



FOLKETINGETS
OMBUDSMAND

**Monitoring
Activities 2019**
**Extracts from
the Annual Report
of the Danish
Parliamentary
Ombudsman**

Preface

This publication contains extracts from the 2019 Annual Report of the Danish Parliamentary Ombudsman of the material relating specifically to the Ombudsman's monitoring activities. The extracted material on pages 76-107 is unchanged from the Annual Report, and the original pagination has been maintained.

This is followed by summaries of statements and extracts from news relating specifically to the Ombudsman's monitoring activities.

The 2019 Annual Report of the Danish Parliamentary Ombudsman can be read in full on www.ombudsmanden.dk or obtained in book form from the Ombudsman's office.



Monitoring activities

Monitoring activities – adults and children

Where: The Ombudsman carries out monitoring visits to public and private institutions, especially institutions where persons are or may be deprived of their liberty, such as prisons, social care institutions and psychiatric wards.

Why: The purpose of the Ombudsman's monitoring visits is to help ensure that daytime users of and residents in institutions are treated with dignity and respect and in compliance with their rights.

The monitoring visits are carried out in accordance with the Ombudsman Act as well as the Optional Protocol to the UN Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT). Pursuant to this Protocol, the Ombudsman has been appointed 'National Preventive Mechanism'. The task is carried out in collaboration with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights, which contribute with medical and human rights expertise.

The Ombudsman has a special responsibility to protect the rights of children under the UN Convention on the Rights of the Child etc.

How: During monitoring visits, the Ombudsman often gives recommendations to the institutions. Recommendations are typically aimed at improving conditions for users of the institutions and in this connection also at bringing conditions into line with the rules. Recommendations may also be aimed at preventing, for instance, degrading treatment.

Monitoring visits may also cause the Ombudsman to open investigations of general problems.

Who: The Monitoring Department carries out monitoring visits to institutions for adults, whereas the Ombudsman's Children's Division carries out monitoring visits to institutions for children. The Ombudsman's special advisor on children's issues participates in monitoring visits to institutions for children and, if deemed relevant, in visits to institutions for adults.

Usually, a medical doctor from DIGNITY – Danish Institute Against Torture participates in the visits, and a human rights expert from the Danish Institute for Human Rights (IMR) will often participate.

Monitoring activities – adults

Theme for 2019

Disciplinary cells

The form of solitary confinement called placement in disciplinary cells ('strafcelle') may be used as a disciplinary sanction when an inmate breaks the rules of the Prison and Probation Service. Inmates placed in a disciplinary cell may be in solitary confinement for up to 23 hours a day. The inmate is entitled to one hour a day outside in the prison exercise yard and to work in his or her cell.

The Ombudsman chose as the theme for 2019 to investigate the use of disciplinary cells. The reasons for the choice of theme were that solitary confinement may have adverse psychological effects and that the use of disciplinary cells in state and local prisons has risen sharply over recent years.

The Prison and Probation Service has laid down guidelines for how the most common transgressions are normally to be sanctioned. For instance, an inmate is normally sanctioned with 15 days in a disciplinary cell the first time the inmate is caught with a mobile phone in a closed prison.

Before the sanction of placement in a disciplinary cell is imposed on an inmate, statements must be taken and the statements must be put on record. The upper limit for placing an inmate in a disciplinary cell is four weeks at a time. However, the inmate can be placed in a disciplinary cell – or be excluded from association with others – for a longer period.

As part of the theme for 2019, the Ombudsman's visiting teams visited three closed prisons, two open prisons, 11 local prisons and the Prison and Probation Service immigration detention centre. The visiting teams focused especially on

- whether the Prison and Probation Service observes the rights of the inmates when questioning them
- whether the documentation in records lives up to the rules
- whether the Prison and Probation Service takes preventive measures against adverse psychological effects on inmates placed in disciplinary cells
- whether the healthcare staff are informed of and attend to inmates who are placed in disciplinary cells

The Ombudsman's overall assessment

- The guidelines of the Prison and Probation Service should in certain areas be changed with a view to ensuring the legal rights of the inmates when it is decided to place them in a disciplinary cell and in order to take preventive measures against adverse psychological effects as a result of placement in a disciplinary cell.

Examples of the Ombudsman's general recommendations

- that the institutions under the Prison and Probation Service ensure that the inmate understands what is said during a disciplinary hearing, and increase the use of interpreters

Reports on the themes for our monitoring visits can be found at www.ombudsmanden.dk by clicking next to the small globe icon at the top of the site, selecting 'English' and clicking 'Read more' under the heading 'About the Ombudsman and complaints' and then 'Publications'.

- that the institutions under the Prison and Probation Service ensure precise and adequate documentation in the records and ensure continuous quality control
- that the Department of Prisons and Probation considers drawing up guidelines on the prevention of adverse psychological effects as a consequence of placement in a disciplinary cell
- that healthcare staff are informed of inmates placed in disciplinary cells

See the Ombudsman's specific recommendations (extracts) in the tables on pages 80-89.

Cases concluded in 2019 in relation to monitoring activities

12 own-initiative cases were concluded in 2019. Eight of these cases were opened in direct continuation of monitoring visits. *Two of the cases resulted in criticism and informal recommendations, respectively.*

In addition, 21 cases on suicide attempts, deaths etc. in institutions under the Prison and Probation Service or in police custody were concluded in 2019. *Three of the cases resulted in criticism.*

Selected investigations

The correct doctor's certificate must be completed before placement in detention cell: A man died while placed in a detention cell for intoxicated persons. In the police car on the way to the detention cell, he was briefly examined by a doctor but no doctor's certificate was completed. The Ombudsman looked into what requirements apply to a medical examination and the use of a doctor's certificate before persons are placed in a detention cell for intoxicated persons. The Danish National Police stated, among other things, that steps would be taken to ensure that all police districts use the Danish Medical Association's doctor's certificate form, which sets out the medical examinations which the doctor must perform. The Ombudsman then concluded his investigation.

Authority to use body scanners to be provided:

During a monitoring visit to the Maximum Security Department of Slagelse Psychiatric Hospital ('Sikringsafdelingen') the visiting team were informed that visitors had to go through a body scanner. The Ombudsman raised the question of the authority to use body scanners with the Ministry of Health. The Ministry informed the Ombudsman that authority to use body scanners would be provided under the Mental Health Act.

The Prison and Probation Service looks into the procedure for inmates' correspondence with the Department:

A complaint made the Ombudsman aware that the Department of Prisons and Probation had sent a letter to an inmate via the prison. The prison staff printed out the e-mail with the letter and put the letter in an envelope for the inmate. The Ombudsman started an investigation of this practice. The Department would look into the procedure for correspondence with inmates and ensure that inmates can correspond unmonitored with the Department regarding, for instance, complaints about the staff's behaviour towards the inmates. The Ombudsman then concluded his investigation.

Gang members must be heard before transfer:

33 inmates complained about having been transferred to another prison section because they had biker or other gang affiliations. The Ombudsman opened a general case on the processing of such cases. The Ombudsman found it regrettable that the inmates had not been heard in all instances and that the rules on, among other things, the duty to take notes had not been observed in all instances. The basis for the Department's identification of inmates as gang-affiliated did not otherwise give the Ombudsman cause for comment.

Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? ¹	
			Users ²	Relatives etc. ³	DIGNITY	IMR
	30 visits in total		309 talks	43 talks	30 visits	17 visits
10 Jan.	'Holbæk Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	8	0	✓	
22 Jan.	'Psykiatrisk Center Sct. Hans', Roskilde	Three bed units for forensic psychiatric patients	11	6	✓	✓
30 Jan.	'Slagelse Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	7	0	✓	
4 Feb.	'Ringsted Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	10	0	✓	
7 Feb.	'Udlændingecenter Ellebæk', Birkerød	Immigration detention centre under the Prison and Probation Service, for foreign nationals held under aliens legislation	11	0	✓	✓
20 Feb.	'Søbæk Have 18 B', Jyderup	Municipal social residential facility for mentally deficient adults with great behavioural challenges and sentenced to placement in an institution	3	2	✓	✓

- 1) The Ombudsman collaborates with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights (IMR) on monitoring activities. Among other things, they participate in a number of monitoring visits.
- 2) Number of inmates, residents and patients etc. with whom the visiting teams had talks.
- 3) Number of relatives, guardians (including social security guardians), patient advisors etc. with whom the visiting teams had talks.

