



**FOLKETINGETS
OMBUDSMAND**

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Thematic report 2018

Exclusion from association in the institutions of the Danish Prison and Probation Service

Contents

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1. What has the theme led to?	3
2. What is exclusion from association, and what are the rules?	4
3. Background for the choice of theme	7
4. How did the Ombudsman proceed?	10
4.1. How was the investigation planned?	10
4.2. What did the Ombudsman investigate?	10
4.3. How were conditions investigated?	11
5. What did the Ombudsman find out?	12
5.1. Review of reports	12
5.1.1. Were the grounds for implementing exclusion correct?	12
5.1.2. Were the grounds for continued exclusion correct?	12
5.1.3. Did the documentation live up to requirements?	15
5.1.4. Was management's follow-up adequate?	16
5.2. Are state prisons and local prisons focused on avoiding the necessity of exclusion?	17
5.3. Do state prisons and local prisons have focus on carrying out the exclusion in a way which prevents any mental health damage?	18
6. The Nelson Mandela Rules	23
7. Summary of the Ombudsman's recommendations and considerations on the theme	24
Annex	26

1. What has the theme led to?

Involuntary exclusion from association is a type of solitary confinement which state prisons and local prisons use in relation to inmates. It is particularly used as a preventative measure in order to prevent escape, criminal activity or violent behaviour or to maintain security.

Inmates can also choose to be voluntarily excluded from association with their fellow inmates. This usually happens because the inmate feels that his or her security is threatened by the other inmates.

It is widely recognised that solitary confinement can result in damage to mental health. It is therefore important that solitary confinement is carried out as gently and briefly as possible, and that laws and regulations are observed.

On that basis, exclusion from association with other inmates was chosen as the theme for those monitoring visits which the Danish Parliamentary Ombudsman carried out in the adult sector in collaboration with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

The theme was common for all the Ombudsman's visits to state prisons and local prisons. The Ombudsman visited a total of 17 institutions where the theme was relevant. Please see Appendix 1 for a list of the institutions visited, etc.

The Ombudsman's general assessment is that:

- as a general rule, exclusion from association in the institutions of the Danish Prison and Probation Service is carried out in accordance with the underlying Danish rules, but that the documentation should be better.

In 12 of the 17 institutions, this led to the Ombudsman giving one or more recommendations on improvement of documentation and the prison administration following up on the quality thereof.

Furthermore, the Ombudsman has noted the following, among other things:

- There is no general guideline for the staff in the institutions of the Prison and Probation Service on how to handle *voluntary* exclusions.
- The guideline on *involuntary* exclusion does not include all relevant subjects.

In connection with all visits, the Ombudsman's visiting team briefed the prisons on the solitary confinement rules in the UN's new prison rules (the

Nelson Mandela Rules), particularly on the rule on a daily healthcare check of inmates in solitary confinement.

On the basis of the thematic report, the above-mentioned conditions will be discussed with the Department of Prisons and Probation with a view to the Department's consideration and follow-up.

In addition, the Ombudsman will follow up on the recommendations given in connection with the processing of the theme for 2018 on future monitoring visits.

The result of the investigation of the theme for the Ombudsman's monitoring visits is developed further below under Headings 5 and 6.

2. What is exclusion from association, and what are the rules?

According to the Danish Act on Enforcement of Sentences, inmates in state prisons and local prisons shall have access to association with other inmates as far possible. It can be decided under special circumstances, however, that an inmate is excluded from the association or the inmate can wish to be excluded from association voluntarily.

EXCLUSION FROM ASSOCIATION
Exclusion from association can be as follows:
Involuntary exclusion:
<ul style="list-style-type: none">• until further notice• temporary exclusion (max. 5 days)• exclusion for protective reasons (max. 5 days)
Voluntary exclusion:
<ul style="list-style-type: none">• without association• with access to limited association

As appears above, involuntary exclusion from association can be in the form of exclusion 'until further notice', temporary exclusion or exclusion for reasons of protection.

Involuntary exclusion 'until further notice' can be used by the institutions of the Prison and Probation Service for preventative purposes – particularly to prevent escape, criminal activities, violent behaviour or to maintain security.

Temporary exclusion is a short-term form of exclusion which can be used by the authorities when it is necessary in connection with the processing of questions regarding exclusion from association or with the transfer of the inmate to another state prison or another local prison. Temporary exclusion is for a maximum of 5 days, unless under very special circumstances.

Exclusion for protective reasons can be used by the authorities for up to 5 days if it is necessary in order to protect the inmate from assault.

As mentioned, it can be the inmate's own wish that the sentence is served without or with only limited association with other inmates. Such a voluntary exclusion is often due to the inmate feeling threatened by the fellow inmates.

The rules on involuntary exclusion from association are set down in sections 63 and 64 of the Danish Sentence Enforcement Act, in Executive Order on Exclusion of Inmates from Association (Executive Order No. 429 of 9 April 2015) and in Rules of Guidance on Exclusion of Inmates from Association, including placement in observation cell, etc., in state prisons and local prisons (Rules of Guidance No. 9229 of 13 April 2015). Furthermore, the Department of Prisons and Probation has issued an internal guideline (Instruction Manual) on involuntary exclusion from association and a check list for use in the staff's preparation of reports on exclusion.

With regard to voluntary exclusion from association, it follows from section 33(3) of the Sentence Enforcement Act that a prison sentence is served without or with limited association if it is the inmate's own wish, and conditions allow it. Neither the Executive Order nor the Rules of Guidance stipulate more detailed rules on voluntary exclusion from association.

Generally, the inmate can exercise his or her usual rights during the exclusion. In its mildest form, the exclusion therefore means that the inmate does not associate with other inmates but can otherwise go outside for exercise, either in the prison yard or in the gym, can telephone, receive visits and work in the cell. In state prisons, as a main rule excluded inmates are placed in a special cell in the 'solitary confinement unit' ('isolationsgang' in Danish) while excluded prisoners in a local prison generally stay in their own cell.

Report on exclusion from association

In the case of involuntary exclusion from association the staff shall write a report on the first day of the exclusion.

Among other things, the report shall contain information regarding the grounds for the exclusion and what provision in the Sentence Enforcement Act the decision is based on.

In addition, the report shall contain a reason for the decision, including also statements made by the parties and information on what the staff has told the inmate about the right to complain and about the deadline for complaining. It shall also be recorded whether the inmate's right to be supported by others has been restricted.

According to the Danish Public Administration Act, the inmate does not have a claim on access to files in a case regarding exclusion from association, but in practice the starting point is still that according to the principle of extended openness, the inmate can obtain access to the files in the case, including the reasons for the exclusion, if there are no security reason or other circumstances which contradict it. If access to the reasons for the exclusion cannot be granted, the reasons therefore shall be entered into the report.

Weekly record and re-entry plan

When a decision has been made on involuntary exclusion of an inmate from association, the staff has a duty to continuously assess whether the grounds for the exclusion are still present and to work actively to bring the exclusion to an end.

The institutions of the Prison and Probation Service shall document these conditions in so-called weekly records ('Ugenotater' in Danish) which must also contain a re-entry plan.

The exclusion must be brought to an immediate end when the conditions for it are no longer met. The question of complete or partial cessation shall be considered continuously and at least once a week, and a detailed re-entry plan for how the inmate is going to be included in association again, including how the exclusion can be eased.

The first weekly record must be written at the latest on the seventh day of the exclusion, and the record shall also be sent to the regional office for approval on that day at the latest.

If the exclusion from association lasts more than 7 days, the institution shall subsequently for every 7th exclusion day send a new weekly record with a revised re-entry plan to the regional office.

After 14 days the inmate must be advised on special offers of, for instance, increased contact with staff, check-up by physician/psychiatrist and the option of cell, work or prison yard association with other inmates and on

offers of activities. The purpose of this is to minimise the special strain and risk of mental health damage which is connected with exclusion from association. This guidance must be reflected in the records.

Based on the above-mentioned rules and guidelines, the Ombudsman has composed a check-up form for review of reports and records. The form is annexed as Appendix 2.

There are no rules on reports and follow-up records on voluntary exclusion from association.

