

THE HIGH COURT

[2025] IEHC 37

[Record No. 2023/3JRP]

BETWEEN

S.P.

APPLICANT

AND

THE GOVERNOR OF MOUNTJOY PRISON AND

THE DEPARTMENT OF JUSTICE

RESPONDENTS

JUDGMENT of Mr Justice Barr delivered on the 24th day of January 2025.

Introduction.

1. The applicant is currently a prisoner in Mountjoy prison, Dublin, where he is serving a life sentence for murder.

2. In a judgment delivered on 25 July 2023 and reported at [2023] IEHC 463, following a contested leave application, the applicant was given leave to proceed with his application for judicial review on the following grounds:

1. An order of *certiorari* in respect of the decision made by the prison governor to place the applicant in solitary confinement.

2. If the court finds that the decision to place the applicant in solitary confinement was unlawful; the court may direct a hearing in relation to the assessment of damages to which the applicant may be entitled, as a result of the finding of the unlawfulness of that decision.
3. In the judgment, reference will be made to "*P 19 records*", these are documents which record allegations of breach of prison rules by the prisoner; the outcome of the hearing or inquiry into the alleged breach of discipline; and the sanction, if any, that was imposed.
4. The applicant's primary complaint is in relation to the periods that he has been accommodated in the challenging behaviour unit (hereinafter 'CBU') within the prison. While there, the applicant is kept locked in a single cell for upwards of 22 hours per day. He does not mix with any other prisoners. He cannot avail of structured activities in the prison in the normal way while he is in that unit.
5. The applicant maintains that his incarceration in the CBU for protracted periods during his time in Mountjoy prison has been without any lawful justification. The applicant maintains that the alleged breaches of prison discipline as recorded in the P19 records, and which are said by the prison authorities to constitute evidence of his challenging behaviour, such that it was necessary to hold him in the CBU, are all falsely concocted documents, which were made for the sole purpose of justifying the regime of solitary isolation to which he has been subjected.
6. The applicant further alleges that records which purport to record a refusal by him of offers to move him from the CBU at various times, save for one occasion when he accepted that he did not wish to transfer to B1 landing, are also fabricated records designed to provide a legal justification for his incarceration in the CBU.

7. The applicant also submits that insofar as any offers of transfer from the CBU were made to him and were followed by progress plans which would lead to accommodation elsewhere within the prison, these were only put in place as part of “*mind games*” or “*mental torture*”, whereby the applicant would be offered a move, subject to a progression plan being successfully completed, only to have the move thwarted by reference to false allegations contained in the P19 report, for the sole purpose of frustrating the proposed move from the CBU. The applicant maintains that this was done in an attempt to break his spirit, and to justify his prolonged detention in the CBU.

8. The applicant’s case is that having regard to these circumstances, his incarceration in the CBU for prolonged periods, was without legal justification; was disproportionate to any breach of discipline that may have occurred; and was for longer than was necessary, and therefore, was in breach of his constitutional rights, and in breach of his rights under the European Convention on Human Rights.

9. In response, the respondents deny that any periods spent by the applicant in the CBU were without proper justification. They maintain that the applicant has exhibited frequent outbursts that constituted challenging behaviour, such that it was necessary to detain him in the CBU from time to time. The respondents deny that any period of time spent by the applicant in the CBU, was disproportionate to the level of challenging behaviour involved, or was not necessitated by the requirements to keep good order in the prison; or was for a longer than was necessary, save for those periods where the applicant had refused to move to other areas of accommodation within the prison.

10. The respondents state that on each occasion when the applicant was placed in the CBU, that had been done either at his request for his own protection, or because it

was deemed that it was necessary to do so, due to incidents that had occurred which demonstrated that the applicant had such challenging behaviour, that it was in the interests of maintaining good order within the prison, that he be placed in that unit.

11. The respondents further allege that due to a number of threats that had been issued by the applicant to prison staff, it was necessary to detain him in the CBU given the level of threat involved and in order to ensure the safety of prison staff. The respondents deny that the applicant is entitled to any of the reliefs claimed by him in his statement of grounds, or in his affidavits, or at all.

The Prison Rules 2007, as amended.

12. Before coming to the evidence, it will be helpful to set out the prison rules which are of particular relevance in this case. The prison rules are contained in SI 252/2007, as amended. Rule 62 is in the section headed “*Control, Discipline and Sanctions*”. The sub heading for the section is “*Removal of Prisoner from Structured Activity or Association on grounds of Good Order.*” The relevant parts of Rule 62 are as follows:

“(1) Subject to Rule 32 (Exercise) a prisoner shall not, for such period as is specified in a direction under this paragraph, be permitted to—

- (a) engage in authorised structured activities generally or particular authorised structured activities,*
- (b) participate in communal recreation,*
- (c) associate with other prisoners, where the Governor so directs.*

(2) The Governor shall not give a direction under paragraph (1) unless information has been supplied to the Governor, or the prisoner's

behaviour has been such as to cause the Governor to believe, upon reasonable grounds, that to permit the prisoner to so engage, participate or associate would result in there being a significant threat to the maintenance of good order or safe or secure custody.”

13. Rule 62(3) provides that a period specified in a direction given under para. (1) shall not continue for longer than is necessary to ensure the maintenance of good order or safe or secure custody. Rule 6(4) provides that where the directions under para. (1) are still in force, the Governor shall review not less than once in every seven days a direction that has been given under para. (1), which will include his detention in the CBU.