	Selected recommendations etc.⁴
	Visits concluded with recommendations: 24 Visits concluded without recommendations: 2 Not concluded at the time of going to press: 4
	<ul style="list-style-type: none"> • Ensure that guidance on the possibility of complaint is only given when there is access to complain • Ensure precise and adequate documentation in records, and continuous quality control • Ensure that medicines are handled in accordance with applicable rules • Increase focus on whether the doctor should be called in as a result of information given by the inmate during placement interview
	<i>Still pending at the time of going to press.</i>
	<ul style="list-style-type: none"> • Increase focus on the inmate understanding what is said during interrogation etc., and increase use of interpreter • Follow and analyse development in number of decisions and days in disciplinary cell • Offer inmates a medical examination during placement interview • Ensure that medicines are handled in accordance with applicable rules
	<ul style="list-style-type: none"> • Ensure clear guidance on each of the inmate's individual rights • Ensure precise and adequate documentation in records, and continuous quality control • Inform the doctor of the expected duration of the disciplinary cell placement • Ensure that medicines are handled in accordance with applicable rules
	<ul style="list-style-type: none"> • Increase focus on the detainee understanding what is said during interrogation, and increase use of interpreter • Ensure prevention of adverse psychological effects from placement in disciplinary cell and inform doctor or healthcare staff of placements in disciplinary cell and the expected duration • Improve the general maintenance standard in the men's accommodation quarters, particularly in the solitary confinement section • Draw up instructions for handling of medicines and for treatment of abstinence, and train staff in the instructions
	<i>Own-initiative case opened about introduction of screening for torture and risk of suicide in the centre.</i>
	<ul style="list-style-type: none"> • Increase focus on a precise and adequate description in reports of the grounds for use of force • Increase focus on handling of medicines

4) The table contains selected, abbreviated recommendations. The full recommendations can be found (in Danish only) at www.ombudsmanden.dk, where concluding letters on monitoring visits are published on an ongoing basis. The table also contains information on cases opened on the Ombudsman's own initiative following monitoring visits.



Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? ¹	
			Users ²	Relatives etc. ³	DIGNITY	IMR
25 Feb.	'Frederikssund Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	9	0	✓	
7 Mar.	'Center Avnstrup', Hvalsø	Deportation centre for rejected asylum seekers who cooperate with own return to home country	4	0	✓	✓
13-14 Mar.	'Storstrøm Fængsel', Nørre Alslev	Closed prison with specially secure unit, particularly for persons serving a sentence	65	0	✓	
1 Apr.	'Københavns Fængsler', 'Vestre Fængsel'	Four prison sections, particularly for persons remanded in custody during investigation of their case (two communal units for men and two communal units for women)	9	0	✓	✓
4 Apr.	'Nykøbing Fængsel', Nykøbing Sjælland	Closed prison, particularly for persons serving a sentence	5	0	✓	
24 Apr.	'Psykiatrisk Afdeling Aabenraa'	Two integrated 24-hour units for general and forensic psychiatric patients	4	3	✓	
25 Apr.	'Haderslev Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	4	0	✓	

Selected recommendations etc.⁴

- Ensure precise and adequate documentation in records, and continuous quality control
 - Ensure correct verbal guidance on possibility of bringing the Department's decisions on disciplinary cell placement before the courts
 - Follow and analyse development in number of decisions and disciplinary cell days
 - Ensure that medicines are handled in accordance with applicable rules
- Ensure precise and adequate documentation in reports on the use of force
 - Clearly communicate zero tolerance towards violence and threats and extend guidelines on prevention and handling of violence and threats so that they include violence and threats among residents
 - Add information in the house rules on residents' possibilities of complaining about conditions at the centre
 - Increase focus on well-being and safety for children and young people staying at the centre – and, among other things, consider establishing a family section
- Ensure precise and adequate documentation in records, and continuous quality control
 - Handle requests from inmates as quickly as possible and continuously assess whether there are requests that need to be prioritised
 - Ensure that medicine storage follows applicable legislation and that handling of medicines follows the institution's procedures
 - Draw up instructions for abstinence treatment and train staff in the contents of the instructions
- Ensure precise and adequate documentation in records, and continuous quality control
 - Ensure that the inmate has understood the guidance on his or her rights during interrogation and on the possibility of complaint
- Ensure that the inmate is not placed in a disciplinary cell longer than necessary, that the inmate is kept active and has sufficient liquids so that thrombosis is prevented, and that the inmate has access to food, drink and visits to the toilet
 - Ensure that staff know how adverse psychological effects of placement in disciplinary cell are prevented
 - Inform healthcare staff of inmates in solitary confinement
 - Ensure that medicines are handled in accordance with applicable rules
- Increase focus on correct reporting of the use of force
 - Establish appropriate quality control of reports on the use of force
 - Carry out and document debriefings with patients when the forcible measures have ended
- Ensure precise and adequate documentation in records, and continuous quality control
 - Update and supplement house rules with a more detailed description of why, how and when urine sampling and searches are done, and access to complaint in that connection
 - Store medicines according to applicable legislation



Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? ¹	
			Users ²	Relatives etc. ³	DIGNITY	IMR
30 Apr.	'Næstved Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	4	0	✓	✓
7 May	'Chiligruppen, Lystrup'	Private social residential facility for adults with problematic behaviour or sentenced to placement in an institution	4	3	✓	✓
8 May	'Aarhus Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	8	0	✓	✓
22 May	'Fonden Landlyst', Hadsund	Private social residential facility for mentally deficient adults with mental disorders	3	3	✓	✓
23 May	'Regionspsykiatrien Randers'	An intensive and emergency bed unit for general and forensic psychiatric patients and a bed unit for general psychiatric patients	7	4	✓	✓
3 June	'Pension Brøndbyhus', Brøndby Strand	Halfway house under the Prison and Probation Service, particularly for persons who are serving the last part of their sentence or who are under supervision	3	0	✓	✓
6 June	'Horserød Fængsel'	Open prison with closed section, particularly for persons serving a sentence	17	0	✓	

Selected recommendations etc.⁴

- Ensure precise and adequate documentation in records, and continuous quality control
- Store medicines according to applicable legislation
- Update instructions on handover of medicines so that they are in accordance with the requirements of applicable legislation
- Not to use rooms of under eight square metres for double occupancy

- Draw up instructions for the use of force and discuss them regularly with staff

- Ensure correct verbal guidance on possibility of bringing the Department's decisions on disciplinary cell placement before the courts
- Follow and analyse development in number of decisions and days in disciplinary cell
- Mark poured out medicine according to the rules and handle excess medicine in accordance with the rules
- Draw up instructions for observation of inmates in abstinence treatment

The monitoring visit did not give rise to recommendations.

- Maintain protocols on the use of force in accordance with applicable regulations
- Document that debriefings have been carried out

The monitoring visit did not give rise to recommendations.

- Ensure precise and adequate documentation in records, and continuous quality control
- Inform doctor or healthcare staff of inmates placed in disciplinary cell and the expected duration of the placement
- Refer inmates to doctor or dentist without undue delay
- Draw up instructions for the nurses' duties when a doctor is not present, and for treatment of abstinence



Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? ¹	
			Users ²	Relatives etc. ³	DIGNITY	IMR
12-13 June	'Psykiatrisk Afdeling Middelfart'	Six 24-hour units for forensic psychiatric patients	13	0	✓	
20 Aug.	'Rønbæk Fængsel', Skærbæk	Open prison with closed section, particularly for persons serving a sentence	14	0	✓	
29-30 Aug.	'Psykiatrien Øst, Roskilde'	Three integrated bed units and a psychiatric emergency unit for general and forensic psychiatric patients	18	5	✓	✓
3-4 Sep.	'Ringe Fængsel'	Closed prison for persons who are serving a sentence and who are sentenced to be deported	22	0	✓	✓
24 Sep.	'Retspsykiatrisk Afdeling, Skejby'	Two bed units for forensic psychiatric patients	8	13	✓	✓
25 Sep.	'Vejle Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	12	0	✓	
1 Oct.	'Køge Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	11	0	✓	✓
9 Oct.	'Roskilde Arrest'	Local prison particularly for persons remanded in custody during investigation of their case	7	0	✓	✓

Selected recommendations etc.⁴

Still pending at the time of going to press.

- Ensure precise and adequate documentation in records, and continuous quality control
- Inform doctor or healthcare staff of inmates placed in disciplinary cell and the expected duration of the placement

- Ensure that management continuously receive and actively use statistics regarding the duration of forcible measures
- Maintain use of force protocols in accordance with the regulations
- Systematically carry out and document debriefings in accordance with regulations
- Draw up guidelines on prevention and follow-up of violence and threats between patients

- Ensure that interpreters are used to the necessary extent
- Ensure that staff consider using a handcuff transport belt in cases involving transport of inmates over longer distances
- Ensure that the rules are observed when inmates are locked up in their own cells

Two own-initiative cases opened about the use of cell No. 709 and payment for hospital treatment of foreign nationals sentenced to deportation.