3. Background for the choice of theme

Types of solitary confinement and legal guarantees

Several different types of solitary confinement of inmates are used in the institutions of the Prison and Probation Service, including disciplinary cell and exclusion from association. Remand prisoners can also be placed in court-ordered solitary confinement, among other things, for the reasons given in the Administration of Justice Act, while the criminal case is pending.

In practice, the three mentioned types of solitary confinement are carried out in a uniform manner. In principle, the inmate is alone in his or her cell, only interrupted by one hour in the prison yard a day.

The legal protection is, however, different.

An inmate serving a sentence who has been ordered to at least 7 days in a disciplinary cell can demand that the Prison and Probation Service bring the case before the court so that the court can decide whether the decision to place the inmate in a disciplinary cell is lawful. This means that there is an especially easy access to have these cases tried before the courts.

Decisions on court-ordered solitary confinement of remand prisoners have always been taken by a court and shall be continuously reviewed by a court according to the provisions in the Administration of Justice Act.

Conversely, there are no special rules on judicial review in cases regarding exclusion from association. Here, there is solely an administrative complaint procedure – however, with the possibility in the last resort of bringing the issue before the courts by the inmate commencing legal proceedings.

Another difference between involuntary exclusion from association and the two other forms of solitary confinement mentioned above is that exclusion from association has no pre-set end date while court-ordered solitary

confinement and disciplinary cell have a set end date. Detailed rules have certainly been laid down regarding re-assessment of decisions on exclusion from association, cf. the above about weekly records, but the actual decision on exclusion from association does not contain an end date.

If an inmate lets him- or herself be voluntarily excluded from association, there is no access to complaint and nor is there an end date, since the inmate can in principle just decide to return to association with the other inmates.

Exclusions from association are thus subject to a weaker legal protection than the other two forms of solitary confinement, while the lack of an end date must be considered to be more mentally burdensome for the inmate.

Risk of damage to mental health

Scientific studies have shown that solitary confinement has a negative effect on people's mental health. This appears from for instance Danish studies on solitary confinement from 1994 and 1997 (Danish Ministry of Justice (1994): 'Isolationsundersøgelsen. Varetægtsfængsling og psykisk helbred' (*The Solitary Confinement Study. Pre-trial detention and mental health*) and the Danish Ministry of Justice (1997): 'Efterundersøgelsen – en opfølgingsundersøgelse af danske varetægtsarrestanter' (*The Post Review – a follow-up study of Danish remand prisoners*). Both studies are only available in Danish.

Denmark has for many years been criticised both nationally and internationally for its use of solitary confinement in its varying forms.

The use of court-ordered solitary confinement has especially incurred criticism but also the use of exclusion from association and voluntary exclusion have led to recommendations to Denmark from the UN Committee Against Torture (CAT) and the EU Committee for the Prevention of Torture (CPT).

Scale of exclusions from association

In 2015 involuntary exclusion from association 'until further notice' was used in 382 instances, in 2016 in 484 instances, in 2017 in 437 instances and in 2018 in 391 instances. In the period from 2007 till 2015, the level was quite stable at around 700 instances. There has thus been a drop in numbers which seems to be stable.

The Prison and Probation Service's statements for 2017 on the duration of involuntary exclusions show that approximately 80 % of the exclusions had a duration of up to 14 days of which half had a duration of under 7 days. Approximately 10 % lasted more than 14 days and approximately 10 %

lasted more than 28 days. At the time of this thematic report there was no statistical data on the duration of the exclusions in 2018.

With regard to voluntary exclusions, the number seems to go up. In 2015 voluntary exclusion was used in 664 instances, in 2016 in 663 instances, in 2017 in 794 instances and in 2018 in 774 instances.

The Prison and Probation Service's statements for 2017 on the duration of voluntary exclusions show that approximately 27 % had a duration of under 7 days, approximately 28 % lasted between 7 and 14 days, approximately 15 % lasted between 14 and 28 days, while approximately 30 % lasted more than 28 days.

The Prison and Probation Service's analysis in 2016

In the 2nd half of 2016 the Department of Prisons and Probation carried out an analysis (a so-called performance audit) of the use of involuntary exclusion from association which came to the overall conclusion that the case processing in this field was not satisfactory.

The analysis resulted in the drafting in the spring of 2017 of, among other things, a check list to be used by staff in connection with documentation for the involuntary exclusion from association.

The Department has not issued a guideline on the use of voluntary exclusion, nor have any analyses been made thereof.

Reports to the Ombudsman on prolonged exclusions

The Ombudsman has an agreement with the Department of Prisons and Probation to receive reports on the very prolonged involuntary exclusions, meaning exclusions lasting more than 3 months.

For the period from 2015 till 2017, the Ombudsman has received 3 reports of this type.

Furthermore, in connection with monitoring visits over the years the Ombudsman has seen instances of very prolonged voluntary exclusions and seen that temporary exclusions in certain instances have exceeded the time limit of 5 days.

Choice of theme

Based on the conditions described, the Ombudsman found, in collaboration with the Institute for Human Rights and DIGNITY – Danish Institute Against Torture, that there were grounds for carrying out a more detailed examination of the conditions for excluded inmates in connection with the monitoring visits in the adult sector in 2018.

4. How did the Ombudsman proceed?

4.1. How was the investigation planned?

The theme has been investigated through 17 visits to institutions under the Prison and Probation Service: 4 closed state prisons, 4 open state prisons and 9 local prisons.

In his selection of the 17 institutions, the Ombudsman has taken into account, among other things, which of the institutions had statistically the highest number of exclusions. However, some institutions were selected because the Ombudsman had not visited these institutions for some considerable time.

The monitoring visits were carried out as part of the Ombudsman's general monitoring activities according to section 18 of the Ombudsman Act and as part of the Ombudsman's task concerning the prevention of people deprived of their liberty being 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 (OPCAT).

The Ombudsman's task concerning the prevention of degrading treatment, etc. in relation to the Protocol is carried out in collaboration with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture. DIGNITY – Danish Institute Against Torture contributes to the collaboration with medical expertise. The Danish Institute for Human Rights contributes with special human rights expertise. This means, among other things, that staff from the two institutes with this expertise participate in the planning, execution and follow-up regarding monitoring visits.

4.2. What did the Ombudsman investigate?

Under the year's theme, the following was examined, among other things:

- Does the documentation in the exclusion cases show that the exclusion is based on correct grounds?
- Does the documentation show that rules are otherwise observed?
- How has the development in the use of exclusions been over the last 3 years?
- What information does management receive on the use of exclusions, and how does management use this information, including for the purpose of prevention?
- Does management systematically ensure that staff are trained in correct prevention, follow-up and writing reports?
- How does the institution prevent and handle voluntary exclusions?
- What observations do staff carry out in relation to the inmate during the exclusion, and how are any harmful effects of the exclusion prevented?

- Has the prison had exclusions which have been more prolonged than the basis for the exclusion has given cause for?
- Are there medical health checks of excluded inmates?

4.3. How were conditions investigated?

Prior to each visit, the Ombudsman has asked the individual institution for reports and other relevant material, for instance weekly records and re-entry plans, for 3 concrete involuntary exclusions. One of these exclusions should be the one which had been of the longest duration within the last 12 months and the 2 others should be the two most recent that had lasted more than 5 days.

Furthermore, the institutions were asked for a series of statistical data concerning exclusions from association and for accounts of preventive measures, implementation and follow-up concerning exclusions.

In Appendix 3 there is an example of an opening letter which shows the information which the institutions have been asked to send prior to the Ombudsman's visit.

During the monitoring visits, the Ombudsman's visiting teams went into more detail regarding the written information about the subject of the theme through interviews with management, staff, including priest and physician, and with inmates.

Management and staff are interviewed on, among other things, compliance with the Prison and Probation Service's check list on the subject and on how exclusion from association is handled in practice with regard to preventive measures and implementation, including whether daily healthcare checks are carried out. Furthermore, the Ombudsman's visiting team has discussed the result of the review of the 3 reports with management and has interviewed management about its use of statistical data and quality control of the writing of reports.

The inmates have been interviewed on the course of exclusions in practice, as experience shows that this can be perceived in different ways by staff and inmates. A question guide for use in interviews with inmates has been formulated. The question guide can be found as Appendix 4.