14. Rule 62(5) provides that a prisoner shall be provided with reasons why any direction has been made under para. (1). Rule 62(9) provides that the Governor shall as soon as may be, submit a report to the Director-General which will include the views of the prisoner, if any, and shall explain the need for the continued removal of the prisoner from structured activity, or association under this rule on the grounds of order where the period of such removal will exceed 21 days. Thereafter, any continuation of the extension of the period of removal must be authorised in writing by the Director-General.

15. Rule 63 is also of relevance. It provides for the protection of vulnerable prisoners. The relevant parts of the rule are in the following terms:

“(1) A prisoner may, either at his or her own request or when the Governor considers it necessary, in so far as is practicable and subject to the maintenance of good order and safe and secure custody, be kept separate from other prisoners who are reasonably likely to cause significant harm to him or her.

(2) A prisoner to whom paragraph (1) applies may participate with other prisoners of the same category in authorised structured activity if the Governor considers that such participation in authorised structured activity is reasonably likely to be beneficial to the welfare of the prisoner concerned, and such activity shall be supervised in such manner as the Governor directs.”

The Evidence.

16. The applicant’s evidence was set out in a large number of affidavits, or statements made by him for the purposes of this application. In essence, he complained that all the P19 reports, which alleged that he had been guilty of breaches of prison discipline and, in particular, that his behaviour had been challenging in various ways, were falsely concocted charges laid against him.

17. The applicant further alleged that the documents that purported to record the various incidents during his incarceration in Mountjoy prison, were false records, which had been put in place merely to justify his detention from time to time in the CBU. Finally, he alleged that insofar as offers of a move from the CBU may have been made to him at various times, and insofar as progression plans were put in place, these were merely an attempt to break his spirit by forcing him to undergo the progression plan, only to have the offer of a move taken away from him at the eleventh hour, by the creation of a fake P19 report against him.

18. Evidence on behalf of the respondents was given in the form of a number of affidavits sworn by Mr David Treacy, Governor II in Mountjoy prison. In addition, Mr Treacy gave evidence in chief and was cross-examined by the applicant at the hearing of this application.

19. A large amount of evidence was given by Mr Treacy in his affidavits. A very large quantity of documentation was exhibited to those affidavits. It will suffice for the purpose of this judgment to summarise the main points made by Mr Treacy in his evidence and to examine the assertions made by the applicant in the course of his cross-examination of the witness.

20. Mr Treacy began by making two general points at the outset. Firstly, he stated that there was no status in the Irish prison system of “*solitary confinement*”. He accepted that when prisoners are in the CBU they are effectively on their own in their cell for approximately 22 hours per day. He stated that the solitary nature of their confinement in that area, was incidental to their being detained in the CBU, rather than being a specific regime of confinement within the prison.

21. He stressed that being in the CBU was never imposed as a punishment for a breach of prison discipline. The sanctions imposed for such breaches were those set out in the legislation and in the prison rules. They take the form of restriction, or loss of privileges, such as additional phone calls, additional visits with family, removal of right to attend the prison shop, *etc.*

22. He accepted that a breach of prison rules by a prisoner could be relevant to the decision to place the prisoner in the CBU, because the breach of discipline may demonstrate that the prisoner was exhibiting challenging behaviour, such that it was required in the interests of maintaining good order in the prison, that the prisoner be placed in the CBU, until his challenging behaviour had diminished and until suitable alternative accommodation within the prison could be found.

23. He stated that while the incident or behaviour on the part of the prisoner which gave rise to the P19 report might be relevant to the decision that his behaviour required his being placed in the CBU, it was never the reason for such detention.

24. The second preliminary point made by Mr Treacy was in relation to the overall management of the prison. He stated that in general, if there was no specific danger caused either to a prisoner's safety, or caused by that prisoner to other prisoners or staff, he would mix freely within the general prison population. However, this was not always possible.

25. The witness outlined that sometimes prisoners could not be accommodated within the general prison population. This was usually due to safety concerns for the prisoner, either that the prisoner would pose a danger to other prisoners in the general prison population with whom he had a grudge, or that the prisoner himself would be in danger from other prisoners, who may be part of rival gangs, or who may have a grudge of one sort or another against the prisoner.

26. Alternatively, there may be feuding going on outside the prison, which made it unsafe for that particular prisoner to be put into the general prison population. In these circumstances, the prisoner would be accommodated in one of the protection groups. These were small groups of prisoners who could mix freely among themselves and could engage in structured activities. However, they did not mix with the general prison population. There are currently 16 protection groups within the prison, catering for approximately 280 prisoners.

27. Mr Treacy stated that C Base within the prison was the committal unit to which prisoners were placed when they were first admitted to the prison. There, they were accommodated in single cells. They will be interviewed by the Governor and seen by prison services, including the doctor, chaplain, and the integrated sentence management coordinator, who advises on the variety of services available in the prison. A review of the safety of that prisoner is carried out before he is moved from C Base.

28. Within C Base there are a further eight cells which are separate, and which constitute the challenging behaviour unit. The CBU is reserved to accommodate prisoners who have been placed on a restricted regime either for threatening the safety, good order and security of the prison, or where their detention in the unit is required for their own safety. The prisoners in the CBU would usually be Rule 62, or Rule 63 prisoners. Rule 62 prisoners have usually been involved in serious disciplinary breaches in the prison, including serious assaults on staff, or other prisoners.

29. Prisoners accommodated in the CBU are kept there for the shortest period necessary as deemed by the Governor. Prisoners accommodated in the CBU are not permitted to associate due to security and safety concerns.