Still pending at the time of going to press.

- Ensure that prison officers who have written a report on a disciplinary matter or have been involved in the matter do not attend the interrogation
- Inform healthcare staff of inmates placed in disciplinary cell and the expected duration of the placement
- Ensure precise and adequate documentation in records, and continuous quality control
- Update instructions for handing out medicines and draw up instructions for treatment of abstinence

- Ensure that during disciplinary hearings no weight is attached to the inmate's negative attitude as evidence that the inmate has committed a disciplinary violation
- Deduct the time an inmate has been temporarily excluded from association from a subsequent placement in disciplinary cell
- Ensure that healthcare staff are aware of the special circumstances applicable to healthcare service of persons deprived of liberty, and ensure the quickest possible response to cell calls so the waiting time is 20 minutes at most

- Increase focus on the inmate understanding what is said during interrogation, and increase use of interpreter
- Inform doctor of inmates placed in disciplinary cell and the expected duration of the placement
- Not to use rooms of under eight square metres for double occupancy
- Ensure that inmates can call a prison officer in order to go to the toilet during evening or night hours



Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? ¹	
			Users ²	Relatives etc. ³	DIGNITY	IMR
22 Oct.	'Særforanstaltningen Grevenlund', Odense	Municipal social residential facility for adults with a mental disorder, pervasive behavioural disorders, disruptive behaviour and sentenced to placement in an institution	2	2	✓	
24 Oct.	'Lunden', Brøndby	Regional social psychiatric residential facility for adults with psycho-social difficulties, misuse of intoxicants, disruptive behaviour and sentenced to be placed in an institution	6	2	✓	✓

Selected recommendations etc.⁴

Still pending at the time of going to press.

- Ensure that the board with risk assessment of the residents is placed so that it is not accessible or visible to others than staff
- Keep statistics on the incidence of violence and threats among residents, and continuously analyse the statistics to find causes and patterns
- Maintain focus on work environment problems continuing not to have a spill-over effect on residents' conditions
- Solve problems in relation to handling of medicines and ensure correct recording of administration of medicines, and that unintended incidents are not under-reported

Monitoring activities – children

Theme for 2019

Younger children placed in social care

The target group for monitoring visits in 2019 was children between 6 and 12 years who were placed outside their home in an accommodation facility or a residential institution.

The institutions visited by the Ombudsman's monitoring teams as part of the theme typically also held children and young people placed in care who were outside the target group in terms of age. The year's monitoring visits encompassed – regardless of the target group – all children and young people at the accommodation facilities and residential institutions visited.

As part of the theme, the Ombudsman's monitoring teams visited three municipal residential institutions and five private accommodation facilities and focused particularly on

- use of physical force
- education
- contact with relatives

Examples of important conclusions

- Several institutions and facilities lack adequate knowledge of legislation on the use of force.
- Several in-house schools experience challenges with regard to observing the rules on exemption from school subjects.
- Generally, the institutions are good at supporting the children and young people's contact with their relatives.

The Ombudsman generally recommends

- that accommodation facilities and residential institutions ensure
 - that staff are familiar with the legislation on the use of force
 - that the deadlines for recording and reporting use of force are observed
 - that children, young people and parents are informed on arrival of their rights in relation to, among other things, the use of force
- that accommodation facilities and residential institutions with in-house schools ensure that the rules on exemption from lessons in school subjects are observed
- that accommodation facilities and residential institutions ensure that their medicines instructions observe applicable rules and that the medicines in the facilities and institutions are handled correctly.

See the Ombudsman's specific recommendations (extracts) in the tables on pages 92-95.

Cases concluded in 2019 in relation to monitoring activities

12 cases opened on the Ombudsman's own initiative were concluded in 2019. **Eight** of these cases were opened in direct continuation of monitoring visits. *Three of the cases resulted in criticism or informal recommendations.*

Reports on the themes for our monitoring visits can be found at www.ombudsmanden.dk by clicking next to the small globe icon at the top of the site, selecting 'English' and clicking 'Read more' under the heading 'About the Ombudsman and complaints' and then 'Publications'.

Selected investigations

Secure residential institutions rejected young asylum seekers without age determination:

During a monitoring visit to a local prison, the monitoring team encountered an underage asylum seeker who was remanded in custody. The court had decided that the inmate was to stay there until a place became available in a secure residential institution. However, two secure residential institutions had refused to accept the young person because his age was in doubt and an examination to determine his age had not yet been carried out. The Ombudsman raised the question with the region whether secure residential institutions were entitled to refuse a young asylum seeker if his or her age was in doubt. The region agreed with the Ombudsman that it is the courts and certain administrative authorities which have the power to make decisions on the placement of children and young people in secure residential institutions. The two secure residential institutions' practice of refusing young people without age determination would therefore be changed.

The Ombudsman criticised a municipality's supervision of teaching in a secure residential institution's in-house school: In continuation of a monitoring visit to a secure residential institution, the Ombudsman received a monitoring report on the teaching in the institution's in-house school. The Ombudsman criticised the municipality's supervision of the teaching as it was not possible to assess on the basis of the report whether the pupils of the in-house school received schooling which measured up to what is ordinarily required in ordinary primary and lower secondary schools. The municipality accounted for the measures which it had since implemented in order to improve its supervision of the in-house schools in the municipality, and the Ombudsman therefore took no further steps in the matter.

The Ombudsman opened a case concerning the duty of children's asylum centres to notify the municipality when unaccompanied minors disappeared or stayed away:

During a monitoring visit to a children's asylum centre, the Ombudsman's monitoring team was informed that the Centre did not notify the municipality if a minor about whom the Centre found it had a duty to notify the municipality disappeared or stayed away. In those cases, the notification form was indeed completed but it was only sent to the municipality if the minor returned. In that connection, the Ombudsman opened a case with the Danish Immigration Service. From replies in the case, the Ombudsman noted that any notifications under the Act on Social Services which were in progress would in future always be sent to the municipality, whether or not the minor stayed away while the case was being processed. Furthermore, a notification would always be sent if a child or young person disappeared. On that basis, the Ombudsman took no further steps in the matter.

The Ombudsman criticised that a minor was placed in a prison in which minors were not permitted to serve a sentence: When visiting a closed prison in which minors were not permitted to serve a sentence, the monitoring team encountered a 17-year-old boy. The Ombudsman criticised that the 17-year-old had been placed in a prison in which according to the rules minors could not serve a sentence. In addition, the Ombudsman noted the initiatives which were subsequently taken to ensure that staff were familiar with the rules on 15-17-year-olds – including the rules specifying the closed institutions in which minors can be placed. (News stories published on 31 May 2018 and 26 March 2019).

Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated?¹	
			Users²	Relatives etc.³	DIGNITY	IMR
	11 visits in total		93 talks	51 talks	9 visits	4 visits
28-29 Jan.	'Villa Kokkedal', Hørsholm	Open residential institution for children and young people	7	7		
4-5 Feb.	'Specialinstitutionen Skodsborg'	Residential institution with one open and two partly closed units for young people between 12 and 17 years	3	2	✓	✓
27 Mar.	'Grenen-Dalstrup', Grenå (unannounced follow-up visit)	Solitary confinement rooms in two secure units and in one specially secure unit for children and young people	0	0		
27-28 Mar.	'Mini-institutionerne Solbrinken, Toften og Sølyst', Aarhus	Open residential institution for children and young people	17	3	✓	
1-2 May	'Hostruphøj S/I', Hobro	Socio-educational accommodation facility for children and young people In-house school	10	2	✓	
2-3 May	'Altiden Solskovgaard ApS', Brovst	Socio-educational accommodation facility for children and young people In-house school	8	4	✓	

- 1) The Ombudsman collaborates with DIGNITY – Danish Institute Against Torture and the Danish Institute for Human Rights (IMR) on monitoring activities. Among other things, they participate in a number of monitoring visits.
- 2) Number of children and young people with whom the visiting teams had talks.
- 3) Number of relatives and guardians, if any, with whom the visiting teams had talks.