In the course of the year's thematic visits, the Ombudsman's visiting teams have spoken with a total of 200 inmates of whom 15 inmates were or had been involuntarily excluded from association 'until further notice' at the institution in question, 15 inmates who were or had been voluntarily excluded from association at the institution in question, and 5 inmates who were temporarily excluded on the day of the visit.

5. What did the Ombudsman find out?

5.1. Review of reports

In the course of 2018 the Ombudsman visited 17 institutions where the use of exclusion was examined in more detail, cf. Heading 4.1 above.

Before the visit, 11 of the institutions had sent in 3 reports on involuntary exclusion from association 'until further notice' for the Ombudsman's review. The other 6 institutions did not have any reports on prolonged exclusions of the nature which the Ombudsman had asked for in his opening letter. However, one of the institutions instead sent 2 reports on involuntary temporary exclusion which were also reviewed by the Ombudsman.

In the case of voluntary exclusions there is, cf. Heading 2 above, no duty to write a report or to complete weekly records. Consequently, the Ombudsman has only reviewed statistics about the number and duration of voluntary exclusions in the institutions visited for 2015, 2016 and 2017, but not reviewed other written material.

Apart from the 2 above-mentioned reports, also temporary exclusions and exclusions for reasons of protection have only been examined through a review of the statistics for number and duration for 2015, 2016 and 2017.

5.1.1. Were the grounds for implementing exclusion correct?

The Ombudsman's review of the reports on exclusion from association and of other material, such as for instance interrogation reports or underlying reports on finds of illegal objects, showed that all exclusions complied with the requirements of the law in as far as the grounds for implementing the exclusions were concerned.

On that basis, the Ombudsman has not given any recommendations with regard to the grounds for implementing exclusions.

5.1.2. Were the grounds for continued exclusion correct?

Weekly records

The Ombudsman's review of the reasons contained in the weekly records showed that the grounds for continuing to exclude an inmate from association were present, except in those cases where capacity problems were the cause, cf. below.

The Ombudsman's visiting teams noted, though, that the description in the weekly records of what it would take to end the exclusion in some cases just said that the inmate should cease the behaviour which had caused the exclusion, for instance 'cease threatening behaviour'. However, there was no

detailed description of the way in which the inmate continued to exhibit threatening behaviour or of which behavioural changes were needed.

During the visits, the brief descriptions were expanded on through verbal explanations from management and in certain cases documented by underlying reports. It was a question of a lack of written documentation in the weekly records and not that the grounds for continued exclusion of the inmate were not present, cf. below under Heading 5.1.4 on documentation.

On that basis, the Ombudsman's visiting teams did not give any recommendations in relation to the question of grounds for the continued exclusion of the inmates.

Capacity problems regarding exclusions 'until further notice'

In open state prisons the decision on involuntary exclusion 'until further notice' led to transfer of the inmate to a closed state prison or a local prison in several cases. In these cases the Ombudsman found that the conditions for excluding the inmate from association 'until further notice' had been met when the exclusion was implemented but not at a later time when the inmate continued to be excluded from association. It appeared from the weekly records in these cases that the inmate continued to be excluded from association solely because he or she were to be transferred from an open state prison to a closed state prison or to a local prison and the open state prison was waiting for a place for the inmate. The continued exclusion was therefore due to capacity problems in closed settings (closed state prisons and local prisons).

In the Ombudsman's opinion, the decision to transfer to a closed setting observed the rules in these cases but the lack of capacity in the closed settings does not, according to the underlying rules, constitute sufficient grounds for excluding an inmate from association. The exclusion from association must be ended immediately when the conditions therefore are no longer met.

Management in the open state prisons agreed with the Ombudsman's visiting teams that a lack of capacity in closed state prisons and local prisons does not constitute sufficient grounds for the continued exclusion of an inmate. It is noted in this context that all the concrete exclusions had ended at the time of the Ombudsman's visit, and that the inmates had been transferred.

However, the lack of capacity in the closed state prisons and local prisons is not the responsibility of the individual open state prison, and the Ombudsman will discuss with the Department of Prisons and Probation the lack of capacity and the resulting problem with compliance with the rules on exclusion from association.

Capacity problems on exclusion for protective reasons

When an inmate is excluded for protective reasons, the solution is often to move that individual to another institution.

As there are presently very few available places in the institutions under the Prison and Probation Service, the same problem arises as mentioned above under capacity problems on exclusion 'until further notice', namely that the possibility of transferring the inmate is lacking.

On reviewing the statistical lists of exclusions from association for protective reasons, the Ombudsman's visiting teams found that the existing maximum limit of 5 days had been exceeded in several instances.

In most of the cases, management stated that these cases involved problems with transfer of the inmate to an institution where the inmate could be secure in association with other inmates.

The Ombudsman will also take this issue up with the Department at a meeting.

Recording problems on temporary exclusions

In a number of instances, the Ombudsman's review of statistical lists showed that temporary exclusions from association had lasted longer than the 5 days which is the maximum limit.

The explanation in these cases was usually that there had been mistakes made in the recording of the exclusion. The temporary exclusion should have been recorded in the client file management system as ended because the inmate had transferred to exclusion 'until further notice' or had been placed in a disciplinary cell.

However, a few of the delays in the 5 day limit were due to the fact that the temporary exclusion had taken place over a weekend which had delayed the processing of the temporary exclusion case. In these few instances, the delays were 2 days at most.

As recorded non-compliance with deadlines is a general problem for the 12 institutions, the Ombudsman will take up the issue at a meeting with the Department of Prisons and Probation.

5.1.3. *Did the documentation live up to requirements?*

Reports

There were documentation problems to a greater or lesser degree in practically all reports on exclusion from association.

All the 12 institutions which prior to the Ombudsman's visit had sent in reports on exclusion from association were therefore recommended to increase their focus in precise and adequate documentation in reports and weekly records.

The typical errors in the documentation were the following:

- The grounds for the exclusion appeared solely with reference to an underlying report and not by a description of the matter in the actual report on exclusion from association.
- Reference to the provisions for the grounds for the exclusion was missing or incorrect.
- The description was insufficient or completely absent.
- The report gave incorrect indication of whether the inmate was entitled to access to files in the case pursuant to the principle of extended openness.
- The inmate's mental state was not described in the report.
- The report lacked information on the inmate's remarks in connection with the decision to exclude the inmate from association.
- Information on the inmate's medication was indicated differently in the report and in the weekly note or was not given at all.
- It did not appear from the report whether guidance on complaint had been provided.
- It did not appear from the report whether a deadline for complaint had been given.

In addition to this, there were other documentation deficiencies to a varying degree but of less significant importance. These were for instance writing errors or information that was filled in wrongly.

Weekly records

The Ombudsman's investigation showed that also the weekly records were in many cases not completed fully in accordance with the provisions.

The typical errors were the following:

- No information on whether or not the inmate had spoken with a priest, physician, psychologist or others.
- No information on whether or not – and if so how – the inmate was motivated to speak with a priest, physician, psychologist or others.
- No information on the mental health state of the inmate.
- No information (at exclusions lasting more than 14 days) on whether the inmate was offered free television.
- No information (at exclusions lasting more than 14 days) on whether the inmate was offered special access to individual tuition and work or other activity.

The Ombudsman also noted in a few cases that the weekly records had not been written on the week day and that notification to the Department of Prisons and Probation had not been carried out after 14 days' exclusion.

5.1.4. Was management's follow-up adequate?

Quality assurance of reports and weekly records

As outlined above, there were generally errors in the documentation concerning exclusions in all the institutions whose reports and weekly records were reviewed.

In 9 of the institutions it was the assessment of the Ombudsman's visiting teams that management's quality assurance of the reports and the weekly records was inadequate or in certain cases not established at all.

The Ombudsman's visiting teams therefore recommended to these institutions that management – in the way which management deemed relevant – undertook a continuous quality assurance in connection with exclusion from association and ensured appropriate training/instruction of staff regarding the requirements for reports and weekly records on exclusion from association.

Management's use of statistics

When visiting state prisons and larger local prisons, the Ombudsman's visiting teams found that managements knew about and at planned intervals followed up on developments in the number of exclusions from association and made analyses of the background for the development. In certain places, managements of comparable institutions also had discussions on differences between these institutions and the reasons therefore.