30. Mr Treacy stated that D Base was a protection landing within the prison. It accommodates two protection groups within 26 single cells and two close supervision cells. Each group of prisoners can mix with prisoners from within their own protection group. This ensures that each protection group has access to available services. Other landings accommodating protection, or Rule 63 prisoners, in Mountjoy prison are the A1, A2, A3, B1, B2, and B3 landings.

31. Mr Treacy stated that it was unrealistic to try to force a prisoner into one of the protection groups if he did not wish to go into that group. Experience had shown that if prisoners are forced into a particular protection group, they are likely to either cause injury to themselves, or to property, or to other prisoners within that protection group. Thus, while a prisoner cannot choose where he will be accommodated within the prison, if he is in one area, such as the CBU, he will not be forced against his will onto a particular protection group. Finally, the Irish Prison Service also utilises close supervision cells, managing violent or distressed prisoners in accordance with the IPS

policy for close supervision cells. The use of such cells is subject to review and monitoring as set out in the policy.

32. Mr Treacy pointed out that the Irish Prison Service had brought its system into line with standards that had been adopted by the United Nations for the minimum rules for the treatment of prisoners which are commonly known as the “*Mandela Rules*”. These rules provide that where prisoners are in isolation, they should be allowed to spend a minimum period of two hours out of their cell daily in accordance with rules 44 and 45 of the Mandela Rules. Mr Treacy stated that the Irish Prison Service had adopted these rules and it is provided that wherever possible a prisoner will be allowed two hours out of his cell per day. This will normally be in the form of one hour of exercise, thirty minutes for showering and thirty minutes for cleaning the cell. Mr Treacy accepted that on occasion it was not possible for a prisoner to be afforded the full two hours due to manpower constraints.

33. Mr Treacy turned to deal with the detention of the applicant in Mountjoy prison in the following way: first, he stated that the applicant had a total of 135 P19 reports for breach of prison discipline, of which 68 related to his period in detention either on remand in relation to the murder charge, or subsequent to his conviction for that offence. The breaches of discipline recorded in those records included threats to staff, possession of offensive weapons, indecent exposure, damage to prison property, and assaults on staff and prisoners. He stated that these breaches of discipline were regarded as being at the serious end of the scale.

34. Mr Treacy stated that on the applicant’s arrival in Mountjoy prison, which had been necessitated by the fact that the applicant had carried out a serious assault on another prisoner when he had been on remand in Wheatfield prison, the applicant had initially been accommodated within the committal unit on C Base. Due to his refusal

to move into any of the protection groups, he had to be accommodated in the CBU from 18 December 2021. This was due to the fact that the committal unit on C Base was required to deal with the anticipated increase in remand prisoners over the Christmas period.

35. The applicant's continued detention in the CBU was kept under review. A progression plan was implemented to facilitate his move back to C Base, which was achieved on 25 April 2022.

36. On two occasions, on 10 and 13 June 2022, the applicant requested during his governor's parade in the morning, to remain on C Base. He then requested a transfer to another prison. He was transferred for three weeks to Cork prison from the 3 July 2022 to 24 July 2022. On his return to Mountjoy prison he was accommodated in the CBU on 24 July 2022. On the following day, 25 July 2022, he committed a serious breach of prison discipline by exposing himself to a female member of staff. That incident was reported to An Garda Síochána.

37. The applicant remained in the CBU during August and into September 2022. His detention was under rule 63 during that time. It was noted in the minutes of a case conference meeting of 23 September 2022 that "*SP is not engaging with his current regime plan and is refusing to leave the C Base under any circumstances. He states that he will use this to his advantage in court*".

38. On 23 September 2022, an action plan was put in place to facilitate the applicant's move back to C Base, if he remained free of P19 reports. Thereafter, from September to December 2022, the applicant refused fifteen offers of accommodation outside the CBU. He informed prison staff that he was remaining in the CBU so as to show the court that he was being held in an area where he could not mix with other prisoners.

39. On 20 December 2022, the applicant enquired about moving to B1 landing. In January/February 2023 a risk assessment and security review was carried out in respect of a proposed transfer to B1 landing. A progression plan was put in place to facilitate that move. On 13 February 2023, the applicant was moved to B1 landing, where he was accommodated under rule 63 as part of a protection group. He remained there for approximately two months.

40. On 19 April 2023, the applicant was placed on Rule 62 and moved back to the CBU, following an incident in which he exposed himself to a female prison officer. The applicant was convicted of an offence contrary to s.45(1) of the Criminal Justice (Sexual Offences) Act 2017 in respect of that incident.

41. Dealing with the period 9 May 2023 to 15 August 2023; the applicant was removed from Rule 62 on 9 May 2023. He was informed that he could leave the CBU, but refused to do so, again indicating that he would use this to his advantage in his court proceedings. Between 9 May 2023 and 12 July 2023, the applicant refused fourteen offers of accommodation outside the CBU.

42. On 24 July 2023, the applicant requested a move back to B Base on a Rule 63 protection regime. Following a risk assessment being carried out, on 15 August 2023 the applicant was moved back to the B Base protection landing and was accommodated in a group with ten protection prisoners.

43. The applicant was transferred to the CBU following a written threat in which he had concluded a formal complaint against Governor Treacy by stating “*Thank you, Happy Christmas, cos it’s your last. Mark my words*”. Governor Treacy said that having regard to the applicant’s previous criminal record and his conduct in various prisons, this threat was taken seriously. He was transferred to Portlaoise prison on 14

December 2023. He returned to Mountjoy prison on 12 February 2024. He was initially detained in C Base and subsequently in D Base until 14 March 2024.

