furthermore, there are no guidelines on which changes in the inmate's behaviour that should be seen as warning signs of harmful mental health effects, and how staff must act if there are signs that the inmate placed in a disciplinary cell shows changes in behaviour. Nor are there guidelines for when prison officers must inform or call in a doctor or other healthcare staff as a result of such warning signs and signs of a change in behaviour of inmates in solitary confinement.

It is the opinion of the Ombudsman's visiting teams that management and staff were generally focused on the risk of inmates placed in disciplinary cell suffering harmful mental health effects as a result of the solitary confinement.

According to management at the institutions visited, particularly the permanent and experienced staff had a good sense of how the inmates were doing and were good at noticing changes in behaviour and signs that the inmate was not thriving. In one institution, however, there was information from staff and the prison chaplain that staff were not sufficiently trained in noticing the small changes, and that staff did not notice everything. In another institution frequent staff turn-over made it difficult for staff to keep up with developments in the individual inmate. In a third institution contact between staff and inmates in disciplinary cell was limited.

Particularly in the small local prisons – but also in some of the state prisons – staff endeavoured to let the inmates in solitary confinement out of the cells for longer than for the daily exercise hour in the prison yard. The inmate could for instance get out with a prison officer to smoke one extra time or the inmate could come out of his cell when the other inmates were locked up in their cells so that he or she could do laundry and prepare food. In a few institutions extra one-to-one time could be granted between the inmate in solitary confinement and staff, if need be.

This information was widely confirmed by the inmates with whom the visiting teams spoke. There were, however, also inmates who stated that the inmates placed in disciplinary cells were the 'black sheep' in the local prison, and that the waiting time in connection with for instance visits to the toilet was longer for them than for the other inmates.

During all visits the Ombudsman's visiting teams gave information about the rules on solitary confinement laid down in the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules), including the rule on a daily healthcare check of inmates in solitary confinement.

In 3 out of 17 monitoring visits the visiting teams recommended that management systematically ensure that staff are familiar with the correct prevention of the harmful mental health effects from placement in a disciplinary cell. Additionally, the visiting team asked management at a fourth institution to consider increasing their focus on giving attention without being asked to inmates placed in disciplinary cells and for instance in connection with cell calls showing an interest in the inmate's mental state.

In 6 out of the 17 institutions visited it was the practice that healthcare staff were informed when inmates were placed in disciplinary cells or that staff could find information that inmates were placed in disciplinary cells by accessing the Client System.

In 11 of the 17 institutions healthcare staff were either not informed at all or were only sporadically informed of inmates placed in disciplinary cells, or of the duration of the placement.

In 9 of these 11 monitoring visits the visiting teams recommended, suggested or urged management to ensure that the doctor or healthcare staff are informed of the inmate's placement in a disciplinary cell, including the time of the placement and the expected duration thereof.

The Ombudsman recommends in general that the institutions' management ensure that the doctor or healthcare staff be informed of an inmate's placement in a disciplinary cell, including the time of the placement and the expected duration of the placement. Receiving such information will enable the healthcare staff to assess the need for visiting inmates placed in disciplinary cells.

In order to ensure an effective prevention of harmful mental health effects resulting from placement in a disciplinary cell, the Ombudsman also recommends that the Department of Prisons and Probation consider laying down guidelines for prevention of harmful mental health effects resulting from placement in a disciplinary cell.

Such guidelines could for instance contain provisions which to a considerable extent correspond to the rules on exclusion from association, including on writing weekly notes with assessment of the inmate's condition during the placement, what initiatives to consider implemented after 14 days in a disciplinary cell to alleviate the harmful mental health effects resulting from solitary confinement, and the possibility of any change in or termination of the disciplinary cell sanction in order to prevent harmful mental health effects for the inmate placed in a disciplinary cell.

Guidelines could also be laid down for informing the doctor or healthcare staff of disciplinary cell placements, which signs staff in Prison and Probation Service institutions must see as warning signs, and when and how staff should react.

Mentally fragile individuals must be considered to be especially at risk of suffering harmful mental health effects as a result of solitary confinement. The Ombudsman therefore recommends that the Department of Prisons and Probation consider laying down guidelines on the use of disciplinary cell placement towards and monitoring of mentally fragile individuals, including individuals with known mental disorders.

5.7.3. Prevention of harmful mental health effects resulting from prolonged solitary confinement by one or more placements in disciplinary cell, perhaps combined with exclusion from association

Though each individual decision can only impose placement in disciplinary cell for a maximum of 4 weeks, in practice it does happen that inmates are kept in overall solitary confinement for longer. This can be because the inmate receives more than one disciplinary cell sanction which are served in immediate continuation of each other, or because the inmate is both placed in a disciplinary cell and is excluded from association.

The Ombudsman is, *i.a.*, acquainted with a case where an inmate had spent an overall time of 82 days in solitary confinement. In connection with a monitoring visit in 2018, the Ombudsman was informed of a case where an inmate had been in solitary confinement for several periods of a total of 115 days over a calendar year. In addition, the Ombudsman's monitoring team has made a monitoring visit aimed at a specific individual in 2020. The basis was that the inmate whom the visit concerned had been in solitary confinement (excluded from association, including temporarily excluded from association, or in a disciplinary cell) for more than 18 months.

As follow-up to the 2018 theme on exclusion from association, the Ombudsman recommended that in a future update of its Client System, or on acquiring a new system, the Department of Prisons and Probation ensure that – before a decision on exclusion from association – it will give a comprehensive overview of the time the inmate has already spent in solitary confinement over the preceding period so that the increased risk of harmful mental health effects, which can be the result of a prolonged period in solitary confinement, can be taken into account. This would also give the possibility of getting an overview of the total time spent in solitary confinement before placement in a disciplinary cell.