One visit showed that there was not the necessary insight into the development of the use of voluntary as well as involuntary exclusions. On that background, the Ombudsman's visiting team recommended that the institution's management follow up on this development, among other things by analysing the causes for the development and to a relevant extent comparing themselves with other institutions.

The smaller local prisons did not have the same systematic approach to follow-up of developments. The Ombudsman's visiting teams assessed that this was not necessary anyway due to the relatively low number of exclusions which these institutions have and they therefore did not give any recommendations on the subject to the smaller local prisons.

5.2. Are state prisons and local prisons focused on avoiding the necessity of exclusion?

It was the assessment of the Ombudsman's visiting teams during the visits to 17 institutions that management and staff are in general focused on avoiding that involuntary or voluntary exclusion from association become necessary.

On that background, no recommendations on increased focus on avoiding exclusion were given during the visits.

The Ombudsman's visiting teams also found, though, that there was some difference between the quality and intensity of the institutions' efforts to build a good relationship with the inmates which can be of importance to the task of avoiding that exclusion becomes necessary. However, the differences had to do with the size and function of the institutions. In the small local prisons with 20-25 inmates and a correspondingly small number of prison officers a good relationship with the inmates is thus easier to establish than in a large, closed state prison with many inmates and many prison officers.

The assessment of the Ombudsman's visiting teams is based on information from management as well as staff and inmates.

Management and staff generally stated during the visits that there is an extensive focus on the effort to build a good relationship with the inmates as the principle foundation for creating an environment which makes it safe to be

in the state prison or local prison. Staff pointed out particularly that familiarity with the individual inmates was important – and was prioritised – so that as a member of staff you could discuss problems concerning for instance family or other inmates with the individual inmate.

However, in several institutions management and staff pointed out that the institution was in a difficult situation due to a shortage of uniformed staff. They also pointed out that the relationship between staff and inmates was important to the dynamic security but that relations were under pressure due to the staff shortage. In addition, the use of disciplinary cells and voluntary exclusion from association was on the increase which tied up extra staff resources for writing reports and monitoring the inmates.

The majority of those inmates in involuntary exclusion with whom the Ombudsman's visiting teams spoke recognised that they had been involved in violations of the rules and that staff had just followed the rules.

The majority of those inmates in voluntary exclusion with whom the Ombudsman's visiting teams spoke had no objections to the way in which staff had tried to solve the problems before the exclusion. Several inmates praised certain members of staff for having made particular efforts to solve the problems.

Generally, the inmates in the institutions visited stated that the relationship with staff was good.

However, the majority of the inmates also remarked that staff had become very busy.

5.3. Do state prisons and local prisons have focus on carrying out the exclusion in a way which prevents any mental health damage?

The Ombudsman's visiting teams assessed that management and staff in the institutions visited generally had relevant knowledge of how exclusion can lead to mental health damage and of how such damage can be prevented. This was true both of involuntary and voluntary exclusions.

As appears below, however, the regime for inmates who were excluded from association, and thereby also the prevention of the risk of mental health damage, varied greatly in the different institution types. The visiting teams could also see that there were differences in the preventive measures in similar institutions, just as the individual staff member's experience with and insight into behavioural changes in inmates in solitary confinement played a role in the preventive measures.

Furthermore, it was found that the institutions did not have procedures in place which ensured that there was notification of for instance physician or priest regarding inmates who were excluded from association and that the possibility of introducing such procedures was not supported by the client management system of the Prison and Probation Service. And the client management system did not allow staff the possibility of retrieving information about the overall number of days that a given inmate had been in solitary confinement in his or her cell.

At a meeting with the Department of Prisons and Probation, the Ombudsman will discuss the possibilities for general improvement of the prevention of any mental health damage in relation to both involuntary and voluntary exclusion through extension of the guidance on involuntary exclusion and through drafting guidance for involuntary exclusion, cf. see below for more details.

As both management and staff in the institutions visited had relevant knowledge of the fact that exclusion can result in mental health damage and how such damage can be prevented, and as none of the excluded inmates whom the visiting teams spoke with stated that they had been mentally damaged – though several indicated that it had been hard mentally – no concrete recommendations on improving the prevention of possible mental health damage were given.

Information from management and staff on the effort

It was the general opinion of management and staff that the inmates are well looked after in connection with exclusion from association. If there were problems with inmates who were excluded from association, this was discussed by staff and management. It was, however, general for all the institutions visited that the measures which staff implemented in relation to the voluntarily excluded were not documented.

Staff stated that they were very attentive of behavioural changes in excluded inmates. Among special focus areas were mentioned, among other things, a lack of appetite, avoidance of eye contact, no wish to communicate, changes in daily routine, changes in behaviour and level of aggression, and choosing not to go for exercise in the prison yard or to use the gym. If such changes occurred, staff would have a talk with the inmate to motivate him or her for activities. However, none of the managements or staff of the institutions visited could remember any more recent instances of exclusion from association where the exclusion had been terminated due to changes in the inmate's behaviour.

The inmates' information about the measures

The Ombudsman's visiting teams spoke with a total of 15 inmates who had been excluded from association. The inmates' experience of the exclusion differed somewhat from the assessment of management and staff.

Of the 15 inmates in total, about half stated that they had felt it to be mentally hard to be excluded. They had not been automatically seen by healthcare staff who only came by on request, and they stated that they had felt forgotten and that time went by very slowly. They passed the time in watching television and for some inmates with reading.

The other half of the inmates had a less negative experience of time as excluded from association. These inmates typically had had some association, some in the form of working with other inmates or joint exercise in the prison yard with another inmate in solitary confinement. Some of the inmates had had tuition in their cell or had visits from the priest.

The 15 inmates who had been or were voluntarily excluded and with whom the Ombudsman's visiting teams spoke were mainly positive in relation to the implementation of their exclusion. There were thus generally positive assessments of staff's focus on alleviating the consequences of not having association with others. However, the inmates also stated that some days could feel very difficult and long.

Varying regimes in the institutions

The Ombudsman's visiting teams found during the visits that exclusion from association is practised with great variation because of the institutions' dissimilarity.

Seen generally, there is a more restrictive regime in the closed state prisons – with the Copenhagen Police Headquarters Prison as the most restrictive. The inmates who are excluded from association in the closed state prisons have the most restrictions in freedom and possibilities of having meaningful social contact in the course of the day.

In the open state prisons there are a higher degree of freedom for inmates excluded from association, and in the small local prisons – following an individual assessment of the inmate – it is only the association with other inmates that is restricted. Thus, in small local prisons the inmate – in addition to outdoor exercise in the prison yard and in the gym – will also be let out of his or her cell when other inmates are locked inside their cells.

The least restrictive regime was practised in Herstedvester Prison where the inmates generally were not actually excluded from association with other inmates but rather restricted in their freedom of movement. They could

therefore leave their rooms themselves and to a certain extent be in the common rooms but were forbidden to enter the rooms of the other inmates. Only in instances where this restriction of their freedom of movement was not respected, was a more restrictive regime implemented.

Measures to counteract mental health damage

In the Exclusion from Association Order and its appurtenant Rules of Guidance there are laid down rules on the special rights and options to which an inmate is entitled after 14 days of involuntary exclusion.

The excluded inmate shall be offered increased contact with staff, examination by a physician, including a psychiatrist, etc., association with one or more inmates in the cell or during outside exercise in the prison yard, the possibility of working together with others, leisure time activities with one or more of the other inmates or with staff, and be offered regular and prolonged talks with for instance a priest, physician or psychologist.

The excluded inmate must also be provided with free television and have special access to individual tuition and work, including other approved activity which can help reduce the special strain and risk of adverse effects on mental health which is connected with exclusion from association.

Nothing similar applies for inmates who are voluntarily excluded – not even when the inmate has no association with others.

Voluntary exclusions with no possibility of association can be of very long duration. At a visit to one institution, the Ombudsman's visiting team noted that in 2017 and 2018 there had been 6 voluntary exclusions without possibility of association which had lasted over 100 days. The longest duration was for 579 days.