44. On 16 March 24, the applicant was transferred to the CBU for organising and participating in an assault involving a number of prisoners. He was placed on Rule 62 on 19 March 2024. As appears from the affidavit sworn by Mr Treacy, the applicant was placed under Rule 62 during that time and was kept under regular review.

45. Mr Treacy stated that in total, the applicant had refused on twenty-nine occasions to accept an offer of alternative accommodation away from either C Base, or the CBU. In particular, he stated that offers of alternative accommodation had been made to the applicant on the following dates 16th, 18th, 30th and 31st May 2023, 1st, 6th, 10th, 11th, 13th, 15th and 19th June 2023, and 12th July 2023.

46. He stated that the records of the Governor's parade held with the applicant each morning, indicated that from September 2022 to December 2022 the applicant had refused fifteen offers of accommodation outside the CBU. The records also indicated that from 9th May 2023 to 12th July 2023, the applicant refused a further fourteen offers of accommodation outside the CBU. Mr Treacy stated that many of the relevant entries in that record were made by him, or had been made at his request. He confirmed that each such entry represented an offer of alternative accommodation made to the applicant and noted his refusal of such offer.

47. In addition to those refusals of offers, which had been detailed in the Governor's parade history, there were further such refusals recorded in the applicant's individual logbook, for example the entries for 14th, 22nd and 27th September 2022, 2nd, 6th and 16th October 2022 and 18th December 2022 and also in his out of cell logs, for example the log entry for 30th October 2021.

48. Mr Treacy stated that these offers were not offers to immediately move the applicant to another landing. As with any prisoner, any such move had to be subject to a risk assessment and security review. At all times it was made clear to the applicant that any progression plan to facilitate a move from CBU was subject to his good behaviour and to his remaining free of P19 reports. He stated that had the applicant indicated a willingness to move to any appropriate landing on any of the occasions on which he had been offered a move, a plan would have been put in place to facilitate that move, as had been done previously in February 2023.

49. In addition to the threat outlined above, Mr Treacy stated that on 15 June 2023, the applicant had said to him that he would take the money that he hoped to receive from this case by way of damages and would “*put it on your head*”. Mr Treacy stated that he took that to mean that the applicant would take the award of damages and use it to take out a contract on his life. Mr Treacy stated that other threats had been made to prison staff on 24 November 2023 and on 24 March 2024, which had been recorded in the P19 reports numbers 121, 128 and 129. Further threats were made to a member of prison staff *e.g.*, a threat to burn down their house.

50. Mr Treacy also stated that the applicant had on occasion committed serious assaults. As previously noted, on 16 March 2024, the applicant had been transferred to the CBU where he was detained under Rule 62, for organising and participating in a vicious assault involving a number of prisoners attacking a prisoner that he had befriended. That assault was currently being investigated by An Garda Síochána.

51. In conclusion, Mr Treacy denied that any of the P19 reports had been fabricated or exaggerated as a means of justifying the applicant’s detention in the CBU, or in any other area of isolation within the prison. He denied that any of the records that he had personally compiled were false in any way. He stated that it was

his opinion that the applicant was a volatile individual, who is prone to outbursts of extreme violence. He stated that this opinion was supported by the documents that had been exhibited to his affidavits.

Evidence of Mr Treacy on Cross Examination.

52. In the course of cross-examination it was put to the witness by the applicant, that his detention in the CBU had been without lawful justification. Mr Treacy denied that there had been any unlawful detention of the applicant in the CBU. He stated that at all times he had been detained there, either for his own protection, or at his own request, or he had been detained in the CBU due to his well-documented challenging behaviour, which had necessitated his detention in that unit in order to provide for the good order and maintenance of safety of staff and prisoners within the prison.

53. It was put to the witness that the only conviction that the applicant had for violence against prison staff was for throwing faeces at prison officers. Mr Treacy stated that while that was the only conviction for violent assault against prison staff, the applicant had also been convicted for exposing himself to a female officer.

54. It was put to the witness by the applicant that he was not a dangerous person. The witness did not agree with that assertion. He stated that the applicant had been transferred from Wheatfield prison after a serious assault on a prisoner there. He had also been involved in a serious assault on another prisoner in Mountjoy prison, for which he had been placed in the CBU due to his violent and challenging behaviour at that time.

55. It was put to the witness that he did not always receive two hours out of his cell per day. The witness accepted that that was correct. He stated that sometimes due to manpower constraints, it was not possible to offer him the full two hours out of his cell, but he would normally receive at least 90 minutes out of his cell, made up of time for exercise, showering and cleaning the cell.

56. It was put to the witness that the incidents in the P19s did not disclose a “*volatile and dangerous*” prisoner; the witness stated that in his view the threats that

had been made to prison staff to burn down their house and to place money on contract on their head, and also exposing himself to a female member of staff, together with the assaults on other prisoners as outlined in his evidence, showed that he was a volatile and dangerous prisoner.

57. It was put to the witness that the purported offers of a move to alternative accommodation were nothing more than “*mind games*” on the part of the prison authorities. The witness disagreed with that contention. He stated that in total the applicant had been made twenty-nine offers of a possible move to alternative accommodation, which he had refused. The applicant had accepted a number of moves from the CBU, which had been accommodated by the prison authorities. This showed that they were willing to move him to alternative accommodation. Mr Treacy stated that it was the preference of the prison authorities that prisoners would mix either in the general prison population, or on protection groups, as this was less demanding on manpower resources and it was more conducive to good order within prison.