In addition, the Ombudsman recommends that the Department consider laying down guidelines on prevention of harmful mental health effects

resulting from a prolonged, overall solitary confinement due to one or more placements in a disciplinary cell, possibly combined with one or more exclusions from association. In this context, it can be considered to lay down guidelines for when and under what conditions the overall solitary confinement can or should be terminated in order to ensure that the inmates do not suffer any harmful mental health effects because of the solitary confinement, and when the Department should be notified of the total duration of the solitary confinement, including also for continuous solitary confinement spread over several institutions.

6. Summary of the Ombudsman's general recommendations and deliberations regarding the theme

The Ombudsman will discuss the following general recommendations with the Department of Prisons and Probation:

- Considering to set guidelines on:
 - Use of hearings over the telephone
 - The legal principles applying to the determination of disciplinary sanctions,
 - Deduction of time spent in temporary exclusion from association from a subsequent time spent in a disciplinary cell
 - What provision(s) to refer to when a violation constitute a breach of more than one provision
 - Specification in the disciplinary hearing report of whether and, if so, when there have previously been similar violations of importance to the determination of the disciplinary sanction
 - What must be specified in the individual boxes in the disciplinary hearing report
 - Securing and storing evidence for use in complaint case processing
 - Handling accumulation of cases where there has been no hearing or where the sanction of disciplinary cell has not been served, including whether there may be obsolescence
 - Prevention of harmful mental health effects resulting from placement in a disciplinary cell
 - Placement in disciplinary cell and supervision of mentally fragile individuals, including individuals with known mental disorders
 - Prevention of harmful mental health effects resulting from prolonged overall solitary confinement due to one or more placements in disciplinary cell, perhaps combined with one or more exclusions from association

- Considering to make changes in the Client System,
 - so that the pre-printed guidelines take into account that remand prisoners are not entitled to demand that the Department's decision on disciplinary cell placement be brought before the courts,
 - so that it will be possible to see the time of placement in disciplinary cell and the termination thereof in the print-out of the disciplinary hearing report and
 - so that the Client System allows the institutions both to extract accounts of the individual violations and of the number of people placed in disciplinary cell.

- How to ensure, as recommended during the individual monitoring visits,
 - that there is an increased focus on the inmate understanding what is being said during the interrogation, and interpreters are used to a greater extent during interrogation,
 - that there is an increased focus on giving clear guidance to the inmate on his or her rights during the hearing, cf. also Chapter 4 of the Guidance Note on Disciplinary Sanctions,
 - that the verbal complaint guidance on the access to demanding that the Department's decision be brought before the courts is correct,
 - that the documentation in the disciplinary hearing reports is precise and adequate so as to clearly show that the rules on disciplinary cell placement have been followed,
 - that the institutions' management ensure a continuous quality control of the written documentation,
 - that the institutions' management follow developments in the number of decisions and disciplinary cell days and – to the extent possible – analyse the reasons for the developments, and
 - that the doctor or healthcare staff are informed when an inmate is placed in a disciplinary cell, including the time of the placement and the expected duration of the placement.

The Ombudsman will, in addition, discuss the following questions with the Department of Prisons and Probation:

- Whether it can be a more general problem that inmates exercise social control when they act as representatives for each other during disciplinary hearings, and, if so, what can be done about this?
- How the Department follows up on developments in the use of disciplinary cells in the Prison and Probation Service, including whether developments are analysed?

Furthermore, as part of the follow-up on the theme the Ombudsman will ask the Department of Prisons and Probation to state which provision(s)

considered to have been violated when remand prisoners circumvent control of own letters, visits and telephone calls.



Niels Fenger

Appendix 1 – Visited institutions and recommendations

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
17 visits		212 interviews	0 interviews	17 visits	7 visits	Visit concluded with recommendations: 17 Visit concluded without comments: 0

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Holbæk Arrest	Local prison, particularly for inmates remanded while their case is being investigated	8	0	√		<ul style="list-style-type: none"> • that management ensure that guidance on the possibility of complaining is only given when there actually is such a possibility • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> – specification of what is considered proven and – precise reference to the violated provision(s) • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Slagelse Arrest	Local prison, particularly for inmates remanded while their case is being investigated	7	0	√		<ul style="list-style-type: none"> • that management ensure an increased focus on the inmate understanding what is being said during the hearing and initial screening interview, and that an interpreter is used to an increased extent during hearings and initial screening interviews • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> – specification of who has written the underlying report and at what date – specification of what is considered to be proven and why it is considered proven, including an express opinion on the inmate's objections – precise reference to the violated provision – precise specification of the authority for the disciplinary sanction and specification of other reactions than disciplinary sanction • that management ensure that the verbal guidance on the possibility of bringing the Department's decision on disciplinary cell before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports • that management follow developments in the number of decisions and disciplinary cell days and – to the extent possible – analyse the reasons for the development, including to a relevant extent compare itself to other comparable institutions