	Selected recommendations etc.⁴
	Visits concluded with recommendations: 9 Visits concluded without recommendations: 1 Not concluded at the time of going to press: 1
	<ul style="list-style-type: none"> • Ensure that the report forms on the use of force are completed correctly • Consider drawing up in-house guidelines on the use of force which explain in an easy-to-understand way what staff can and cannot do • Strive to keep deadlines for recording and reporting use of force
	<ul style="list-style-type: none"> • Bring house rules and information material on stays in partly closed unit in line with the applicable rules on access of young people to communal areas • Record violence and threats among young people • Continue efforts to ensure the safety of the young people in the institution, including follow-up on specific incidents • Consider drawing up a policy on prevention of violence and threats among the young people <p><i>Case opened on the Ombudsman's own initiative about the legal basis for the institution's practice of locking windows and balcony doors of the young people's rooms at night when they are staying in the open part of the institution. The case was still pending at the time of going to press.</i></p>
	<i>The monitoring visit did not give rise to recommendations.</i>
	<ul style="list-style-type: none"> • Ensure that children, young people and holders of parental responsibility are informed on arrival about their rights in relation to use of force • Adjust guidance on use of force to state that children and young people over the age of 12 can complain to the municipal council about use of physical force
	<ul style="list-style-type: none"> • Ensure that staff, including in-house school staff, are familiar with the scope of the Act on Adult Responsibility for Children and Young Persons in Placement Facilities • Ensure that incidents involving use of force in in-house school are reported to the municipality in which the institution is located • Ensure that the rules on exemption from classes in individual school subjects are observed
	<ul style="list-style-type: none"> • Ensure documentation of pedagogical-psychological assessment when pupils are exempted from classes in one or more school subjects • Draw up local instructions on handling of medicines which can be used in day-to-day work, cf. the applicable guidance on drawing up instructions

4) The table contains selected, abbreviated recommendations. The full recommendations can be found (in Danish only) at www.ombudsmanden.dk, where concluding letters on monitoring visits are published on an ongoing basis. The table also contains information on cases opened on the Ombudsman's own initiative following monitoring visits.



Where did we go in 2019?

When	Where	What	With whom did we speak?		Who also participated? ¹	
			Users ²	Relatives etc. ³	DIGNITY	IMR
14-15 May	'Det Socialpædagogiske opholdssted Munkegården', Avernakø	Socio-educational accommodation facility for children and young people In-house school	12 ⁵	5	✓	✓
15-16 May	'Fonden Asgaard-Sødinge', Ringe	Socio-educational accommodation facility for children and young people In-house school	7	3	✓	✓
10-11 Sep.	'Magnoliegården', Hårlev	Open residential institution for children and young people In-house school	6	7	✓	
17-18 Sep.	'Skole- og behandlingshjemmet Orøstrand'	Socio-educational accommodation facility for children and young people In-house school	13	9	✓	✓
12-13 Nov.	'Marjatta Skolehjem', Tappernøje	Open residential institution for children and young people with mental disabilities	10 ⁶	9	✓	

5) Including one resident over the age of 18.

6) Including nine residents over the age of 18.

Selected recommendations etc.⁴

- Consider a staff training course on careful grips in connection with use of force
 - Ensure observance of rules on full school curriculum
 - In cooperation with the municipality of location to update the agreement on education so that it is in accordance with applicable rules
- Ensure awareness that it is only pedagogical staff etc. who can use force according to the Act on Adult Responsibility for Children and Young Persons in Placement Facilities
 - Ensure that the children and young people are informed that use of force is put on record and that they are given the opportunity to give their own version of the incident and to document that it has happened
 - Review and assess the reported incidents involving use of force together with staff in order to learn from the incidents and prevent use of force
- Ensure that staff are sufficiently familiar with the conditions for using force under the Act on Adult Responsibility for Children and Young Persons in Placement Facilities
 - Continue endeavours to ensure that the rules on teaching the full school curriculum and number of teaching hours are observed
 - Consider drawing up written guidelines on prevention of violence and sexual abuse and on a procedure for handling suspected abuse
- Continue endeavours to prevent and bring down the number of incidents involving use of force
 - Ensure that poured-out medicine is marked with name of drug and date of pouring it out in accordance with the guidance on prescription and handling of medicines

Still pending at the time of going to press.

Discussions, other activities etc. in relation to both children and adults

Discussions with key authorities

Dialogue with the relevant authorities – both at the local level in connection with monitoring visits and at central level – plays an important part in the Om-

budsman's monitoring activities. The Ombudsman has meetings with key authorities on a regular basis together with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

When	Who	Subjects (extracts)
21 May	Department of Prisons and Probation	Overcrowding and understaffing in institutions under the Prison and Probation Service Written information for 15-17-year-olds on their rights and duties Result of internal review of placements in security cells Addiction treatment of remand prisoners Healthcare provision in Prison and Probation Service institutions
27 May	Ministry of Health	Non-statutory authority for interventions and house rules in the psychiatric sector So-called satellite pharmacies of the Prison and Probation Service Reduction in the use of force in the psychiatric sector Shielding in wards Capacity issue concerning the Maximum Security Department of Slagelse Psychiatric Hospital ('Sikringsafdelingen') Handling of medicines in private accommodation facilities Addiction treatment of children and young people in accommodation facilities
27 Aug.	Ministry for Children and Social Affairs	Knowledge of the legislation on the use of force Observance of deadlines for reporting incidents involving the use of force in secure residential institutions Young people' access to a toilet during solitary confinement and summoning of psychiatrist or emergency doctor for young people with mental disorders in solitary confinement Information for children, young people and their parents or guardians in connection with moving into accommodation facilities about their rights in relation to the use of force Addiction treatment of children and young people in accommodation facilities Feedback on reports of the use of force and guidance on complaints Security for residents in (social psychiatric) residential facilities and sector transfers
26 Sep.	Local Government Denmark	Briefing on the issues which the Ombudsman took up at a meeting with the Ministry of Social Affairs and the Interior in continuation of the thematic report for 2017 about young people in secure residential institutions, local prisons and state prisons Briefing on the most important conclusions in the thematic report for 2018
3 Oct.	Danish Immigration Service	Knowledge of the legislation on the use of force Information for children, young people and personal representatives in connection with moving into children's asylum centres on their rights in relation to the use of force Addiction treatment for children and young people in children's asylum centres
24 Oct.	Ministry of Social Affairs and the Interior together with Danish Regions	Non-statutory authority for interventions and house rules in the psychiatric sector
25 Oct.	Department of Prisons and Probation	Inadequate documentation in cases regarding exclusion from association Maintaining exclusion from association due to a lack of space in other places Guidance on forced and voluntary exclusion from association Overview of the total amount of time in which an inmate has been in solitary confinement

Other activities

- Meetings with foreign (including Nordic) ombudsmen or 'national preventive mechanisms' etc., with discussion and exchange of experience
- Meeting with the UN Subcommittee on Prevention of Torture, etc. (SPT)
- Meeting with delegation from the European Council's Committee for the Prevention of Torture (CPT)
- Meetings with national monitoring authorities with discussion and exchange of experience

Other results

- The Department of Prisons and Probation has emphasised the documentation requirements in cases involving the use of pepper spray. This has been done on the basis of a statement from the Ombudsman. (News story published on 21 March 2019).
- In meetings in 2017 and 2018 the Ombudsman discussed a number of issues with the Ministry of Health as a follow-up on the thematic report from 2016 on children and young people in the psychiatric sector. The Ministry then took the following initiatives:
 - Information material was prepared for children and young people and their relatives on the use of force and their rights in the psychiatric sector, in collaboration with the National Council for Children and the Danish Mental Health Fund.
 - Guidance on the use of force etc. was clarified and spelled out in greater detail, among other things in relation to recording use of belt restraints during stomach tube feeding and in relation to medical assessment of children and young people who fall asleep while immobilised with belt restraints. (News story published on 23 January 2019).
- The Ombudsman opened a case about the Central Denmark Region's practice of making voluntary agreements with children and young people in secure residential institutions that they would hand over their clothes for washing on arrival at the institution with a view to, among other things, degrading or destroying any illegal drugs hidden in the clothes. Over the course of the case, the Region decided to stop this practice with reference to the Ombudsman's enquiry and a monitoring report from the local social supervisory authority according to whose assessment the Region did not have statutory authority for its practice. On that basis, and because the Act on Adult Responsibility for Children and Young Persons in Placement Facilities had been changed in the meantime, the Ombudsman decided to close the case.
- On 1 February 2019 new rules on education provision for inmates of compulsory school age came into force. According to the rules, inmates (remand prisoners and inmates serving a sentence) of compulsory school age are entitled to schooling which measures up to what is ordinarily required in primary and lower secondary schools. The rules were introduced in continuation of a case regarding conditions for 15-17-year old inmates in Prison and Probation Service institutions which the Ombudsman had opened on his own initiative. (News stories published on 5 September 2017, 4 July 2018 and 26 March 2019).

Summaries of selected statements – relating to monitoring activities

The Ombudsman regularly publishes statements (in Danish) on selected cases on www.ombudsmanden.dk and on www.retsinformation.dk, the official legal information system of the Danish state.

Summaries are provided on the following pages of the statements published on cases concluded in 2019 which related to monitoring activities. In all three cases, the Ministry of Justice was the authority with prime responsibility.