The Ombudsman's visiting teams found furthermore that none of the institutions visited had routine procedures for notifying healthcare staff about exclusions. Neither were priest, teachers, substance abuse therapists or social worker notified according to routine procedures.

In addition, none of the institutions had local in-house guidelines on prevention of possible mental health damage as a result of exclusion (or other forms of solitary confinement), and therefore the follow-up in relation to the excluded inmates relied very much on the staff's knowledge of and insight into the inmate's mental state.

Overall, it is established *that* that there are significant differences in the institutions' regime for the execution of exclusions, *that* there is a difference in the insight of individual members of staff into what changes in an inmate's

behaviour that must be seen as warning signs of mental health damage, and *that* there are differences in how the institutions react to inmates showing signs of behavioural changes during the exclusion.

Furthermore, there are measures not taken today, including systematic notification of healthcare staff, priest, teachers, substance abuse therapists and social worker. Such an automatic notification could mean that the knowledge these professionals have regarding less robust inmates could be included in the way the exclusion is implemented.

The Ombudsman therefore recommend in general that the Department of Prisons and Probation consider laying down instructions for the institutions' prevention of any mental health damage. The existing guideline on involuntary exclusion could with advantage be expanded with instructions on this subject.

Correspondingly, there should be guidelines laid down on prevention of any mental health damage in connection with voluntary exclusion.

The recommendations on expansion of the guideline for involuntary exclusions and establishment of guidelines for voluntary exclusions will be discussed with the Department of Prisons and Probation.

The overall time an inmate spends in solitary confinement

The duration of solitary confinement is of significant importance to the incidence of mental health damage. The longer a person is in solitary confinement, the higher the risk of mental health damage. This has been documented in numerous scientific studies.

The Ombudsman has therefore examined more closely whether the duration of solitary confinement is included in the Prison and Probation Service's decisions on and implementation of exclusion from association.

Based on the records of the use of disciplinary cell, observation cell and security cell together with exclusions from association which the Ombudsman received prior to the visits, it could be established that certain inmates could spend a very long time in involuntary exclusion. For one particular inmate it was 115 days out of a calendar year.

During the visits, managements stated that it is not possible in the client management system of the Prison and Probation Service to retrieve information about the total number of days any given inmate has been in solitary confinement. A search for the total number of days in solitary confinement for any given inmate would therefore require a manual review of the individual inmate's files in the client management system. Whether there

was awareness of the increased risk of mental health damage which too many periods of solitary confinement can cause, and whether the decision to exclude an inmate took this into account, were therefore dependent on the individual interrogation officer's memory or information from other members of staff. In by far the majority of the institutions, this question was not checked before a decision to exclude an inmate was made.

In the Ombudsman's opinion, it is important – when making a decision to place an inmate in solitary confinement – that there is knowledge of how long the inmate has already been in solitary confinement in the previous period so that the increased risk of mental health damage liable to be caused by long-time solitary confinement can be taken into account. In a modern IT system, such information should be available via simple commands.

It is therefore the Ombudsman's view that in a future up-date of its client management system or when acquiring a new system, the Department of Prisons and Probation should ensure that this facility is available and utilised.

The Ombudsman will discuss this issue at a meeting with the Department.

6. The Nelson Mandela Rules

The so-called Nelson Mandela Rules are the UN's new international prison standards. The rules reflect the development in the view of prison conditions over the last decades and provide in a number of areas a more extensive protection of inmates than previous prison standards.

The UN's Nelson Mandela Rules were adopted at the UN General Assembly on 17 December 2015. The rules are an up-dated version of the old UN Standard Minimum Rules for the Treatment of Prisoners from 1955. The rules are not binding for the Member States as they are a so-called recommendation.

The new rules establish a number of minimum standards for the treatment of inmates in state prisons and local prisons. Of special relevance in connection with exclusion from association, the following rules on pre-trial detention in solitary confinement and placement in solitary confinement cell can be mentioned:

- A definition of solitary confinement as confinement for 22 hours or more a day without meaningful human contact.
- A general prohibition on solitary confinement for more than 15 consecutive days, including that the period of solitary confinement shall be as short as possible and only be used in exceptional cases.

- A requirement that solitary confinement shall be subject to independent review.
- A requirement that healthcare personnel shall visit inmates in solitary confinement daily and that inmates with mental or physical disabilities shall not be placed in solitary confinement.
- A requirement that healthcare personnel shall continuously inspect and report unacceptable and degrading conditions in prisons and if necessary recommend that the solitary confinement be terminated.

The rules can be found in No. 43-46 in the Nelson Mandela Rules, cf. Appendix 5.

In connection with all visits, the Ombudsman's visiting teams informed the institutions about the rules on solitary confinement contained in the UN's Nelson Mandela Rules, including particularly the requirement for a daily visit from healthcare personnel to inmates in solitary confinement.

However, the Ombudsman's visiting teams learned in the course of the visits that many local prisons do not employ nurses and that medical service with a physician is restricted to a few hours a week.

In a meeting with the Department of Prisons and Probation the Ombudsman will discuss the impact of the rules on persons in solitary confinement in Danish state prisons and local prisons.

7. Summary of the Ombudsman's recommendations and considerations regarding the theme

- In 12 out of 17 institutions the Ombudsman's visiting teams recommended an increased focus on precise and adequate documentation in reports and weekly records.
- In 9 out of 17 institutions the visiting teams recommended that the institutions' management ensure continuous quality control of the written documentation and training/instruction of staff in requirements for reports and weekly records on exclusion from association.

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

- That the Department ensures that maintaining an involuntary exclusion from association only takes place when the rules for this are observed so that for instance inmates do not have to be transferred from an open to a closed state

prison or local prison are not kept excluded from association due to a lack of places in the closed setting.

- That the guideline on involuntary exclusion is expanded with a section on prevention and early intervention regarding any mental health damage and on follow-up regarding exclusion from association.
- That a guideline on voluntary exclusion from association be drafted with directions on preventive measures and early intervention regarding any mental health damage and on follow-up regarding exclusion from association.
- That in connection with a future up-date of its client management system, or when acquiring a new system, the Department ensures that when a decision is to be made on whether or not an inmate should be placed in solitary confinement, the system automatically produces information on the individual inmate's overall time in all forms of solitary confinement during his or her imprisonment so that this information can be included when the decision is made.

Furthermore, the Ombudsman will discuss with the Department of Prisons and Probation the significance of the UN's Nelson Mandela Rules in relation to persons in solitary confinement in Danish state prisons and local prisons.



Louise Vadheim Guldborg

Direktør

Director General

Annex

Appendix 1

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
17 visits	Talks with 200	1 talk	17 visits	7 visits	Visits concluded with recommendations regarding the theme: 12 Visits concluded without comments regarding the theme: 5
'Herstedvester Fængsel', Albertslund (closed special prison)	37	1	√	√	<ul style="list-style-type: none"> that focus on precise and adequate documentation in reports and weekly records about exclusions from association is increased that the prison management ensure – in the way the management consider relevant – regular quality control of the written documentation in connection with exclusion from association that the prison management ensure in a systematic way that staff are trained in correct report writing

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Sdr. Omme Fængsel' (open prison)	4	0	√	√	<ul style="list-style-type: none"> • that focus on precise and adequate documentation in reports and weekly records about exclusion from association is increased, among other things in relation to information about, respectively, activities offered and carried out with inmates, what medicine inmates have been given in which periods, whether guidance on complaint has been given, and information about the grounds for the exclusion • that prison management ensure – in the way the management consider relevant – regular quality control of the written documentation in connection with exclusion from association as well as training of/instructions to staff as regards requirements for reports and weekly records about exclusion from association (cf. check lists, etc., which the Department of Prisons and Probation has issued)