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Ringsted Arrest	Local prison, particularly for inmates remanded while their case is being investigated	10	0	√		<ul style="list-style-type: none"> • that management follow developments in the number of decisions and disciplinary cell days and – to the extent possible – analyse reasons for the development, including to a relevant extent compare itself to other comparable institutions • that management ensure that the inmate during the hearing is clearly informed of each of his or her rights, cf. Section 7(4) of the Disciplinary Punishment Order • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> – specification of what is considered to be proven and why it is considered proven, including an express opinion on the inmate’s objections, – precise reference to the violated provision and – precise specification of the authority for the disciplinary sanction • that management ensure that the verbal guidance on the possibility of bringing the Department’s decision on disciplinary cell placement before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct • that management ensure that the doctor is informed of the expected duration of the disciplinary cell placement when informed that the inmate has been placed in a disciplinary cell • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Udlæn- dinge- center Ellebæk in Birkerød	Detention centre under the Prison and Probation Service for foreigners who have been deprived of their liberty pursuant to the rules of the Aliens Act	11	0	√	√	<ul style="list-style-type: none"> • that management ensure that the detainee during hearings is clearly informed of each of his or her rights, cf. Section 7(4) of the Disciplinary Punishment Order • that management ensure an increased focus on the detainee understanding what is being said during hearings and an interpreter is used to a greater extent during interrogation, cf. the Council of Europe's Committee of Ministers, Recommendation (Rec(2006)2 to the member States on the European Prison Rules, paragraph 59(e) • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> - specification of the facts in the case in the case statement, including underlying reports and witness statements, - stating that it is an account of an underlying report, who has written the underlying report and the date thereof - stating what is considered to be proven and why it is considered to be proven, including an express opinion on the detainee's objections - precise reference to the violated provision • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports <p>(Continued next page)</p>

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations concerning theme
Udlændinge-center Ellebæk in Birkerød (continued)						<ul style="list-style-type: none"> • that management ensure that staff are familiar with correct prevention of the harmful mental health effects of placement in disciplinary cell • that management, in a way management deem relevant, ensure that the doctor or the healthcare staff are informed of a detainee's placement in disciplinary cell, including the time of the placement and the expected duration of the placement • that management ensure that Detention Centre Ellebæk's information leaflet to the detainees is updated, including a possible inclusion of guidance on rights and possibilities of complaint in connection with placement in a disciplinary cell <p><i>Own-initiative case on introduction of screening for torture and suicide risk in the Detention Centre Ellebæk</i></p>

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Frederiks-sund Arrest	Local prison, particularly for inmates remanded while their case is being investigated	9	0	√		<ul style="list-style-type: none"> • that management ensure that the officer who has written a report on a disciplinary matter is not a witness during the hearing, cf. Clause 8 of the Guidance Note on Disciplinary Sanctions, • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> – stating who has written the underlying report, – stating what is considered proven and why it is considered proven, including stating an express opinion on the inmate’s objections, – precise reference to the violated provision, – precise reference to the authority for the disciplinary sanction and – stating other reactions than disciplinary sanction, • that management ensure that the verbal guidance on the possibility of bringing the Department’s decision on disciplinary cell placement before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct, • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports • that management follow developments in the number of decisions and disciplinary cell days and – to the extent possible – analyse the reasons for the development, including to a relevant extent compare itself with other comparable institutions

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Storstrøm Fængsel, Nørre Alslev	Closed prison with a specially secure unit, especially for inmates serving a sentence	65	0	√		<ul style="list-style-type: none"> • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> - clear indication that it is an account of an underlying report, who has written the underlying report, and the date thereof - specification of what is considered to be proven and why it is considered to be proven, including an express opinion on the inmate's objections - precise reference to the violated provision, including – when relevant – the provision in the Sentence Enforcement Act - precise specification of the authority for the disciplinary sanction - specification of other reactions than disciplinary sanction, for instance reporting the matter to the police. • that management ensure that the verbal guidance on the possibility of bringing the Department's decision on disciplinary cell placement before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct. • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports.

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Køben-havns Fængsler, Vestre Fængsel	Four units, especially for inmates in remand while their case is being investigated, including two communal units for men and two communal units for women	9	0	√	√	<ul style="list-style-type: none"> • that management ensure an increased focus on precise and adequate documentation, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> - precise specification of the violated provision - precise indication of what is considered proven and why it is considered proven, including an express opinion on the inmate's objections • that management ensure that the inmate has understood the guidance on: <ul style="list-style-type: none"> - the special rights to which the inmate is entitled pursuant to Section 7(4) of the Disciplinary Punishment Order - the possibility of complaint • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Nykøbing Fængsel, Nykøbing Sjælland	Closed prison especially for inmates serving a sentence	5	0	√		<ul style="list-style-type: none"> • that management ensure an increased focus on the inmate understanding what is being said during hearings and an interpreter is used to a greater extent during hearings, cf. the Council of Europe's Committee of Ministers, Recommendation (Rec(2006)2 to the member States on the European Prison Rules, paragraph 59(e), • that management ensure an increased focus on precise and adequate documentation, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> - specification of the facts in the case in the case statement, including underlying reports and witness statements - stating that it is an account of an underlying report and who has written the underlying report and at which date - stating what is considered to be proven and why it is considered to be proven, including an express opinion on the inmate's objections - precise reference to the violated provision - precise reference to the authority for the disciplinary sanction - specification of other reactions than disciplinary sanction • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports • that management systematically ensure that staff are familiar with the correct prevention of the damaging mental health effects of placement in a disciplinary cell <p>(Continued next page)</p>

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Nykøbing Fængsel, Nykøbing Sjælland (continued)						<ul style="list-style-type: none"> that healthcare staff to the extent possible participate in morning meetings where the inmates are reviewed, or are otherwise informed of inmates in solitary confinement