58. It was put to the witness that the hearings that had followed the P19 reports, were nothing more than a rubberstamping exercise designed to justify his incarceration in the CBU. The witness disagreed with that. He stated that the investigation of all breaches of prison discipline had taken place in accordance with the rules. The applicant had not appealed the findings that had been made in relation to the breaches of discipline, or in relation to the sanctions that had been imposed; save in respect of one case, where he had been found guilty of a breach of prison discipline for damaging a toilet. On appeal he had managed to have that finding of breach of discipline overturned, because CCTV revealed that the damage had been

done prior to his arrival in the shower area. The witness stated that that showed that the P19 procedure was fair and operated properly.

59. It was put to the witness that a VAEG camera had been placed on him in an unreasonable way because it constituted an interference with his general right to privacy. The witness stated that that camera had only been put in place due to extreme misbehaviour on the part of the applicant leading to a decision that it was necessary to have all dealings with the prisoner recorded on camera. The camera had been removed in November 2022 as part of a progression plan leading to the move of the applicant from the CBU.

60. The witness denied that the carrying out of a risk assessment and implementation of a progression plan prior to implementing a move of a prisoner from the CBU to one of the protection groups was part of a plan to frustrate the move and cause mental torture to the applicant. The witness stated that they had a duty of care when relocating prisoners to another part of the prison to ensure that it was safe to do so both for the prisoner being moved and for the other prisoners within the group to which he would be assigned.

61. It was for that reason that a detailed risk assessment was carried out which involved both intelligence on the ground relating to the prisoner, intelligence relating to the other members of the protection group, intelligence from An Garda Síochána in relation to outside activities and also involved taking into account the views of the director of security within the prison.

62. The witness was asked about his interaction with the applicant after the indecent exposure incident. He stated that after that incident the applicant had been moved to the CBU. That was because they deemed that incident as being a serious incident. Mr Treacy stated that after a number of weeks, he offered the applicant a

move to B1 landing. He stated that he recalled the conversation with him on that occasion. He had offered the move to the applicant. The applicant had refused to move saying that he would use his detention in the CBU as material for his court case. He went on to state that he would get €900,000 in damages and would “*put it on your head*”, meaning that he would put the money on a contract to have Mr Treacy killed. The witness stated that that threat was taken extremely seriously.

63. The witness was asked about the control and restraint regime that had been placed on him. Mr Treacy stated that it had been put in place by a Governor prior to his arrival in the prison. He stated that when he arrived at Mountjoy prison, he started to move from the policy of control and restraint. However the applicant would not engage with him at first. He did subsequently engage with this plan, so the witness was able to remove the control and restraint regime.

64. Mr Treacy stated that the control and restraint regime had been put in place due to the fact that the applicant had engaged in a serious assault on a vulnerable prisoner whom the applicant had befriended. That prisoner was attacked by the applicant and by other prisoners. Due to that challenging behaviour, the applicant had been placed in the CBU. Mr Treacy stated that he did not know the precise dates when the control and restraint regime had been placed on the applicant. He did recall that when the applicant had refused a move to B landing, he was not on control restraint at that time.

65. The witness was asked about an occasion when he had requested a transfer back to Wheatfield prison in November 2021. The witness stated that that request had been put to the Governor in Wheatfield prison, but due to the fact that the applicant had attacked a prisoner in Wheatfield prison, they would not accept him back.

66. It was put to the witness that he had a number of P19s arising from when he had been taken out of his cell by officers in full riot gear. It had been alleged that he had threatened them, when in reality he stated that it was not possible for him to do so. The witness stated that the applicant had received a number of P19s arising out of that incident for possession of an offensive weapon and threatening to cut an officer's throat. He stated that if a prisoner will not hand over a weapon and if they are threatening staff it may be necessary for the prison authorities to use control and restraint to protect both staff and the prisoner himself.

67. He stated that these P19s were at the higher end of the spectrum for possession of a weapon and for making a serious threat to a member of prison staff. It was put to Mr Treacy that as they were wearing riot gear, he could not possibly have threatened these men. The witness stated that the applicant had been given three P19 reports arising out of that incident in respect of possession of an offensive weapon, and threatening to cut an officer's throat.

The Law.

68. The principles that have to be applied by a court when considering a challenge by way of judicial review that is brought by a prisoner concerning the conditions of his incarceration in a prison, have been considered in a large number of cases. It is not necessary to refer to all of them, as the law in this area was analysed in depth by Ní Raifeartaigh J (then sitting as a judge of the High Court) in *SF (A minor) v The Director of Oberstown Childrens Detention Centre* [2018] 3 IR 466. These principles will be set out later in the judgment. Before doing that, it will be helpful to refer to a few other cases which have set down general principles that are apposite to this case.

69. In *Killeen v Governor of Portlaoise Prison & Ors.* [2014] IEHC 77, Hedigan J recognised that the placing of a person in solitary confinement and depriving them of the opportunity to mix with other prisoners, was itself a very serious deprivation of rights that would otherwise be afforded to him while in prison. He noted that there was a presumption in favour of association between prisoners subject to the good order of the prison. Segregation of prisoners should only occur in exceptional circumstances. When it was necessary, such segregation should be kept under review. However, he noted that a court dealing with a matter on judicial review, was not entitled to impose its own opinion in relation to how a prison should be run. He stated as follows at paragraph 6.7:

“In keeping with the normal rules of judicial review, it is not for this Court to assess those risks but rather to determine whether they exist and constitute evidence upon which the respondents may rationally base a decision that segregation from the main prison population is the only way to resolve the security problem they pose. These affidavits have demonstrated to the satisfaction of the court that there are such reasonable grounds to believe that segregation is necessary in this case. The history of each, including the crimes of which they have been convicted and their disciplinary history as prisoners, is very striking and would give cause for alarm to anyone responsible for their security and that of those with whom they would normally congregate.”