2019-4. Police use of force to reduce screaming and shouting during deportations

During a forced deportation of a rejected asylum seeker, the deportee offered resistance by, among other things, screaming and shouting on the plane. In order to reduce the shouting, the police officers escorting the deportee restrained him and bent his head towards his chest several times.

The Ombudsman asked detailed questions about the use of this technique. Among other things, he asked the police whether the technique could involve a risk of obstructing the deportee's free breathing.

The police subsequently arranged for the technique to be demonstrated to a doctor. In the doctor's assessment, the technique would not cause airway problems if the person's head was only held briefly in this position and the hold was released when he or she calmed down.

The police also informed the Ombudsman that before the technique is used during a deportation, the escorting police officers are required to try to quieten the deportee down verbally. In addition, the deportee must be informed that the use of force will be discontinued when he or she calms down.

The fact that the police use force in certain situations to reduce screaming and shouting during deportations did not give the Ombudsman cause for comment. In the light of the medical assessment, the technique which had been used by the police also did not give him cause for comment.

However, the Ombudsman recommended the National Police to include directions on how the technique is to be used, and on what conditions, in the internal guidelines of the police on escorted deportations by air.

The use of force during the specific deportation did not give the Ombudsman cause for comment. The police had informed the Ombudsman that the police report on the deportation did not contain adequate documentation of the use of force, and the Ombudsman agreed.

2019-6. Danish police officers did not neglect obligations during deportation

Two legal case officers from the Ombudsman's office were present at a forced deportation by the police of a number of foreign nationals. On arrival in the country of destination, two foreign nationals refused to leave the plane, and a local police chief hit the two deportees in the face.

The Danish National Police assessed that under the European Convention on Human Rights, the Danish police officers had the responsibility for protecting the two foreign nationals.

At the same time, however, the National Police assessed that due to, among other things, safety considerations, the Danish police officers – and thus the Danish state – did not neglect their obligations by not intervening towards the local police chief.

The Ombudsman had no grounds for repudiating the assessment of the National Police that the two foreign

nationals were under the jurisdiction of the Danish authorities. In addition, he had no grounds for criticising the assessment of the National Police that the police did not neglect their obligations during the deportation.

More specifically, the Ombudsman agreed with the National Police, among other things, that it follows from the practice of the European Court of Human Rights in other areas that the positive obligations of a state must not be interpreted in such a manner as to impose a disproportionate burden on the state and that, further, they must be determined by reference to the situation at the time in question. On that basis, states may be held responsible if, for instance, their authorities have failed to take reasonable measures to protect persons for whom the authorities are responsible.

The assessment of the National Police of the obligation of the police to notify relevant authorities of any observations during an escorted deportation also did not give the Ombudsman cause for comment.

Further, the Ombudsman agreed with the National Police that the documentation regarding prescription medicine for one of the foreign nationals was inadequate. As a result of the inadequate documentation, the Ombudsman was unable to assess whether it was an error that the foreign national was not offered any prescription medicine during the deportation.

On 6 February 2019, the National Police issued new guidance notes which clarify the obligations of Danish police officers during deportations.

2019-23. Police assessment of need to use force during deportation not documented

A woman of foreign nationality was to be deported by the police together with several other foreign nationals.

The police assessment prior to the deportation was that both she and the other deportees would seek confrontation during the deportation.

The woman's hands were strapped in a transport belt for three periods during the deportation. The first period was from when she was collected at an immigration detention centre until approximately two hours later, when she had boarded the plane.

The second period was from shortly before a stopover at Rotterdam until shortly after disembarkation at Rotterdam, and the third from shortly before boarding of another plane at Rotterdam until shortly after take-off.

The police described the deportee's conduct during the deportation as 'exemplary'.

The Ombudsman had no grounds for repudiating the assessment of the police of the need for the deportee's hands to be strapped when she was collected at the immigration detention centre and to remain strapped for the first approximately two hours of the deportation.

However, the Ombudsman found that there was not adequate documentation that the police had made a specific, individual assessment prior to the next two times the deportee's hands were strapped which substantiated that the restraint was necessary and proportionate.

Extracts from news - relating to monitoring activities - published on the Ombudsman's website in 2019

The number of subscribers to the Ombudsman's e-mail service, where an e-mail is sent out each time a news story is published (in Danish) on the Ombudsman's website, was 4,106 as at 31 December 2019. To subscribe to the service, go to www.ombudsmanden.dk/nyhedsbrev/.

The Twitter account @ombudsmanden_ had 1,854 followers.

The following pages contain extracts from news stories published by the Ombudsman in 2019. In addition to news stories, the Ombudsman publishes press releases. Press releases are more factual and are typically about processes in major cases. Press releases are published on the Ombudsman's website and distributed via Twitter but, unlike news stories, they are not sent to subscribers to the Ombudsman's e-mail service. In 2019 the Ombudsman published four press releases. However, the following pages do not contain extracts from press releases.

4 January

Ombudsman recommends Department of Prisons and Probation to increase its awareness in relation to use of pepper spray

In 2017 pepper spray was used on inmates in Danish state and local prisons on 125 occasions – almost twice as frequently as the year before. The Ombudsman now recommends that the Department of Prisons and Probation consider whether further initiatives are needed to ensure that pepper spray is used in accordance with the rules.

8 January

Departure Centre Sjælsmark: New information about how long children had been staying at Centre does not change Ombudsman's assessment

On 20 December 2018 the Ombudsman submitted a report on the conditions for children housed at Departure Centre Sjælsmark.

Although it has now emerged that some children had been staying longer at the Centre than stated in his report, the Ombudsman has informed the authorities that the information which has now become available does not change his assessment of the overall conditions for children housed at the Centre.

In his report of 20 December 2018 the Ombudsman concluded that children at Departure Centre Sjælsmark were – generally speaking – to be regarded as living under difficult conditions.

23 January

Greater clarity in relation to immobilisations with restraint belts of children and young people in inpatient psychiatric care

Children and young people in inpatient psychiatric care may be immobilised with restraint belts. When that happens, it is important that clear rules apply and that the immobilisations are documented correctly. For this reason the Ombudsman is pleased with new initiatives aimed at providing greater clarity in relation to immobilisations with restraint belts.

18 March

Ombudsman to investigate use of disciplinary cells in state and local prisons

In 2019 the Ombudsman's Monitoring Department will have special focus on the form of solitary confinement which is called placement in disciplinary cells.

Placements in disciplinary cells are increasingly used against inmates who violate rules in state and local prisons. In 2018 unconditional placements in disciplinary cells were used on 4,752 occasions as against 2,579 occasions in 2015.

Denmark has been criticised several times by the UN and the Council of Europe for protracted placements in disciplinary cells.

21 March

Department of Prisons and Probation to stress that rules on use of pepper spray must be observed

In the light of a specific case the Ombudsman recently recommended the Department of Prisons and Probation to consider whether further initiatives were needed to ensure that the rules were observed when pepper spray was used on inmates in Danish state and local prisons. In this connection the Ombudsman pointed out that the use of pepper spray had almost doubled over the past few years.

The Department of Prisons and Probation has now replied that it will be stressed that the rules on use of pepper spray – including in regard to when pepper spray may be used and what documentation is required – must be observed.

25 March

Ombudsman to focus on younger children in care outside their home in 2019

In 2019 staff of the Ombudsman's Children's Division are going to visit a number of residential institutions and accommodation facilities for children in care where some or all residents are aged six to 12 years – as the theme for this year's monitoring visits by the Children's Division is younger children placed in social care outside their home.

26 March

Minor inmates' rights strengthened

The rights of the small number of 15- to 17-year-olds who are placed in state or local prisons have been strengthened in several respects. This has happened after, among other things, monitoring visits by the Ombudsman, in which connection the Ombudsman raised a number of questions with the authorities.

28 March

Obligations of Danish police officers during deportations clarified

During a forced deportation of foreign nationals to Afghanistan, several Danish police officers saw an Afghan police chief hit two of the Afghan deportees in the face with the flat of his hand on the plane at the airport in Kabul. Afterwards, the Danish National Police assessed that the Danish police officers had the responsibility for protecting the Afghan nationals, but that due to, among other things, safety considerations, they did the right thing by not intervening.

On investigating the matter, the Ombudsman concludes that he has no grounds for repudiating the assessment of the National Police.

1 July

Emphasis is placed on best interests of children with asylum background

Many unaccompanied underage foreign nationals have major problems. However, the children's asylum centres and private accommodation facilities for, among others, children and young people with an asylum background visited by Ombudsman staff place emphasis on ensuring that the best interests of the children and young people come first. This is a central conclusion of the investigation which the Parliamentary Ombudsman has just completed of conditions for children and young people with an asylum background. The investigation focused particularly on use of physical force and the practices of asylum centres and accommodation facilities in relation to notifying the municipality of concerns about the well-being of a child.