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Haderslev Arrest	Local prison, particularly for inmates remanded while their case is being investigated	4	0	√		<ul style="list-style-type: none"> that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> – specification of what is considered to be proven and why it is considered proven, including an express opinion on the inmate's objections, – precise reference to the violated provision and – precise specification of the authority for the disciplinary sanction and that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Næstved Arrest	Local prison, particularly for inmates remanded while their case is being investigated	4	0	√	√	<ul style="list-style-type: none"> that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> specification of the facts in the case in the case statement, including underlying reports and witness statements specification of what is considered to be proven and why it is considered proven, including an express opinion on the inmate's objections, precise reference to the violated provision that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Aarhus Arrest	Local prison, particularly for inmates remanded while their case is being investigated	8	0	√	√	<ul style="list-style-type: none"> that management ensure that the verbal guidance on the possibility of bringing the Department's decision on disciplinary cell placement before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct and that management follow developments in the number of decisions and disciplinary cell days and – to the extent possible – analyse reasons for the development, including to a relevant extent compare itself to other comparable institutions

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Horserød Fængsel	Open prison with a closed unit, especially for inmates serving a sentence	17	0	√		<ul style="list-style-type: none"> • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> - specification of the facts in the case in the case statement, including facts given in underlying reports and witness statements - stating that it is an account of an underlying report, who has written the underlying report and on what date - stating what is considered to be proven and why it is considered to be proven, including an express opinion on the inmate's objections - precise reference to the violated provision - precise specification of the authority for the disciplinary sanction • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports • that management, in a way it deem relevant, ensure that the doctor or the healthcare staff are informed of an inmate's placement in disciplinary cell, including the time of the placement and the expected duration of the placement

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Renbæk Fængsel, Skærbæk	Open prison with a closed unit, especially for inmates serving a sentence	14	0	√		<ul style="list-style-type: none"> • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> – specification of the facts in the case statement, including underlying reports and witness statements – stating what is considered proven and why it is considered proven, including an express opinion on the inmate's objections – precise reference to the violated provision – precise specification of the authority for the disciplinary sanction • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports • that management, in a way it deem relevant, ensure that the doctor or the healthcare staff are informed of an inmate's placement in disciplinary cell, including the time of the placement and the expected duration of the placement

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Ringe Fængsel	Closed prison for inmates sentenced to deportation	22	0	√	√	<ul style="list-style-type: none"> • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> - stating what is considered proven and why it is considered proven, including an express opinion on the inmate's objections - specification of the facts in the case statement, including underlying reports and witness statements - stating that it is an account of an underlying report and who has written the underlying report and at what date - precise reference to the violated provision - precise specification of the authority for the disciplinary sanction • that management ensure an increased focus on the inmate and the interrogation officer understanding what is being said during the hearing, and that an interpreter is used to a greater extent during hearings, cf. the Council of Europe's Committee of Ministers, Recommendation (Rec(2006)2 to the member States on the European Prison Rules, paragraph 59(e), • that management ensure that an interpreter is also used to the necessary extent, including for talks between for instance healthcare staff and inmates and during talks between social services officers and inmates, <p>(Continued next page)</p>

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Ringe Fængsel (continued)						<ul style="list-style-type: none"> • that management examine the use of solitary confinement cell No. 709 for use of multiple inmates at a time, including <i>i.a.</i> the scale of the use of cell No. 709, for how long the inmates have been placed in cell No. 709, whether reports on placement of the inmates in cell No. 709 have been written, and whether disciplinary sanctions were imposed on the inmates before or after, • that management ensure that cell No. 709 is used in accordance with the rules, • that cell No. 709 is equipped with the necessary furnishings, • that management ensure that in connection with longer transports of inmates, staff consider using the handcuff transport belt, cf. Clause 2 in Circular No. 9374 of 26 April 2016 on the use of restraints and approval of handcuffs, • that management ensure that locking up inmates in their own cell is in accordance with the rules in Section 6 in Executive Order No. 866 of 25 June 2018 on Inmates' Access to Association, etc. with Other Inmates in the institutions of the Prison and Probation Service (the Association Order) <p><i>Two own-initiative cases raised on the use of cell No. 709 and payment for hospital treatment of foreign nationals sentenced to deportation</i></p>

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Vejle Arrest	Local prison, particularly for inmates remanded while their case is being investigated	12	0	√		<ul style="list-style-type: none"> • that management ensure that an prison officer who has written a report on a disciplinary matter or has been involved in the matter is not a witness during the hearing, cf. Clause 8 of Guidance Note on Disciplinary Sanctions, • that management, in a way which management deem relevant, ensure that the healthcare staff are informed of the inmate's placement in disciplinary cell, including the time of the placement and the expected duration of the placement • that management ensure a focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to the precise reference to the authority for the disciplinary sanction and indication of other reactions than disciplinary sanction, • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports, • that management ensure that the verbal guidance on the possibility of bringing the Department's decision on disciplinary cell placement before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Køge Arrest	Local prison, particularly for inmates remanded while their case is being investigated	11	0	√	√	<ul style="list-style-type: none"> • that management ensure that the inmate during the hearing is clearly guided on each of his or her rights, cf. Section 7(4) of the Disciplinary Punishment Order, • that management ensure that the verbal guidance on the possibility of bringing the Department's decision on disciplinary cell placement before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct • that management ensure an increased focus on the inmate understanding what is being said during admission interviews, disciplinary hearings and consultation with healthcare staff, and that interpreters are used to a greater extent • that management systematically ensure that staff are familiar with correct prevention of the harmful mental health effects of placement in disciplinary cell, • that management ensure that the doctor or the healthcare staff are systematically informed of the inmate's placement in disciplinary cell, including the time of the placement and the expected duration of the placement, • that management ensure that in the evidence assessment during a disciplinary hearing, the inmate's negative attitude during the hearing is not taken as proof that the inmate has committed a disciplinary offence, <p>(Continued next page)</p>