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Kragsskovhede Fængsel', Jerup (open prison)	10	0	√		<ul style="list-style-type: none"> that the prison's focus on precise and adequate documentation in reports and weekly records about exclusions from association is increased. This applies, among other things, in relation to the grounds (it is not sufficient to merely refer to an underlying report), whether they have been 'ticked' correctly as to extended openness, which activities have been, respectively, offered and carried out with inmates, and that records are made about inmates' mental state during the exclusion that prison management ensure – in the way the management consider relevant – regular quality control of the written documentation in connection with exclusion from association and training of/instructions to staff as to the requirements for reports and weekly records about exclusion from association (cf. check list and 'Instruction Manual', etc., which the Department of Prisons and Probation has issued) that the institution's management/the regional office follow up on the development in the use of both voluntary as well as involuntary exclusions and carry out analyses of the reasons for the developments
'Nyborg Fængsel' (closed prison with section for remand prisoners)	32	0	√	√	<ul style="list-style-type: none"> that the in-house set of rules, if maintained, is kept updated so that it is consistent with applicable law that focus on precise and adequate documentation in reports on exclusion from association is increased, among other things, respectively, in relation to information about activities offered and carried out with inmates

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Nr. Snede Fængsel' (open prison with closed sections)	26	0	√		<ul style="list-style-type: none"> • that motivation of inmates to get out of voluntary exclusion from association is documented • that prison management analyse the cause of the increase in the number of disciplinary cell decisions • that the in-house guidelines, including the provisions of exclusion from association, are updated if they are maintained • that management focus on the overall development in number of exclusions, duration of the exclusions and possibility of association • that focus on precise and adequate documentation in reports on exclusion from association is increased, among other things in relation to the grounds for the exclusion as well as recording of information as to whether it was an exclusion from association and how long it lasted

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Enner Mark Fængsel', Horsens (closed prison with section for remand prisoners)	10	0	√		<ul style="list-style-type: none"> • that focus on precise and adequate documentation in reports and weekly records about exclusions from association is increased, among other things in relation to the grounds stated, including the kind of exclusion implemented, whether a regard for extended openness has been taken into account, which activities have been, respectively, offered and carried out with the inmate, and information about the inmate's mental state during the exclusion • that prison management ensure – in the way the management consider relevant – regular quality control of the written documentation in connection with exclusion from association and training of/instructions to staff as to the requirements for reports and weekly records about exclusion from association (cf. check list and 'Instruction Manual', etc., which the Department of Prisons and Probation has issued)

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Søbysøgård Fængsel', Årslev (open prison with closed section)	14	0	√	√	<ul style="list-style-type: none"> • that the in-house set of rules is updated in regard to time limits for complaints so that it is accordance with the applicable rules • that focus on precise and adequate documentation in reports and weekly records about exclusions from association is increased, among other things in relation to the grounds stated, whether regard to extended openness has been taken into account, which activities have been, respectively, offered and carried out with the inmate, and information about the inmate's mental state during the exclusion • that prison management ensure – in the way the management consider relevant – regular quality control of the written documentation in connection with exclusion from association and training of/instructions to staff as to the requirements for reports and weekly records about exclusion from association (cf. check list and 'Instruction Manual', etc., which the Department of Prisons and Probation has issued)

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Københavns Fængsler, Politigårdens Fængsel' (the monitoring visit concerned a specific remand prisoner excluded from association for a long time)	0 (the inmate did not wish to speak with the visiting team)	0	✓	✓	<ul style="list-style-type: none"> that prison management try to extend the inmate's time out of the cell with visits to the training facilities when deemed justifiable on safety grounds

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Køge Arrest' (local prison)	9	0	√		<ul style="list-style-type: none"> • that focus on precise and adequate documentation in reports and weekly records about exclusion from association is increased, among other things in relation to information about which activities have been, respectively, offered and carried out with inmates, what medicine inmates have been given during which periods of time and inmates' mental state during the exclusion • that prison management ensure – in the way the management consider relevant – regular quality control of the written documentation in connection with exclusion from association and training of/instructions to staff as regards requirements for reports and weekly records about exclusion from association (cf. check lists, etc., which the Department of Prisons and Probation has issued) • that the local guidelines with the heading 'Local guidelines for involuntary exclusion from association' are rephrased, if maintained • that the prison management contact the regional office in regard to a change in the wording on the time limit for the applicable instructions on appropriate sanctions so that they meet applicable rules <p>(Continued next page)</p>

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Køge Arrest' (local prison) (continued)					<ul style="list-style-type: none"> that it is ensured that all solitary confinement cell reports contain documentation that an assessment was made upon initiation and that a continuous assessment has been made of the need for restraint used on the inmate placed in the cell that the accuracy in connection with record of solitary confinement cell reports in regard to staff's monitoring and observations is increased
'Kalundborg Arrest' (local prison)	9	0	√	√	<i>No theme recommendations</i>
'Holstebro Arrest' (local prison)	8	0	√		<i>No theme recommendations</i>
'Københavns Fængsler', Vestre Fængsel (Copenhagen Prison, Western Prison)	5	0	√	√	<i>No theme recommendations</i>
'Ringkøbing Arrest' (local prison)	7	0	√		<i>No theme recommendations</i>

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Esbjerg Arrest' (local prison)	5	0	√		<ul style="list-style-type: none"> that focus on precise and adequate documentation in reports on exclusion from association is increased, among other things in relation to information as to grounds, particulars of the case and correct completion of the section regarding extended openness that the prison management ensure – in the way the management consider relevant – a better quality control of the written documentation in connection with exclusion from association in addition to training of/instructions to staff as regards requirements for reports and weekly records about exclusion from association (cf. check lists, etc., which the Department of Prisons and Probation has issued) that it is ensured that staff checks take place as often as laid down in the rules and that the time of the checks is stated in the solitary confinement cell reports
'Helsingør Arrest' (local prison)	9	0	√		<ul style="list-style-type: none"> that notification to healthcare staff is introduced in connection with new exclusions in the local prison that the prison management make sure that reports on temporary exclusions sufficiently document the grounds for the temporary exclusion, including among other things on which rules of law the decision was reached and whether complaint guidance was given

Where	Talks with inmates	Talks with relatives and guardians	DIGNITY	IMR	Recommendations regarding the theme
'Odense Arrest' (local prison)	10	0	√		<ul style="list-style-type: none"> that prison management ensure – in the way the management consider relevant – regular quality control of the written documentation in connection with exclusion from association that focus on precise and adequate documentation in reports and weekly records about exclusions from association is increased, among other things regarding reference to correct provisions about exclusion from association, information about grounds, whether they have been 'ticked' correctly as to extended openness, what kind of medicine has been given to inmates and during which period of time
'Aalborg Arrest' (local prison)	5	0	√		<ul style="list-style-type: none"> that prison management increase their focus that documentation in reports regarding involuntary exclusion is correct, precise and adequate that prison management – in the way the management consider relevant – make sure that a regular quality control of the written documentation in connection with exclusion from association, among other things, is carried out

Appendix 2

Check list form for review of reports and records

Institution	Name of inmate
Control of the decision record	
	Yes No
Is a date stated in the record as to when notice of the decision was given	<input type="checkbox"/> <input type="checkbox"/>
Is the time when notice of the decision was given stated in the record	<input type="checkbox"/> <input type="checkbox"/>
Has information about access to assistance and the right to give one's opinion been given	<input type="checkbox"/> <input type="checkbox"/>
Has the right to receive assistance been restricted	<input type="checkbox"/> <input type="checkbox"/>
Have hearings been conducted	<input type="checkbox"/> <input type="checkbox"/>
• If yes, did the inmate approve his statement	<input type="checkbox"/> <input type="checkbox"/>
Has information about complaint options been given	<input type="checkbox"/> <input type="checkbox"/>
Has information about time limit for lodging a complaint been given	<input type="checkbox"/> <input type="checkbox"/>
Has information been given as to which rules of law the decision was based on	<input type="checkbox"/> <input type="checkbox"/>
Is it stated which information/incidents form the basis of the exclusion	<input type="checkbox"/> <input type="checkbox"/>
Are the grounds for the decision stated	<input type="checkbox"/> <input type="checkbox"/>
• If yes, can the conclusion be reached that conditions for necessity, proportionality and indication are observed	<input type="checkbox"/> <input type="checkbox"/>
Has the inmate been informed about the grounds	<input type="checkbox"/> <input type="checkbox"/>
Control of weekly records	
Have weekly records been worked out for each commenced week	<input type="checkbox"/> <input type="checkbox"/>
• If yes, has it been considered whether the exclusion can partly be terminated	<input type="checkbox"/> <input type="checkbox"/>
Has a re-entry plan on how the inmate could be included in the association again been worked out	<input type="checkbox"/> <input type="checkbox"/>
Exclusions exceeding 14 days and up to 3 months	
Has the exclusion been reported to the Department of Prisons and Probation	<input type="checkbox"/> <input type="checkbox"/>
Has the inmate received guidance on/been offered regular talks of long duration with:	
priest	<input type="checkbox"/> <input type="checkbox"/>
doctor	<input type="checkbox"/> <input type="checkbox"/>
or psychologist	<input type="checkbox"/> <input type="checkbox"/>
Offered free TV at his or her disposal	<input type="checkbox"/> <input type="checkbox"/>
Offered special access to individual tuition and work	<input type="checkbox"/> <input type="checkbox"/>
other activity	<input type="checkbox"/> <input type="checkbox"/>