70. The wide discretion that is afforded to the prison authorities as to how the prison should be run so as to best secure the maintenance of good order within the

prison, was recognised by Edwards J (then sitting as a judge of the High Court) in *Devoe v Governor of Portlaoise Prison & Ors.* [2009] IEHC 288, where he stated as follows at the p.84:

“As has been pointed out by Counsel a prisoner cannot reasonably have an expectation of confinement in any particular prison, in any particular wing of a prison, on any particular landing within a prison, or within any particular cell. Once a prisoner has been received at whatever prison his/her committal warrant specifies the first and second named respondents must have, and do in fact have, the widest possible discretion as to the prisoners placement from time to time within the prison system and issues ancillary thereto, including the question as to with whom he or she may have society.”

71. Dicta to similar effect were made in *McDonnell v Governor of Wheatfield Prison* [2015] 2 ILRM 361. In that case, the Court of Appeal pointed out that it was for the prison authorities to decide what measures are necessary for the safety of prisoners. That included Rule 63 orders. It was not for the High Court to second-guess decisions of fact in that regard, but they are subject to review as administrative decisions in accordance with the principles set out in a series of cases including *Holland v Governor of Portlaoise Prison* [2004] 2 IR 573, *Walsh v Governor of the Midlands Prison* [2012] IEHC 229, *Kinsella v Governor of Mountjoy Prison* [2012] 1 IR 467 and *Connolly v Governor of Wheatfield Prison* [2013] IEHC 334. The court also pointed out that a prisoner was obliged to cooperate with the management of the prison in protecting his own safety, health and welfare during his detention.

72. The leading authority in this area is the decision in *SF (A minor) v Director of Oberstown Children Detention Centre & Ors*. In that case, the judge set down a number of principles which are set out at paras. 96 to 102 of her judgment. It is not necessary for the court to quote those principles in full, as the judge there set out the entire legal basis on which the principles were derived. However, it will be helpful to summarise the principles in the following way:

1. It is well established that the imprisonment of an individual does not thereby extinguish all the prisoner's rights. Any restrictions on the rights that would normally be enjoyed by a prisoner while in prison, should go no further than is necessary to ensure the maintenance of good order within the prison.
2. When a detainee is separated from the society of his or her fellow detainees, the constitutional rights most likely to be affected are the rights to bodily integrity, dignity, and communication. A constitutional right not to be subjected to inhuman or degrading treatment has also been identified in a number of cases. Association with fellow detainees is not so much a right in itself, but a presumption, which arises as an aspect of the right to bodily integrity, dignity and communication. The presumption arises because of the serious risk of psychological harm that may be caused by social isolation.
3. Where a measure involving segregation or solitary confinement is imposed upon a detainee, proportionality is required as a matter of constitutional law.
4. The requirement of proportionality means that sufficient justification is required for the initial imposition of the measure and that sufficient justification must be maintained throughout the period of

segregation/isolation/solitary confinement. It also means that the separation or isolation of the detainee should be counterbalanced as far as possible in order to ameliorate the effect of such isolation, for example, by access to exercise outdoors or access to stimulating materials in order to compensate for the loss of human society.

5. Certain procedural safeguards are closely linked with ensuring proportionality is achieved. In the first place, some form of review at appropriate intervals is necessary and there should be appropriate record keeping in respect of isolation.

6. In examining the totality of the conditions in which the detainee is held, the court should be mindful of where on the spectrum of “*sensory deprivation*” the case falls and should have regard to the level of interaction which the prisoner has been afforded with a teacher, chaplain, governor, medical officers and family members and whether he has access to entertainment in the form of a television or access to reading material and access to exercise in the form of exercise outside the cell.

7. The court must nonetheless be mindful of the separation of powers and the different roles of the executive and the judiciary in cases involving prisoners. The court must not engage in any attempt to ‘micromanage’ the running of prisons and places of detention. The court must be careful not to overstep the boundary between the executive and the judicial function in situations where decisions may have resource implications.

73. Finally, in *Dumbrell v the Governor of the Midlands Prison & Ors* [2018] IEHC 462, the court noted that the only temporal limit involved in Rule 62, was the period for which such confinement necessary to ensure maintenance of good order or safe or secure custody within the prison. This required that there be a regular review of the detention in isolation.

Conclusions.

74. In reaching its conclusions herein, the court has had regard to the affidavits and statements filed by the applicant and to the affidavits filed on behalf of the respondents. The court has also had regard to the considerable volume of documentation that has been provided in the course of these proceedings. The court has also had regard to the evidence of Mr Treacy given as his evidence in chief and on cross-examination. The court has also had regard to the submissions made by the applicant both during his cross-examination of Mr Treacy and at the conclusion of the evidence; along with the oral and written submissions of Ms Lawlor SC on behalf of the respondents.

75. The court accepts the evidence given by Mr Treacy that placing a person in the CBU is never done as punishment for any breach of prison discipline as found following a P19 hearing.

76. I accept his evidence that while the decision to place a person in the CBU may be connected to the incident that was the subject matter of the P19 report, because it was established that that person was demonstrating challenging behaviour at the time, which required his being placed in the CBU to ensure the safety of other prisoners or staff; the court accepts that it is not imposed as a punishment for a breach of prison discipline.