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Køge Arrest (continued)						<ul style="list-style-type: none"> • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports in relation to: <ul style="list-style-type: none"> - specification of who has written the underlying report and at what date, - specification of what is considered to be proven and why it is considered proven, including an express opinion on the inmate's objections, - precise reference to the violated provision, - precise specification of the authority for the disciplinary sanction, - specification of other reactions than disciplinary sanction, and - indication of whether this is a repeated offence, • that management ensure that the time which an inmate has been temporarily excluded from association is deducted from a subsequent disciplinary cell placement, • that management follows the development in the number of decisions and disciplinary cell days

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY partici-pated	IMR partici-pated	Recommendations concerning theme
Roskilde Arrest	Local prison, particularly for inmates remanded while their case is being investigated	7	0	√	√	<ul style="list-style-type: none"> • that management ensure an increased focus on the inmate understanding what is being said during hearings and an interpreter is used to a greater extent during hearings, cf. the Council of Europe's Committee of Ministers, Recommendation (Rec(2006)2 to the member States on the European Prison Rules, paragraph 59(e), • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports in relation to: <ul style="list-style-type: none"> - specification of the facts in the case presentation, including underlying reports and witness statements - stating that it is an account of an underlying report and who has written the underlying report and at what date - stating what is considered to be proven and why it is considered proven, including an express opinion on the inmate's objections - precise reference to the violated provision - precise specification of the authority for the disciplinary sanction • that management ensure that the verbal guidance on the possibility of bringing the Department's decision on disciplinary cell placement before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct <p>(Continued next page)</p>

Where	What	Inter-views with users	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations concerning theme
Roskilde Arrest (continued)						<ul style="list-style-type: none"> • that management ensure that the doctor, in the way that management deem relevant, is informed of the inmate's placement in disciplinary cell, including the time of the placement and the expected duration of the placement, • that management follow developments in the number of decisions and disciplinary cell days and – to the extent possible – analyse reasons for the development, including to a relevant extent compare itself to other comparable institutions.

Appendix 2 – Rules

Sentence Enforcement Act (Consolidation Act No. 1333 of 9 December 2019, *unauthorised translation*):

Chapter 11

Disciplinary sanction, confiscation and set-off for damages

Disciplinary sanction

Section 67. The Prison and Probation Service shall impose a disciplinary sanction on an inmate

- 1) for violation of Section 32,
- 2) for failing to return from leave, for absconding or attempting to do so,
- 3) for disregarding the occupational duty pursuant to Section 38(1),
- 4) for refusing to give a breath test or urine sample pursuant to Section 60 a,
- 5) for ingesting alcohol, euphoriants or other substances prohibited by the statutory provisions in general,
- 6) for violation of the rules and directions pertaining to smoking in the institution,
- 7) for a criminal offence when the offence involves in addition a separate violation of order or security in the institution,
- 8) for violation of rules laid down by the Minister of Justice when the rules stipulate that a violation can result in a disciplinary sanction, and
- 9) for violation of rules laid down by the Prison and Probation Service when the rules stipulate that a violation can result in a disciplinary sanction.

Section 68. As disciplinary sanction can be used a warning, a fine or a period in a disciplinary cell.

(2) Disciplinary cell can, however, only be used for the following violations or attempts thereof:

- 1) failure to return from leave or absconding,
- 2) smuggling in, possession of or ingestion of alcohol, euphoriants or other substances prohibited by the statutory provisions in general,
- 3) refusal to give a breath test or urine sample pursuant to Section 60 a,
- 4) smuggling in or possession of weapons and other dangerous offensive articles,
- 5) violence or threats of violence against other inmates, prison staff or others in the institution,
- 6) gross malicious damage and
- 7) other serious or often repeated violations.

(3) A disciplinary sanction in the form of a fine or placement in a disciplinary cell can be imposed in combination.

(4) Enforcement of a disciplinary sanction can be wholly or partly suspended on condition that the inmate during a specified period does not commit a criminal offence or a new disciplinary violation.

...

Section 70. When imposing placement in disciplinary cell as a disciplinary sanction, the duration is fixed for a maximum of 4 weeks, having regard to the nature and scale of the violation. However, for young persons under the age of 18 the duration is fixed for a maximum of 7 days, unless the matter concerns violence against staff in the institution.

(2) An inmate on whom the sanction of placement in a disciplinary cell has been imposed is placed in a special unit or own cell or in a local prison. The inmate is excluded from association in the institution during the placement. However, young persons below the age of 18 can participate in occupational activities in the institution unless specific reasons speak against it.

(3) The Minister of Justice lays down rules on serving a disciplinary cell sanction.

Interrogation cell

Section 71. If there is a reasonable suspicion that an inmate has violated provisions which must be presumed to result in a disciplinary sanction, the inmate can be placed in an interrogation cell if it is necessary for the purpose of carrying out investigations in the disciplinary case.

(2) Placement in an interrogation cell shall not be extended for longer than the investigation demands, and shall not exceed 5 days.

(3) The time which an inmate has been placed in an interrogation cell shall be deducted from the time served in a disciplinary cell.

(4) Placement in interrogation cell is governed by the same rules that apply to placement in disciplinary cell.

Processing of disciplinary cases

Section 72. The Minister of Justice lays down rules on processing of disciplinary cases.

Executive Order on Disciplinary Cells, Interrogation Cells and the Examination of Disciplinary Cases in State and Local Prisons (Order No. 105 of 30 January 2019):

Joint rules

Section 1. Disciplinary cell and interrogation cell can be used towards inmates serving a prison sentence or in secure detention, pursuant to the rules in Sections 67-71 of the Sentence Enforcement Act.