Have relaxations in the form of cell association been considered	<input type="checkbox"/>	<input type="checkbox"/>
association during exercise in the	<input type="checkbox"/>	<input type="checkbox"/>
prison yard	<input type="checkbox"/>	<input type="checkbox"/>
working association	<input type="checkbox"/>	<input type="checkbox"/>
or leisure time activities with staff	<input type="checkbox"/>	<input type="checkbox"/>

	Yes	No
Have staff been aware whether the excluded inmate has a special need for:		
increased contact with staff	<input type="checkbox"/>	<input type="checkbox"/>
medical attention by doctor/psychiatrist	<input type="checkbox"/>	<input type="checkbox"/>
Is the exclusion expected to last longer than 3 months	<input type="checkbox"/>	<input type="checkbox"/>
• If yes, has a recommendation been sent to the Department of Prisons and Probation after 10 weeks	<input type="checkbox"/>	<input type="checkbox"/>

Appendix 3

Opening letter

Monitoring visit to (...) Prison (thematic visit)

As agreed by telephone with institution manager (...), the visit to (...) Prison is scheduled for **Wednesday (...) 2018**. The visit starts at 9:00 am.

There are no specific conditions at (...) Prison leading to the Ombudsman's wish to visit the prison. The monitoring visit is conducted as part of the Ombudsman's general monitoring activities and as part of the Ombudsman's OPCAT activities, cf. below reasons for and purpose of the visit.

As the theme for 2018, the Ombudsman has chosen to look into conditions for inmates who are excluded from association in state prisons and local prisons. The theme comprises both involuntary exclusions, including temporary exclusions according to section 63(2) of the Sentence Enforcement Act, as well as voluntary exclusions.

Therefore, the visit will primarily focus on conditions for these inmates. Consequently, some of the information which the Ombudsman has requested is related to the conditions for these inmates.

In addition to this, the visit can also include questions on the use of physical force, interventions and restrictions, relations, healthcare conditions as well as work, education and leisure time activities.

The visiting team consists of Director General Louise Vadheim Guldberg, Deputy Head of Department Erik Dorph Sørensen and Legal Case Officer Rikke Malkov-Hansen from the Ombudsman institution, Chief Medical Officer Jens Modvig from DIGNITY – Danish Institute Against Torture and Senior Researcher Peter Vedel Kessing from the Danish Institute for Human Rights.

I must ask you to make sure that a permission is available upon commencement of the visit that legal case officer Rikke Malkov-Hansen is permitted to bring along a laptop during the visit.

Information in advance

For my preparation of the visit, I ask that I receive various types of information on **Tuesday (...) 2018** at the latest:

1. House rule(s)
2. A list with the number of times physical force has been used within the last three years, divided into types of force and number of inmates
3. A list with the number of involuntary and voluntary exclusions from association within the last three years with information about the duration, and in regard to the involuntary exclusions also with information about the grounds for the exclusion
4. A list with the number of placements in disciplinary cell within the last three years with information about duration of the placement
5. A list with the number of placements in observation cell and solitary confinement cell (if there are such cells) within the last three years with information about the grounds for and duration of the placement
6. A list with the number of occurrences of abuse, violence and threats about violence within the last three years (both among inmates, against inmates as well as against staff)
7. Guidelines for the processing of cases about violence and abuse, etc. (anti-violence policy)
8. Written in-house guidelines, if any, regarding involuntary exclusion from association
9. Written in-house guidelines, if any, regarding voluntary exclusion from association
10. Reports and other relevant material, for example weekly records and re-entry plan, for three involuntary exclusions. One of the exclusions must be one which has lasted the longest during the last year, and the other two exclusions must be the latest exclusions lasting longer than 5 days.
11. Information about number of exclusions, where the decisions have been appealed, with statement of the number of cases where the decision has been overruled, or cases where the Department of Prisons and Probation has stated that relevant rules have not been observed.
12. If possible, a list with 5 inmates who are still in prison and who have been involuntarily excluded from association the longest time (overall) over the past year
13. If possible, a list with 5 inmates who are still in prison and who have been voluntarily excluded from association the longest time (overall) over the past year
14. A list with inmates, who according to the point below about 'Notice and information to inmates about the visit' have been informed about the visit. The list must contain information about name, age, gender, time of imprisonment and any special needs, including mental illness.
15. An updated occupancy rate of the prison with information about the inmates' name, age, gender, time of imprisonment and any special needs, including mental illness.

Furthermore, I ask the prison to send me a report on the following:

- a. Which significant, problematic incidents the prison has experienced in 2017.
- b. A report with the reason for the development in the number of exclusions, if a development has occurred.
- c. A report on which information the prison management receive about the use of exclusions and how the prison management use the information, including with a view to preventive measures.
- d. A report on how the prison handles voluntary exclusions, including how the prison prevents voluntary exclusions, which observations the prison makes regarding the inmate at this stage and how the prison prevents any damaging effects from the exclusion.

When the material is sent, I ask that it is numbered in accordance with the points above. Any confidential information can be sent to me via ordinary post but you are also welcome to send it to me via secure e-mail to post@ombudsmanden.dk.

Programme for the visit

The visit is primarily carried out through talks with the prison management, staff and inmates who would like to talk with the visiting team.

Moreover, the visiting team would also like to talk with the prison's doctor and priest.

Talks with inmates will take place both with inmates who in advance have notified that they are interested, and those who know that on the visiting day, the visiting team will ask a number of selected inmates whether they would like to talk with the team.

Talks with staff can, if possible, be carried out as group talks if the staff wish to do it this way.

The visiting team primarily wishes to talk with inmates who are or have been excluded from association (both involuntary as well as voluntary exclusion), and, in addition to this, also inmates who are currently placed in solitary confinement. The visiting team would also like to talk with representatives, if any, for the inmates, including possible spokespersons and staff representatives.

I therefore ask the prison to make sure that this will be possible.

I ask that the talks are carried out at times that fit into the prison's programme for the day, and that it is possible in terms of time to have talks with inmates who did not notify their interest in a talk in advance. At present, it is not possible to say exactly how long the individual talks are going to take but in principle it is a question of fairly brief talks of approximately 15 minutes' duration. The visiting team has the option of splitting into two groups, making it possible to carry out two talks at a time.

The visit also includes a presentation tour of the prison inmates' physical environment.

The visiting team wants the visit to open and close with meetings with the prison's management. The visiting team expects that the opening meeting is going to last approx. 2 hours and that the closing meeting is going to last approx. 1 hour. Prior to the closing meeting, the visiting team has a pre-meeting of approx. 45 minutes' duration.

At present, it is not possible to say when the visit is going to end on the day. Among other things, this depends on the number of persons asking for a talk.

On this background, I ask the prison to send me a suggestion for a programme for the visit, including the talks mentioned. The prison is welcome to contact me for further clarification of the planning of the visit. I ask that I receive the programme and a list of inmates who wish to talk with us on **Thursday (...) 2018 at the latest.**

If, prior to the visit but after the prison has worked out a suggestion for a visiting programme, more requests for a talk with the visiting team should arise among inmates, I ask you to change the programme so that these talks can also be carried out on the day of the visit, and that the prison upon commencement of the visit hands out a copy of the possibly changed programme to me.

Notice and information to inmates about the visit

I ask that the prison put up the enclosed notice in Danish and English about the visit only in the prison's solitary confinement and exclusion sections and in any way which the prison finds most suitable will pass on information to the inmates about the visit.