10 September

Police must on an ongoing basis reconsider need to use force during deportations

During a police deportation of a foreign national, it may be necessary to use force, for instance in the form of plastic strips around the deportee's wrists. However, the Ombudsman stresses on the basis of two specific deportations that when force is used during a deportation, the police should consider on an ongoing basis whether it is still necessary to use force. The reason is that any use of force must be necessary and proportionate for its entire duration, which follows from the rules of law applicable to police deportations.

All news stories can be read in full
(in Danish) at www.ombudsmanden.dk.

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**FOLKETINGETS
OMBUDSMAND**

5 May 2020

Thematic report 2019

from the Danish Parliamentary Ombudsman

Disciplinary cells

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1. What has the theme led to?

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

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

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

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

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

The Ombudsman's general assessment is

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

2.1. Conditions during placement in a disciplinary cell

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

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

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

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

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

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

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

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

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

2.2. The rules

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

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

2.2.1. The Sentence Enforcement Act

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

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

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

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

2.2.2. *The Disciplinary Punishment Order*

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

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

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

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

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

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

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

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

Remand prisoners are covered by the same rules.

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

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

2.2.3. Guidance Note on Disciplinary Sanctions

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

2.2.4. Local guidelines

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

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

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

3. The background for the choice of theme

3.1. Harmful effects of solitary confinement

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

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

3.2. Recommendations from the UN and the European Council

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

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

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

3.3. International recommendations and resolutions

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

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

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

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

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

3.4. The Ombudsman's experience from previous monitoring visits

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

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

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

3.5. Significant changes regarding disciplinary sanction

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

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

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

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

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

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

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

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

3.6. Extent of disciplinary cell impositions

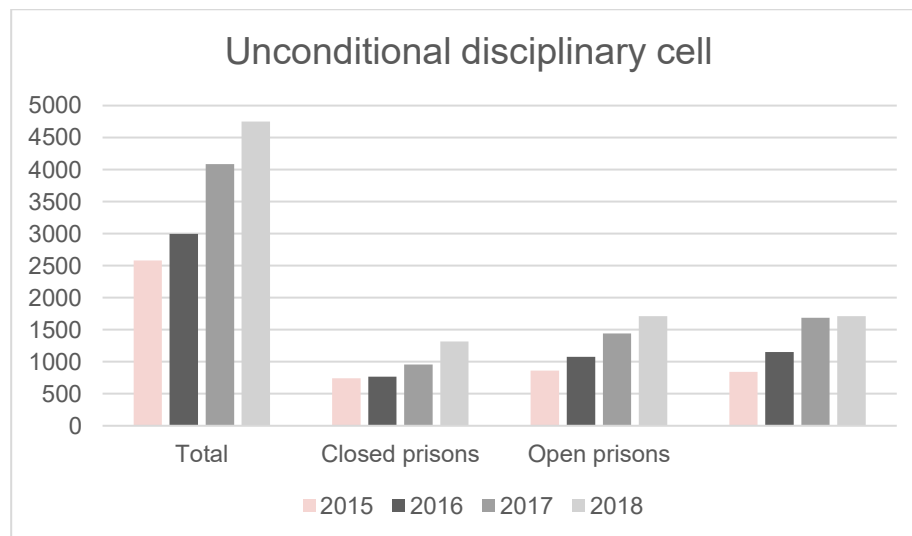


Table 1 – number of unconditional disciplinary cell placements imposed

a) Total number of unconditional disciplinary cell impositions

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

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

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

b) Duration of disciplinary cell placements

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

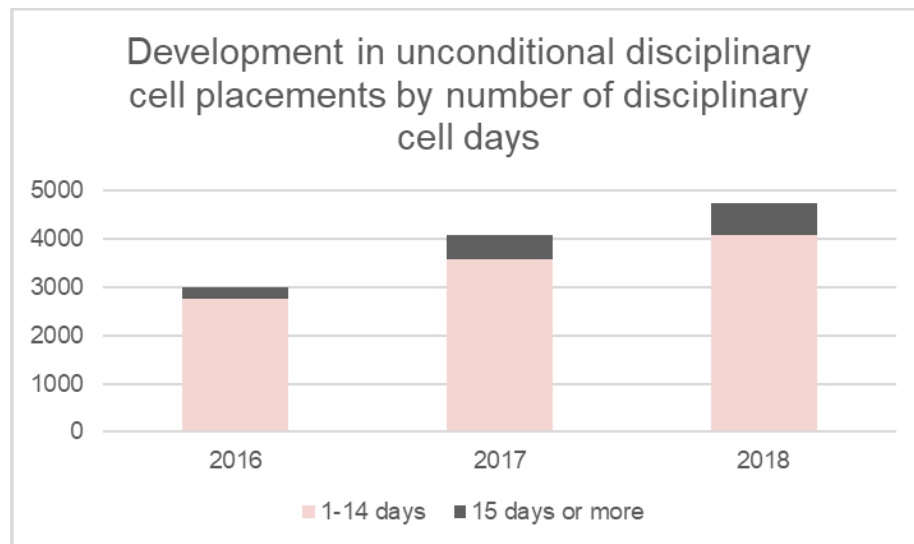


Table 2 shows the development in the number of impositions of unconditional disciplinary cell placements distributed by the duration of the imposed sanction

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

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

3.7. Choice of theme

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

4. What did the Ombudsman do?

4.1. How was the investigation organised?

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

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

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

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

4.2. What did the Ombudsman investigate?

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

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

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

4.3. How were the conditions investigated?

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

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

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

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

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

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

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

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

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

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

5. What did the Ombudsman find?

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

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

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

5.1.1. Disciplinary hearings over the telephone

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

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

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

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

5.1.2. Dual roles when prison staff attend disciplinary hearings

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

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

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

5.1.3. Use of interpreter during disciplinary hearings

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

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

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

5.1.4. Guidance on rights

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

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

5.1.5. The right to be assisted or represented by others

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

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

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

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

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

5.1.6. Correct guidance on complaint

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.2.1. Combined sanction for several violations at the same time

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

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

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

Example:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.4.1. Presentation of the facts of the case

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

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

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

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

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

5.4.2. Assessment of evidence

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.4.4. Grounds for determining sanctions

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

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

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

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

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

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

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

5.4.5. Indication of other reactions than disciplinary sanction

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

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

5.4.6. Continuous quality control by management

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

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

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

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

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

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

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

5.4.8. Noting time of placement in disciplinary cell

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

5.7.1. Prevention of the use of disciplinary cells

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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



Niels Fenger

Appendix 1 – Visited institutions and recommendations

Where	What	With whom did we speak?		Who participated		Recommendations concerning theme
		Users	Relatives, etc.	DIGNITY	IMR	
17 visits		212 interviews	0 interviews	17 visits	7 visits	Visit concluded with recommendations: 17 Visit concluded without comments: 0
Holbæk Arrest	Local prison, particularly for inmates remanded while their case is being investigated	8	0	√		<ul style="list-style-type: none"> • that management ensure that guidance on the possibility of complaining is only given when there actually is such a possibility • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> ○ specification of what is considered proven and ○ precise reference to the violated provision(s) • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports

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

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

Udlændinge-center Ellebæk in Birkerød	Detention centre under the Prison and Probation Service for foreigners who have been deprived of their liberty pursuant to the rules of the Aliens Act	11	0	√	√	<ul style="list-style-type: none"> • that management ensure that the detainee during hearings is clearly informed of each of his or her rights, cf. Section 7(4) of the Disciplinary Punishment Order • that management ensure an increased focus on the detainee understanding what is being said during hearings and an interpreter is used to a greater extent during interrogation, cf. the Council of Europe's Committee of Ministers, Recommendation (Rec(2006)2 to the member States on the European Prison Rules, paragraph 59(e) • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> ○ specification of the facts in the case in the case statement , including underlying reports and witness statements, ○ stating that it is an account of an underlying report, who has written the underlying report and the date thereof ○ stating what is considered to be proven and why it is considered to be proven, including an express opinion on the detainee's objections ○ precise reference to the violated provision • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports • that management ensure that staff are familiar with correct prevention of the harmful mental health effects of placement in disciplinary cell • that management, in a way management deem relevant, ensure that the doctor or the healthcare staff are informed of a detainee's placement in disciplinary cell,
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Where	What	With whom did we speak?		Who participated		Recommendations concerning theme
		Users	Relatives, etc.	DIGNITY	IMR	
						<p>including the time of the placement and the expected duration of the placement</p> <ul style="list-style-type: none"> • that management ensure that Detention Centre Ellebæk's information leaflet to the detainees is updated, including a possible inclusion of guidance on rights and possibilities of complaint in connection with placement in a disciplinary cell <p><i>Own initiative case on introduction of screening for torture and suicide risk in the Detention Centre Ellebæk</i></p>