(2) Sections 67-69 and Section 71 of the Sentence Enforcement Act and this Executive Order apply similarly to remand prisoners.

Use of interrogation cell and serving time in disciplinary cell

Section 2. Inmates who are placed in an interrogation cell or is serving a sanction in a disciplinary cell have a right and an obligation to occupation according to the rules in Sections 38-42 of the Sentence Enforcement Act and the Executive Order on Occupation of Inmates in the Institutions of the Prison and Probation Service.

(2) The inmate are in addition entitled to attend religious services and spend time in the open air pursuant to Section 35 and 43(3) of the Sentence Enforcement Act.

(3) The Prison and Probation Service can lay down rules restricting the access to bringing own possessions in cases where an inmate is placed in an interrogation cell or is serving disciplinary cell placement in accommodation in a special unit or in a local prison. With respect to placement or serving time for more than 7 days, however, restrictions can only be laid down when these are concretely due to available space in the institution or for special security reasons.

(4) In connection with serving time in a disciplinary cell, limited association can be allowed if special circumstances indicate it in the individual case. Pursuant to Section 70(2) of the Sentence Enforcement Act, young persons under the age of 18 placed in a disciplinary cell can participate in occupational pursuits in the institution in association with other inmates unless specific reasons argue against it.

(5) A note shall be written on the date and time of the placement's implementation and termination.

Section 3. The decision to place an inmate in an interrogation cell is made by the Prison and Probation Service.

(2) The inmate shall be informed, without delay, of the reason for the placement in an interrogation cell and shall be allowed to make a statement in the case.

(3) A note shall be written of the information given to the inmate pursuant to (2), and of any statements the inmate makes.

Processing of disciplinary cases

Section 4. If the violation has given cause for other measures pursuant to the Sentence Enforcement Act, apart from damages and confiscation, this can, according to circumstances, be taken into account when determining the disciplinary sanction.

Section 5. Disciplinary cases shall be processed as quickly as possible.

Section 6. In disciplinary cases where only a warning or a fine will be used, the case can be processed without the inmate being present if the violation is immediately apparent or if the circumstances in the case must otherwise be considered to be fully established. Furthermore, it is a condition for processing the case without the inmate being present that the inmate does not want to make a statement in the case.

(2) The inmate shall be informed in writing

- 1) of what decision the Prison and Probation Service intends to make, and
- 2) that the inmate has access to making a statement in the case.

Section 7. In other disciplinary cases the inmates shall be notified of what has been reported and in general be briefed on what may have emerged during any interrogations. The inmate shall have the opportunity to make a statement in the case.

(2) The decision must be made while the inmate is present.

(3) All hearings shall be witnessed by one of the staff members of the Prison and Probation Service.

- (4) At the start of the hearing the inmate shall be informed of his or her rights in relation to the processing of the case, including
- 1) the right at any time of the processing of the case to be assisted or represented by others, cf. Section 8 of the Public Administration Act,
 - 2) the right to access to the documents forming the basis of the hearing, cf. Chapter 4 of the Public Administration Act,
 - 3) the right to make a statement before a decision is made, and that this does not imply any obligation on the part of the inmate to make a statement,
 - 4) the right not to approve the presentation of his or her statement, cf. Section 8(5)(iv), and
 - 5) the right on request to be given a copy of the drafted record pursuant to Section 8, cf. Section 9.
- (5) If the inmate does not wish to be present, the disciplinary case can be completed without the inmate's presence. Section 6(2) applies similarly.

Section 8. A record of the processing of the disciplinary case shall be entered into the hearing module of the Client System.

- (2) The record shall contain
- 1) a presentation of what has been reported,
 - 2) information on which provisions have been violated,
 - 3) information on the decision,
 - 4) information on date and time of when the decision has been announced to the inmate,
 - 5) information that the inmate has been informed of the possibility of complaining about the decision to the Department of Prisons and Probation in those cases where this option appears from Section 10(1), Section 4 of the Executive Order on Deducting for Damages, and Section 6 of the Executive Order on Confiscation, and
 - 6) information on when the deadline for submitting a complaint expires, cf. Section 10(2), and Section 4(2) of the Executive Order on Deducting for Damages, and Section 6 of the Executive Order on Confiscation.
- (3) If it is a decision which is included in Section 112 of the Sentence Enforcement Act, the record shall in addition contain information that the inmate has been briefed on the possibility of demanding that the final administrative decision be brought before the court for judicial review.
- (4) When processing disciplinary cases pursuant to Section 6, it shall appear from the record, apart from that which is mentioned in Subsection 2, that the inmate has been notified in writing of what decision the Prison and Probation Service intends to make, and that the inmate has access to making a statement, cf. Section 6(2).
- (5) When processing disciplinary cases pursuant to Section 7, apart from that which is mentioned in Subsection 2, the record shall contain a presentation of statements given which shall be entered into the protocol in the presence of the person giving the statement. The record shall furthermore contain detailed information on the grounds on which the decision is made. In addition, the record shall contain information on any restrictions in the right at any time during the processing of the case to be assisted or represented by others and in the right to access to the documents in the case, cf. Section 7(4)(i) and (ii). Lastly, the record shall contain grounds which meet the requirements in Section 24 of the Public Administration Act. It shall be endeavoured to write the record in such a way that it can be approved by the individual in question. It shall appear from the record that the inmate has

approved it. If the inmate has not wished to be present during the interrogation, this shall also appear from the record.

Section 9. The inmate shall receive a copy of the record upon request.