77. I also accept the evidence given by Mr Treacy that there are two grounds on which a prisoner may be detained in the CBU. The first of these is under Rule 62, which provides that a direction may be given that a prisoner shall not be permitted to engage in specified activities where the prisoner has engaged in challenging behaviour. I accept the evidence that such a direction is not given unless information has been supplied to the Governor, or the prisoner's behaviour has been such as to cause the Governor to believe, upon reasonable grounds that to permit the prisoner to so engage, participate or associate with others within the prison, would result in there being a significant threat to the maintenance of good order or safe or secure custody within the prison.

78. The second ground on which a person may be placed in the CBU, or placed on a protection wing, is Rule 63, which provides a separate regime for the protection of vulnerable prisoners. It provides that a prisoner may, either at his own request, or when the Governor considers it necessary, insofar as is practicable and subject to the maintenance of good order and safe and secure custody, be kept separate from other prisoners who are reasonably likely to cause significant harm to him. I accept the evidence of Mr Treacy that in general, the prison authorities prefer to have prisoners mix freely with other prisoners. If it can be done safely, it is the best form of incarceration for prisoners as they have association with other prisoners and is the least intrusive in terms of manpower.

79. However, there are circumstances in which it is not possible to have particular prisoners mix freely within the general prison population. I accept his evidence that for a number of reasons, it can be necessary to accommodate prisoners in small groups for their own protection. This may be due to the fact that prisoners within the general prison population are antagonistic to the particular prisoner, or due to the

nature of crime that the particular prisoner has been convicted of, such as for sex offences, or due to the fact that the particular prisoner may have enemies outside the prison population, who would cause other prisoners to cause harm to him, or it may be due to their having drug debts owing to other prisoners within the prison.

80. It is for these reasons that protection groups have been set up in the prison. There are currently sixteen protection groups within Mountjoy prison. These cater for small groups of prisoners whom it is felt can mix freely with each other without any risk to their safety. In so doing, they are able to socialise with other prisoners and have better access to services within the prison, such as to education services.

81. However, it is also clear that a prisoner cannot be forced to join a particular protection group. I accept the evidence given by Mr Treacy that were a prisoner has refused to go to a particular protection group, it is futile for the prison authorities to attempt to move him there. Such a prisoner is likely to either cause harm to himself, or to cause harm to other prisoners in an effort to frustrate such a move. Accordingly, I accept the evidence that there is no realistic prospect of moving a prisoner into a protection group if he does not wish to go there.

82. I accept the evidence of Mr Treacy that when considering moving a prisoner from the CBU to a particular protection group, the first step is to secure the consent of the prisoner to such a move. If he is willing to move into that group, it is then necessary to carry out a detailed risk assessment to ensure that (a) the prisoner does not harbour any bad feeling towards any of the prisoners already in that group; (b) that none of the prisoners already in the group have any serious ill feeling towards the prisoner; (c) that the prisoners already in the group do not have any connections to persons outside the prison who might wish to harm the prisoner; (d) if the risk assessment is favourable, a progression plan is put in place whereby the prisoner

agrees to remain P19 free for a set period and he signs a compact that he will observe the prison rules once moved to the particular protection landing.

83. I accept the evidence that a move within the prison is not something that can be done quickly when a prisoner is being moved from the CBU to a particular protection group. The steps outlined above have to be taken to ensure that such a move can be put in place safely.

84. Turning to the grounds raised by the applicant, it is important to note at the outset that these are judicial review proceedings. This Court is not sitting as a Court of Appeal from the individual P19 findings made against the applicant. What this Court has to do is to look at the overall picture that emerges and see if there was legal justification for accommodating the applicant with the CBU, or in other areas of isolation, during his time in Mountjoy prison.

85. In this regard, I accept the submission made by Ms Lawlor SC on behalf of the respondents that as the rules of court provide that an applicant must bring his judicial review application within three months of the event or decision that is challenged; I hold that as the applicant lodged his papers on 5 November 2022, he is confined to challenging his detention in the CBU and in other areas, as from August 2022.

86. As his incarceration in the CBU and in other area locations of isolation, was an ongoing, though not continuous, state of affairs, I hold that his challenge launched in November 2022, also covers his subsequent periods of detention in the CBU down to the present. It would be unduly onerous on the applicant to hold that he had to lodge separate sets of proceedings each and every time he was accommodated in the CBU while the present proceedings were in being.

87. The applicant was only placed in the CBU on a relatively small number of occasions. I am satisfied on the oral and documentary evidence before me, that his

detention in that area of the prison was mandated by the challenging behaviour that he was demonstrating at the relevant times, such that it was required in the interests of maintaining good order within the prison, or in the interests of safety of staff and other prisoners, that he be placed in that unit.

88. The applicant was initially placed in the medical unit for two days and then on C Base on his arrival into Mountjoy prison. C Base is the committal unit. He was detained there as he was regarded as a vulnerable prisoner, because he was noted to have alienated himself from the prison population in Wheatfield prison, where he had been on remand. He was transferred to Mountjoy prison following a serious assault he had perpetrated on a fellow prisoner in Wheatfield.

89. When his detention on C Base was reviewed on 29 August 2021, it was noted that he was “*an extremely volatile prisoner who has alienated himself from all other prisoners*”.

90. On 18 December 2021, the applicant refused a transfer to B2 Landing. That was recorded in the relevant PIMS report exhibited to the affidavit sworn by Mr Treacy.

91. The prisoner was moved to the CBU on 23 December 2021 as it was the only available option, because the prison authorities needed the committal unit on C Base given the number of remands likely to be made over the Christmas period; thus, the reason that he was sent to the CBU, was due to his refusal to move to the B2 Landing.