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

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

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

Nykøbing fængsel, Nykøbing Sjælland	Closed prison especially for inmates serving a sentence	5	0	√	<ul style="list-style-type: none"> • that management ensure an increased focus on the inmate understanding what is being said during hearings and an interpreter is used to a greater extent during hearings, cf. the Council of Europe's Committee of Ministers, Recommendation (Rec(2006)2 to the member States on the European Prison Rules, paragraph 59(e), • that management ensure an increased focus on precise and adequate documentation, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> ○ specification of the facts in the case in the case statement , including underlying reports and witness statements ○ stating that it is an account of an underlying report and who has written the underlying report and at which date ○ stating what is considered to be proven and why it is considered to be proven, including an express opinion on the inmate's objections ○ precise reference to the violated provision ○ precise reference to the authority for the disciplinary sanction ○ specification of other reactions than disciplinary sanction • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports • that management systematically ensure that staff are familiar with the correct prevention of the damaging mental health effects of placement in a disciplinary cell • that healthcare staff to the extent possible participate in morning meetings where the inmates are reviewed, or are otherwise informed of inmates in solitary confinement
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Where	What	With whom did we speak?		Who participated		Recommendations concerning theme
		Users	Relatives, etc.	DIGNITY	IMR	
Haderslev Arrest	Local prison, particularly for inmates remanded while their case is being investigated	4	0	√		<ul style="list-style-type: none"> • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> ○ specification of what is considered to be proven and why it is considered proven, including an express opinion on the inmate's objections, ○ precise reference to the violated provision and ○ precise specification of the authority for the disciplinary sanction and • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports
Næstved Arrest	Local prison, particularly for inmates remanded while their case is being investigated	4	0	√	√	<ul style="list-style-type: none"> • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> ○ specification of the facts in the case in the case statement, including underlying reports and witness statements ○ specification of what is considered to be proven and why it is considered proven, including an express opinion on the inmate's objections, ○ precise reference to the violated provision • that management, in a way which management deem relevant, provide continuous quality control of the written documentation in disciplinary hearing reports

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

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

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

Ringe Fængsel	Closed prison for inmates sentenced to deportation	22	0	√	√	<ul style="list-style-type: none"> • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports, <i>i.a.</i> in relation to: <ul style="list-style-type: none"> ○ stating what is considered proven and why it is considered proven, including an express opinion on the inmate's objections ○ specification of the facts in the case statement, including underlying reports and witness statements ○ stating that it is an account of an underlying report and who has written the underlying report and at what date ○ precise reference to the violated provision ○ precise specification of the authority for the disciplinary sanction • that management ensure an increased focus on the inmate and the interrogation officer understanding what is being said during the hearing, and that an interpreter is used to a greater extent during hearings, cf. the Council of Europe's Committee of Ministers, Recommendation (Rec(2006)2 to the member States on the European Prison Rules, paragraph 59(e), • that management ensure that an interpreter is also used to the necessary extent, including for talks between for instance healthcare staff and inmates and during talks between social services officers and inmates, • that management examine the use of solitary confinement cell No. 709 for use of multiple inmates at a time, including <i>i.a.</i> the scale of the use of cell No. 709, for how long the inmates have been placed in cell No. 709, whether reports on placement of the inmates in cell No. 709 have been written, and whether disciplinary sanctions were imposed on the inmates before or after,
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Where	What	With whom did we speak?		Who participated		Recommendations concerning theme
		Users	Relatives, etc.	DIGNITY	IMR	
						<ul style="list-style-type: none"> • that management ensure that cell No. 709 is used in accordance with the rules, • that cell No. 709 is equipped with the necessary furnishings, • that management ensure that in connection with longer transports of inmates, staff consider using the handcuff transport belt, cf. Clause 2 in Circular No. 9374 of 26 April 2016 on the use of restraints and approval of handcuffs, • that management ensure that locking up inmates in their own cell is in accordance with the rules in Section 6 in Executive Order No. 866 of 25 June 2018 on Inmates' Access to Association, etc. with Other Inmates in the institutions of the Prison and Probation Service (the Association Order) <p><i>Two own-initiative cases raised on the use of cell No. 709 and payment for hospital treatment of foreign nationals sentenced to deportation</i></p>

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

Køge Arrest	Local prison, particularly for inmates remanded while their case is being investigated	11	0	√	√	<ul style="list-style-type: none"> • that management ensure that the inmate during the hearing is clearly guided on each of his or her rights, cf. Section 7(4) of the Disciplinary Punishment Order, • that management ensure that the verbal guidance on the possibility of bringing the Department's decision on disciplinary cell placement before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct • that management ensure an increased focus on the inmate understanding what is being said during admission interviews, disciplinary hearings and consultation with healthcare staff, and that interpreters are used to a greater extent • that management systematically ensure that staff are familiar with correct prevention of the harmful mental health effects of placement in disciplinary cell, • that management ensure that the doctor or the healthcare staff are systematically informed of the inmate's placement in disciplinary cell, including the time of the placement and the expected duration of the placement, • that management ensure that in the evidence assessment during a disciplinary hearing, the inmate's negative attitude during the hearing is not taken as proof that the inmate has committed a disciplinary offence, • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports in relation to: <ul style="list-style-type: none"> ○ specification of who has written the underlying report and at what date, ○ specification of what is considered to be proven and why it is considered proven, including an express opinion on the inmate's objections, ○ precise reference to the violated provision,
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Where	What	With whom did we speak?		Who participated		Recommendations concerning theme
		Users	Relatives, etc.	DIGNITY	IMR	
						<ul style="list-style-type: none"> ○ precise specification of the authority for the disciplinary sanction, ○ specification of other reactions than disciplinary sanction, and ○ indication of whether this is a repeated offence, ● that management ensure that the time which an inmate has been temporarily excluded from association is deducted from a subsequent disciplinary cell placement, ● that management follows the development in the number of decisions and disciplinary cell days

Roskilde Arrest	Local prison, particularly for inmates remanded while their case is being investigated	7	0	√	√	<ul style="list-style-type: none"> • that management ensure an increased focus on the inmate understanding what is being said during hearings and an interpreter is used to a greater extent during hearings, cf. the Council of Europe's Committee of Ministers, Recommendation (Rec(2006)2 to the member States on the European Prison Rules, paragraph 59(e), • that management ensure an increased focus on precise and adequate documentation in disciplinary hearing reports in relation to: <ul style="list-style-type: none"> ○ specification of the facts in the case presentation, including underlying reports and witness statements ○ stating that it is an account of an underlying report and who has written the underlying report and at what date ○ stating what is considered to be proven and why it is considered proven, including an express opinion on the inmate's objections ○ precise reference to the violated provision ○ precise specification of the authority for the disciplinary sanction • that management ensure that the verbal guidance on the possibility of bringing the Department's decision on disciplinary cell placement before the courts, cf. Section 112 of the Sentence Enforcement Act, is correct • that management ensure that the doctor, in the way that management deem relevant, is informed of the inmate's placement in disciplinary cell, including the time of the placement and the expected duration of the placement, • that management follow developments in the number of decisions and disciplinary cell days and – to the extent possible – analyse reasons for the development,
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Where	What	With whom did we speak?		Who participated		Recommendations concerning theme
		Users	Relatives, etc.	DIGNITY	IMR	
						including to a relevant extent compare itself to other comparable institutions.

Appendix 2 – Rules

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

Chapter 11

Disciplinary sanction, confiscation and set-off for damages

Disciplinary sanction

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

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

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

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

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

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

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

...

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

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

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

Interrogation cell

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

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

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

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

Processing of disciplinary cases

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

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

Joint rules

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

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

Use of interrogation cell and serving time in disciplinary cell

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

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

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

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

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

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

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

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

Processing of disciplinary cases

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

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

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

(2) The inmate shall be informed in writing

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

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

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

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

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

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

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

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

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

Administrative right of appeal

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

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

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

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

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

Appendix 3 – Opening letter

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

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

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

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

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

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

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

Information prior to the visit

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

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

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

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

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

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

Programme for the visit

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

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

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

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

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

I therefore ask that this be made possible.