Administrative right of appeal

Section 10. The following decisions made by the Prison and Probation Service can be appealed to the Department of Prisons and Probation:

1) A decision pursuant to Section 70(1) of the Sentence Enforcement Act, cf. Section 67 on disciplinary sanction in the form of placement in disciplinary cell.

2) A decision pursuant to Section 71(1) of the Sentence Enforcement Act on placement in interrogation cell.

(2) A complaint to the Department of Prisons and Probation must be submitted within two months after the inmate has been notified of the decision. The Department of Prisons and Probation can disregard this deadline in certain cases.

(3) A complaint to the Department of Prisons and Probation does not have a suspensory effect unless the Prison and Probation Service so decides.

Appendix 3 – Opening letter

As agreed over the telephone with Area Manager (...), the visit will take place in (...) Local Prison **DAY/DATE/MONTH 2019**. The visit starts at 9:00.

There are no special circumstances in (...) Local Prison which have led to the Ombudsman wanting to visit the local prison. The monitoring visit takes place as part of the Ombudsman's general monitoring activities and as part of the Ombudsman's OPCAT activities, cf. below on background and purpose of the visit.

As theme in 2019 the Ombudsman has chosen to inspect conditions for inmates on whom disciplinary cell placement is or has been imposed in state and local prisons.

Conditions for these inmates are therefore the primary concern of the visit, and a number of facts which the Ombudsman asks for therefore concern their conditions.

In addition, the visit may include questions on the use of force, interventions and restrictions, relationships and healthcare matters together with occupation, education and leisure time.

The visiting team consists of Deputy Head of Department Erik Dorph Sørensen and Legal Case Officer Nina M. Ringsted from the Ombudsman's Office, together with medical doctors Jens Modvig and Lisa Michaelsen from DIGNITY – Danish Institute Against Torture.

I ask that at the start of the visit there will be a permission for Legal Case Officer Nina M. Ringsted to bring and use a laptop PC during the visit.

Information prior to the visit

For use in the preparation for the visit I would like to receive a number of details about the local prison **at the latest (...)**:

1. House rules
2. A current occupancy rate with information about the inmates, including information about age, gender, time of arrival and any special needs, such as any mental disorder.
3. A list of the number of times force was used in 2018.
4. A list of the number of involuntary and voluntary exclusions from association in 2018.
5. A list of the number of placements in a disciplinary cell in 2018 with information about the duration thereof and the grounds therefore.

6. A list of the number of placements in observation cell and security cell (if the institution has such cells) for 2018 with information of the grounds for the placement and the duration thereof
7. A list of the number of incidents of abuse, violence and threats of violence for 2016, 2017 and 2018 (both between inmates, against inmates and against staff)
8. Guidelines for processing cases regarding violence and abuse, etc. (anti-violence policy)
9. Any written internal guidelines concerning the use of disciplinary cells
10. Reports and other relevant material (disciplinary cell reports, interrogation reports, reports on temporary exclusion from association or interrogation cell reports) for the three longest impositions of disciplinary cell placement within the latest 12 months from reception of this letter. If there are notes in the inmate's prisoner file in the three cases on the inmate's stay in a disciplinary cell, please send a copy thereof with the rest of the material.
11. Information on the number of disciplinary cell impositions where the decisions have been appealed to the Department of Prisons and Probation, together with indication of the number of times when the decision has been overruled or where the Department has stated that the relevant rules have not been observed.

In addition, I ask for a statement for (...) Local Prison regarding the following:

- a. What significant, problematic incidents the local prison has experienced in 2018
- b. An account of the reason for the development in numbers and duration of disciplinary cell impositions for the most recent 3 years
- c. An account of what information management receive on the use of disciplinary cells and how management use that information, including with a view to preventive measures
- d. An account of the use of interpreters in connection with interrogations and information on the extent to which the record on disciplinary cell imposition is translated if it is handed to individuals who do not master Danish.

When the material is sent, I ask that the material is numbered with reference to the points above. Any confidential information can of course be sent to me via the postal service but can certainly also be sent via secure e-mail to post@ombudsmanden.dk.

Programme for the visit

The visit will primarily be carried out through interviews with management and staff and with those inmates in the local prison who may want to have an interview.

In addition, the visiting teams would like to speak with the local prison's doctor and the prison chaplain.

Interviews with inmates will take place both with those who have signed up beforehand and by the visiting team on the day of the visit asking a number of selected inmates whether they wish to have an interview.

Interviews with staff can possibly be carried out as group interviews, if the staff so want.

The inmates with whom the visiting team principally wish to speak are inmates who are or have been placed in a disciplinary cell within the last 3 months. In addition, the visiting team would like to speak with any representatives of the inmates in the local prison, including any spokespersons and any representatives for the staff.

I therefore ask that this be made possible.

I ask that interviews be carried out at times which fit in with the local prison's programme for the day, and that time will be set aside for interviews with inmates who have not signed up for interviews in advance. At the present time it is not possible to say precisely how long the individual interviews will take but they will generally be quite short interviews with a duration of approximately 15 minutes. The visiting team can split up into two teams so that it will be possible to carry out two interviews at the same time.

The visit will, moreover, include a presentation of the physical setting for the inmates of the local prison.

The visiting team wish the visit to open and close with meetings with management. The visiting team expect the opening meeting to last approximately 2 hours and the closing meeting to last approximately 1 hour. Before the closing meeting the visiting team will have preparatory meeting which lasts approximately 45 minutes.

It is not possible at the present time to say when the visit ends on the day. This will depend among other things on the number of people who wish to have an interview.