92. It is clear from the documents that have been exhibited that the applicant’s detention on the CBU thereafter, was kept under constant review. It was noted on 20 January 2022 that there had been serious breaches of prison discipline in relation to the storing of excrement, the possession of weapons and a threat to throw excrement at staff. The applicant was placed in a close supervision cell on the night of 20/21

January 2022 and was then sent back to the CBU. The court is satisfied that the applicant was demonstrating sufficiently challenging behaviour at that time, that his continued detention in the CBU was warranted in terms of the maintenance of good order within the prison. The risk assessment carried out in March 2022, noted that the applicant was refusing to mix with any of the sixteen protection groups within the prison.

93. When the applicant subsequently indicated his agreement to move to the D3 landing area, the risk assessment that was carried out on that occasion, established that such a move would not be mandated due to the need to preserve good order within the prison.

94. In April 2022 the prisoner indicated that he was prepared to move to B landing. A six week stepdown plan was put in place. A case conference was held to consider that. A further case conference was held to monitor progress being made on that aspect. The applicant started on the progression plan and ultimately moved to C Base.

95. It was noted that at the Governor's parade on 12 and 13 June 2022, during the parade the prisoner requested that he stay in C Base. Later that month, the applicant requested a transfer to Cork prison. That took place during the month of July 2022. However, on his return, he engaged in an act of indecent exposure towards a female member of staff. Due to the serious nature of that conduct, he was sent back to the CBU. The court finds that the direction that he be detained in the CBU at that time was reasonable and was proportionate to the behaviour that he was exhibiting.

96. The court notes that on 13 February 2023, the applicant was moved into a protection group on B1 Landing. He remained there until 19 April 2024, due to the fact that he had carried out a serious breach of prison discipline by exposing himself

to a female ACO. The court also notes that on 15 June 2023, the applicant had made a threat to the prison Governor, Mr Treacy, that he would put the money that he would receive from his court action and would put it on the head of the prison Governor. It was reasonable for the prison authorities to accept this as a threat, whereby the applicant was threatening to take out a contract on the life of the prison Governor.

97. The court notes that further P19s were received by the applicant for making threats to prison staff on 24 November 2023 and 24 March 2024. They were followed by the threat made in the complaint form in relation to that Christmas being the last Christmas that the Governor would enjoy. That threat was made on 12 December 2023.

98. The court also notes that on 16 March 2024, the applicant was transferred to the CBU after he had organised and participated in a vicious assault involving a number of prisoners attacking another prisoner, whom the applicant had befriended. In all the circumstances, the court is satisfied that the characterisation of the applicant by the prison Governor as being a dangerous and volatile prisoner is accurate. In addition, the court is satisfied that on the occasions when he was put into the CBU, his behaviour on those occasions was challenging to such degree that it was necessary to place him in that unit in order to maintain good order within the prison and in order to ensure the safety of other prisoners and staff.

99. The court also accepts the evidence given by Mr Treacy, which is supported by the documentary evidence before the court, that a total of twenty-nine offers of a move from the CBU were made at various times to the applicant, but were refused by him. The court is satisfied that insofar as he may have remained in the CBU and in other units of isolation, for prolonged periods, this was due to his refusal to consider a move to other nominated protection groups.

100. The law is very clear, a prisoner cannot mandate the particular wing or landing within a particular prison that he shall be accommodated on. That is a decision for the prison authorities. It is they who must decide where is best calculated in the interests of maintaining good order within the prison, that a prisoner should be accommodated.

101. The court also accepts the evidence given by Mr Treacy that where a prisoner refuses to move to a particular protection group within the prison, there is, in reality, no prospect of moving him there, as to do so would only expose either the prisoner, or other prisoners, or prison property, to a risk of injury or damage. Thus, I am satisfied that insofar as the applicant refused offers of a move to alternative accommodation within the prison, his continued detention in the CBU, or in other units of isolation, must be seen as being voluntary from that point onwards. I accept the evidence given by Mr Treacy, that on a number of occasions on which the applicant refused a move from the CBU, he stated that his intention in so doing, was to acquire damages in the present proceedings.

102. In summary, the court is satisfied that there has been no breach of the applicant's rights during his period of detention in Mountjoy prison. The court is satisfied that in respect of those periods when he was sent to the CBU, that was done lawfully by direction of the prison governor either based on the challenging behaviour that he was exhibiting at the time, or was mandated due to the fact that he was a vulnerable prisoner, he having alienated himself from the rest of the prison population.

103. I am further satisfied that insofar as the applicant spent any protracted periods of time in the CBU, those periods were kept under review by the prison authorities. In addition, I am satisfied that his presence on the CBU was to a large extent due to his

refusal on twenty-nine occasions to consider a move to alternative accommodation within the prison.

104. The court accepts the evidence given by Mr Treacy that the applicant is given the opportunity to have two hours out of his cell per day. Although it is accepted that on occasion due to manpower constraints, it may not be possible to give him his full allocation in this regard. Nevertheless, the court is satisfied that the applicant's rights in relation to time out of his cell when he was in the CBU, have not been infringed.

105. For the reasons set out in this judgment, the court refuses the reliefs sought by the applicant in relation to the ground on which he was permitted to proceed by way of judicial review.

106. As this judgment has been delivered electronically, the parties shall have two weeks within which to furnish brief written submissions of not more than 1,000 words on the terms of the final order and on costs. The written submissions can be furnished in hard copy or soft copy to the court registrar.

107. When written submissions have been received, the court will determine whether it is necessary to hold any further hearing before delivering its final order and ruling on costs. If such hearing is not deemed necessary, the final order will be furnished by the court registrar directly to the parties.