I also enclose the guide 'Visit from the Parliamentary Ombudsman'. Please hand out the guide to inmates who are or have been subject to exclusion within the last 3 months and who are still in prison. Please also hand out the folder to inmates who within the last month have been subject to another kind of isolation for more than 5 days, as well as to others who wish to have a talk.

These inmates must be informed verbally about the Ombudsman's visit and the possibility of having a talk with the Ombudsman's visiting team.

Background and purpose of the visit

The Parliamentary Ombudsman is regularly carrying out monitoring visits, among other things to institutions where people are or can be deprived of their liberty. Partly, the monitoring visits are carried out as part of the Ombudsman's general monitoring activities pursuant to section 18 of the Ombudsman Act, cf. Consolidation Act No. 349 of 22 March 2013, and partly in accordance with the Optional Protocol to the UN Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, cf. Executive Order No. 38 of 27 October 2009. The Ombudsman's work of preventing degrading treatment, etc. in accordance with the Protocol is carried out in collaboration with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

Pursuant to section 21 of the Ombudsman Act, the Ombudsman shall in connection with his activities, including his monitoring visits, assess whether persons or authorities falling within his jurisdiction act in contravention of existing legislation or otherwise commit errors or derelictions in the discharge of their duties. In connection with the Ombudsman's monitoring activity, section 18(ii) of the Act also applies. Pursuant to this provision, the Ombudsman can, in addition to assessments pursuant to section 21, assess matters concerning the organisation and operation of an institution or authority and matters concerning the treatment of and activities for users of the institution or authority on the basis of universal human and humanitarian considerations.

If the prison has any questions in connection with the monitoring visit, you are welcome to contact the undersigned or (...) on telephone number + 45 33 13 25 12.

Appendix 4

Question Guides

Question guide for voluntarily excluded inmates

Fact sheet

- How long have you been excluded
 - How did it take place (specific incident or from the beginning)?
 - Could it have been avoided?
- How is your everyday life/describe a day.
 - Who do you see?
 - Are you in contact with relatives/is it possible for you to make telephone calls?
 - Are you in contact with healthcare staff/priest/social worker?
 - Do you have the possibility of undertaking activities/occupation/education?
 - What do you get out of it? Do you look forward to it/is it meaningful?

Information

- What kind of information did you receive from staff/how was the information passed on to you?
- Were you informed of the consequences of exclusion?
 - How did the information affect you?
 - Did you feel that you had a choice?
- Have you received information as to which offers/initiatives staff can make available to you during the exclusion?
- Did anyone talk with you about the possibilities of being released from exclusion?
 - Have you considered it yourself?
 - Is staff doing any follow-up?
 - What are staff doing to support you?
 - Has a re-entry plan been drawn up for you?

Well-being/health/impacts

- Have you been admitted to a hospital?
 - If yes, for what reason?
 - Did it occur during the exclusion or is it something which you have been admitted to hospital for previously?
- Have you otherwise been in contact with healthcare staff?
 - If yes, on what occasion?

- Is it because of something that occurred during the exclusion, or is it because of something that you have been treated for in the past?
- We have heard from other institutions that isolated inmates can suffer from anxiety and/or melancholy. Do you also experience that?
- WHO-5 (Please tick the field at each of the 5 statements which comes closest how the excluded inmate has felt the last two weeks. Please note that a higher figure represents better well-being).

During the last 2 weeks ...	5 All the time	4 Most of the time	3 A little more than half of the time	2 A little less than half of the time	1 A little of the time	0 At no time
... I have been happy and in a good mood						
... I have felt calm and relaxed						
... I have felt active and energetic						
... I have woken up fresh and re-energized						
... my everyday life has been filled with things that are interesting to me						

Possibility of relaxing restrictions/cessation

- Do you have the possibility of associating with other inmates who are excluded?
 - If yes, do you make use of this possibility?
- Do you have increased access to:
 - work?
 - leave?
 - possibility of making a telephone call?
 - books/TV?
- Now that you are excluded, is there anything you wish would be different?

Question guide for involuntarily excluded inmates

Fact sheet

- How long have you been excluded?
 - What was the course of events up to your exclusion?
 - Could it have been avoided?
- How is your everyday life/describe a day.
 - Who do you see?
 - Are you in contact with healthcare staff/priest/social worker?
 - Are you in contact with relatives/are you allowed to make telephone calls?
 - Do you have any possibility of activities/occupation/education?
 - What do you get out of it? Do you look forward to it/is it meaningful?

Information

- What kind of information did you receive from staff/how was the information passed on to you?
- Were you informed about the possibility of being released from exclusion?
 - Is this discussed with you on a continuous basis?
 - Has a re-entry plan been drawn up for you?

Well-being/health/impacts

- Have you been admitted to hospital?
 - If yes, for what reason?
 - Did it occur during the exclusion or is it something which you have been admitted to hospital for previously?
- Have you otherwise been in contact with healthcare staff?
 - If yes, on what occasion?
 - Was it because of something that occurred during the exclusion, or was it because of something that you have been treated for in the past?
- We have heard from other institutions that isolated inmates can suffer from anxiety and/or melancholy. Do you also experience that?
- WHO-5 (Please tick the field at each of the 5 statements which comes closest how the excluded inmate has felt the last two weeks. Please note that a higher figure represents better well-being).

During the last 2 weeks ...	5 All the time	4 Most of the time	3 A little more than half of the time	2 A little less than half of the time	1 A little of the time	0 At no time
... I have been happy and in a good mood						
... I have felt calm and relaxed						
... I have felt active and energetic						
... I have woken up fresh and re-energized						
... my everyday life has been filled with things that are interesting to me						

Possibility of relaxing restrictions/cessation

- Did you receive any information as to which offers/initiatives staff can make available to you during the exclusion?
 - Do you have increased access to
 - work?
 - leave?
 - possibility of making telephone calls?
 - books/TV?
- Now that you are placed in solitary confinement, is there anything you wish would be different?

Appendix 5

United Nations Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules)

Rule 43

1. In no circumstances may restrictions or disciplinary sanctions amount to torture or other cruel, inhuman or degrading treatment or punishment. The following practices, in particular, shall be prohibited:
 - (a) Indefinite solitary confinement;
 - (b) Prolonged solitary confinement;
 - (c) Placement of a prisoner in a dark or constantly lit cell;
 - (d) Corporal punishment or the reduction of a prisoner's diet or drinking water
 - (e) Collective punishment.
2. Instruments of restraint shall never be applied as a sanction for disciplinary offences.
3. Disciplinary sanctions or restrictive measures shall not include the prohibition of family contact. The means of family contact may only be restricted for a limited time period and as strictly required for the maintenance of security and order.

Rule 44

For the purpose of these rules, solitary confinement shall refer to the confinement of prisoners for 22 hours or more a day without meaningful human contact. Prolonged solitary confinement shall refer to solitary confinement for a time period in excess of 15 consecutive days.

Rule 45

1. Solitary confinement shall be used only in exceptional cases as a last resort, for as short a time as possible and subject to independent review, and only pursuant to the authorization by a competent authority. It shall not be imposed by virtue of a prisoner's sentence.
2. The imposition of solitary confinement should be prohibited in the case of prisoners with mental or physical disabilities when their conditions would be exacerbated by such measures. The prohibition of the use of solitary confinement and similar measures in cases involving women and children, as referred to in other United Nations standards and norms in crime prevention and criminal justice, continues to apply.

Rule 46

1. Health-care personnel shall not have any role in the imposition of disciplinary sanctions or other restrictive measures. They shall, however, pay particular attention to the health of prisoners held under any form of involuntary separation, including by visiting such prisoners on a daily

basis and providing prompt medical assistance and treatment at the request of such prisoners or prison staff.

2. Health-care personnel shall report to the prison director, without delay, any adverse effect of disciplinary sanctions or other restrictive measures on the physical or mental health of a prisoner subjected to such sanctions or measures and shall advise the director if they consider it necessary to terminate or alter them for physical or mental health reasons.
3. Health-care personnel shall have the authority to review and recommend changes to the involuntary separation of a prisoner in order to ensure that such separation does not exacerbate the medical condition or mental or physical disability of the prisoner.