On that basis I ask to receive a programme proposal for the visit, including the aforementioned interviews. The Prison and Probation Service is welcome to contact me for a more detailed clarification of the planning of the visit. I ask that I receive a programme and a list of the inmates wishing to speak with us **at the latest on DAY DATE MONTH 2019.**

If, before the visit but after the Prison and Probation Service has made a proposal for a visit programme, more inmates in the local prison indicate that they wish to speak with the visiting team, I ask that the programme be adapted so that these interviews can also be carried out on the day of the visit, and that the local prison provides me with a copy of a possible adapted programme at the start of the visit.

Notice

I ask that (...) Local Prison displays the enclosed notice in Danish and English regarding the visit, or otherwise in such a way as the local prison finds most appropriate informs the inmates of the visit. I also enclose a guide, 'Visit from the Parliamentary Ombudsman'. Please give the guide to inmates who are or have been excluded from association or are placed in another form of solitary confinement, and to those inmates who otherwise wish to have an interview, and to others who may wish so.

Background for and purpose of the visit

The Parliamentary Ombudsman carries out regular monitoring visits to, among others, places where people are or can be deprived of their liberty. The monitoring visits take place partly pursuant to the Parliamentary Ombudsman's general monitoring activities pursuant to Section 18 of the Ombudsman Act, cf. Consolidation Act No. 349 of 22 March 2013, and partly pursuant to the Optional Protocol to the UN Convention on the Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), cf. Statutory Order No. 38 of 27 October 2009. The Ombudsman's work to prevent degrading treatment, etc. pursuant to the Protocol is carried out in cooperation with DIGNITY – Danish Institute Against Torture and with the Danish Institute for Human Rights.

Pursuant to Section 21 of the Ombudsman Act the Ombudsman shall in connection with his activities, including the monitoring visits, assess whether any authorities or persons falling within his jurisdiction act in contravention of existing legislation or otherwise commit errors or derelictions in the discharge of their duties. In addition, in connection with the Ombudsman's monitoring activities the provision in Section 18(ii) apply. According to this provision, the Ombudsman may, besides that which follows from Section 21 of the Act, assess matters pertaining to an institution's or authority's organisation and operation together with matters pertaining to the processing of and activities

for the institution's or authority's users on the basis of universally human and humanitarian standpoints.

If the Prison and Probation Service has questions regarding the monitoring visit, you are welcome to contact me or (...) on telephone No. 33 13 25 12.

Appendix 4 – Check-up charts for review of disciplinary hearing reports

CHART 1 – REVIEW OF DISCIPLINARY HEARING REPORT	YES	NO	NOT Relevant
State date and time of offence:			
State date and time of issuing decision:			
State date and time of placement in disciplinary cell:			
State date and time of release from disciplinary cell:			
Has the inmate been present during the hearing? If no, fill in chart 2 instead of the rest of chart 1.	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has another officer than the injured party or lead hearing officer been present during the hearing? Elaborate if the reply is no:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate been advised on the right to have a representative present? Elaborate, if restrictions of this right have been given:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate been advised on the right to access to the documents which form the basis of the hearing? Elaborate, if restrictions of this right have been given:	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate received guidance on the right to make a statement and that there is no obligation to make a statement?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate received guidance on the right not to approve the lead hearing officer's report of the explanation?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

CHART 1 – REVIEW OF DISCIPLINARY HEARING REPORT	YES	NO	NOT Relevant
Has the inmate been advised on the right to receive a copy of the report on the disciplinary case?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have the reports underlying the case and given statements been recorded?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is it stated what is considered proven and not proven?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is it stated which facts have been taken into account in the assessment of evidence?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have any objections/comments by the inmate been considered?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have the rules violated been stated precisely?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the precise authority for the disciplinary sanction been stated?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Is there information about matters of significant importance to the case processing and decision, for instance language used and use of interpreter, and the duration of interrogation cell or temporary exclusion from association?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has duration of time in interrogation cell or temporary exclusion from association been taken into account when deciding on the number of days in disciplinary cell?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Have reasons for any deviation from the Normal Reaction been given?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate been informed of other reactions, including for instance transfer to another institution, exclusion from association and reporting the matter to the police?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate been informed of channels of complaint (including the possibility of bringing the final administrative decision on disciplinary cell placement for more than 7 days before the court)?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>

CHART 2 – REVIEW OF RECORD ON DISCIPLINARY CELL WHERE INMATE HAS NOT WISHED TO BE PRESENT	YES	NO
Has the inmate received a copy of reports in the case?	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate been informed of what decision the Prison and Probation Service intends to make and that the inmate has the right to make a statement in the case?	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate been informed of the right to make a statement in the case?	<input type="checkbox"/>	<input type="checkbox"/>
Have the rules violated been stated?	<input type="checkbox"/>	<input type="checkbox"/>
Has the authority for the disciplinary sanction been stated?	<input type="checkbox"/>	<input type="checkbox"/>
Is there information about interrogation cell or temporary exclusion from association?	<input type="checkbox"/>	<input type="checkbox"/>
Has duration of time in interrogation cell or temporary exclusion from association been taken into account when deciding on the number of days in disciplinary cell?	<input type="checkbox"/>	<input type="checkbox"/>
Have reasons for any deviation from the Normal Reaction been given?	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate been informed of other reactions, including for instance transfer to another institution, exclusion from association and reporting the matter to the police?	<input type="checkbox"/>	<input type="checkbox"/>
Has the inmate been informed of channels of complaint (including the possibility of bringing the final administrative decision on disciplinary cell placement for more than 7 days before the court)?	<input type="checkbox"/>	<input type="checkbox"/>