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

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

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

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

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

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

Notice

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

Background for and purpose of the visit

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

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

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

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

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

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

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

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



FOLKETINGETS
OMBUDSMAND

23 June 2020

Thematic report 2019

Younger children in social care placement

Content

23 June 2020

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1. Introduction

Younger children in social care placement was the theme for the monitoring visits which the Ombudsman carried out in the children's sector in 2019 in collaboration with the Danish Institute for Human Rights (IMR) and DIGNITY – the Danish Institute Against Torture.

In this context, children in social care placement mean children who have been placed outside the home in accommodation facilities or open residential care institutions according to the Danish Social Services Act.

The Ombudsman carried out a total of eight monitoring visits in order to examine the theme. The Ombudsman visited five private accommodation facilities and three residential care institutions. All visits were announced in advance.

The target group for the year's monitoring visits was children between the age of 6 and 12 years. Regardless, the visits included all children below the age of 18 years in the visited facilities and institutions.

Six of the eight visited facilities and institutions had in-house schools, and the education provided in the in-house schools was included in the monitoring visits.

During the monitoring visits the focus was especially on:

- use of physical force
- education
- contact with relatives.

During the monitoring visits there was in addition a focus on, among other things, healthcare conditions, including the children's access to healthcare service and the medicines management by the visited facilities and institutions.

2. What have the thematic visits shown?

2.1. Main conclusions

Use of physical force

- The deadlines for recording and reporting the use of physical force were to a wide extent not observed by the visited facilities and institutions.

- There was in a number of facilities and institutions a lack of sufficient knowledge of the rules on adult responsibility and their scope of application, and a lack of sufficient knowledge of how the use of force is exercised most gently.
- A number of facilities and institutions did not inform – in connection with moving in – children, young persons and custodial parents of their rights in relation to the use of force, etc.

Education in in-house schools

- Apart from one, all in-house schools were challenged with regard to observing the rules on teaching a full range of subjects and on the number of teaching hours and with the rules on exemption from lessons in subjects, mandatory tests and examinations of the Danish Folkeskole (the Danish municipal primary and lower secondary school).
- The agreement of a number of in-house schools with the municipality of location regarding schooling did not fully meet the legislative requirements.

Contact with relatives

- In overall terms, the facilities and institutions were good at supporting the children and young people's contact with their relatives.

Medicines management

- A number of facilities and institutions did not fully observe the applicable rules on medicines management.

Appendix 2 contains a list of the visited facilities and institutions and the recommendations made in connection with the monitoring visits.

2.2. General recommendations, etc.

Based on the monitoring visits, the Ombudsman recommends in general the following:

- Accommodation facilities and residential institutions observe the deadlines for recording and reporting the use of physical force.
- Accommodation facilities and residential institutions ensure that staff, including in-house school staff, are sufficiently familiar with the Danish Act on Adult Responsibility towards Children in Foster Care and the Act's

scope of application and with what restraining holds to use in connection with a use of physical force so that the force is used as gently as possible.

- Accommodation facilities and residential institutions ensure that children, young people and custodial parents are informed on arrival about their rights in relation to the use of force and other restrictions of the right of self-determination, including the right to complain. In this context, the Ombudsman recommends that accommodation facilities and residential institutions consider drawing up written material on rights and channels of complaint which can be given to the children, young people and custodial parents on arrival.
- Private accommodation facilities with in-house schools ensure – in cooperation with the municipality of location – that the agreements on education are in accordance with legislation.
- Accommodation facilities and residential institutions with in-house schools ensure that all pupils are taught a full range of subjects and number of teaching hours, and that exceptions from this are only made if a pupil – based on a concrete and individual assessment – is exempted from lessons in one or more subjects or has the teaching time reduced.
- Accommodation facilities and residential institutions with in-house schools ensure that exemptions from lessons in subjects, mandatory tests and Folkeskole examinations are decided in accordance with the rules, and that there is documentation therefore.
- Accommodation facilities and residential institutions ensure that medicines management is carried out in accordance with the applicable rules, and that the places' instructions on medicines management are prepared in accordance with the Danish Health Authority's guidelines on the drawing-up of instructions.

The Ombudsman will discuss the follow-up on these general recommendations with, respectively, the Ministry of Social Affairs and the Interior, the Ministry of Children and Education and the Ministry of Health, and will at the same time discuss additional issues uncovered in connection with the monitoring visits with the relevant ministries, cf. heading 3.3.2, 4.4.2 and 4.8.2 below.

The Ombudsman will also follow up on the general recommendations during future monitoring visits.

Based on the monitoring visits in 2019, the Ombudsman has in addition raised an issue on his own initiative with the Ministry of Social Affairs and the Interior regarding the application of the Danish Act on Adult Responsibility towards Children and Young People placed in Foster Care when they are in respite care at an accommodation facility or residential institution. The Ombudsman has also raised the issue with the Ministry of which in-house school pupils force can be used towards according to the Act on Adult Responsibility. The case is pending.

2.3. Background for the choice of theme and focus points

2.3.1. Younger children who are placed outside the home will often be very vulnerable and have few resources. They may come from a difficult family background and be especially challenged due to their physical and mental health. They may have difficulties understanding why they cannot live at home and be together with their parents, siblings and other relatives. They may also have difficulties in making use of the general measures of support available to children and young people. Their rights may therefore easily come under pressure.

2.3.2. Normally, the Ombudsman will only have very limited contact with 6-12 year old children placed in care. With this theme, the Ombudsman wanted to gain a better insight into conditions for these children, and to examine their conditions in more detail.

During the visits it was important to the Ombudsman to, among other things, get an insight into the extent to which physical force is used in accommodation facilities and residential institutions where younger children are placed, as it can be a distressing experience to be the subject of physical force or to witness others being the subject of physical force.

It was also central for the Ombudsman to examine whether younger children placed in care and attending in-house schools are getting the education they are entitled to according to legislation. This is because research shows that education is the most important factor in relation to children formerly placed in care getting a normal adult life.

Contact with relatives is important for the wellbeing of children during a care placement. Consequently, in connection with the monitoring visits the Ombudsman also examined the extent to which the children had contact and visitation with their relatives, and the extent to which the facilities and institutions supported that contact and visitation.

During the monitoring visits the Ombudsman also wanted to examine the children's access to health services, including the way this is organised. In addition, the Ombudsman examined the medicines management by the visited facilities and institutions. This is because it is important that the staff manage medicines in accordance with the applicable rules on preventing medication errors, among other things.

Appendix 1 contains additional information on the Ombudsman's work with themes.

2.4. How did the Ombudsman proceed?

2.4.1. Prior to the monitoring visits the Ombudsman asked the facilities and institutions for a range of information with a view to shedding light on the conditions which the Ombudsman would focus on during the visits. This was, among other things, the following information:

- Guidelines for use of physical force and information on how children and custodial parents are informed of their rights in relation to the use of force and to other restrictions of the right to self-determination, including the right to complain.
- A summary of the number of times when physical force has been used within the most recent three years with a copy of the five most recent reports on the use of physical force towards children at the facility or institution.
- An account of the reasons for any development in the use of physical force, how the facility or institution prevents the use of physical force, and how children who have been involved in a use of physical force get the opportunity to make a statement regarding the episode.
- Information about children who do not have contact or who rarely have contact with relatives.
- An account of how the children's contact with relatives is organised.
- Instruction for medicines management.
- An account of how the children's access to health care is organised.

If the accommodation facility or residential institution had an in-house school, the Ombudsman also asked for, among other things, a copy of the three most recent exemptions from lessons in a subject in the in-house school.

Furthermore, the Ombudsman asked the private accommodation facilities for

a copy of the agreement with the municipality of location regarding the in-house school.

2.4.2. In the week leading up to the monitoring visits, the Ombudsman sent a letter to the facilities and institutions, containing a card to each individual child placed there, with information about the Ombudsman's upcoming visit.

There was a QR code on the card. By using the QR code, the children had access to a film with information about the Ombudsman's Children's Division, the upcoming monitoring visit and the subjects which the visiting teams would like to talk with the children about. The film (in Danish) can be seen here: <http://boernekontoret.ombudsmanden.dk/besoeg/>.

At the same time, the Ombudsman asked the facilities and institutions to help the children see the film so that everybody was informed of the monitoring visit.

The aim was to reach as many children as possible because their experience of how it is to live in an accommodation facility or residential institution is a significant and important source of information to the Ombudsman.

During the monitoring visits the visiting teams had interviews with 77 children and young people under the age of 18, of which 43 were children between the ages of 6 and 12. In addition, the visiting teams spoke with relatives and staff, including in-house school teachers and those responsible for medicines who also contributed with information about the visited facilities and institutions. Finally, the visiting teams obtained information about the visited facilities and institutions, including on how it is for the children to live at an accommodation facility or residential institution, through discussions with management during the monitoring visits.

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

In addition, the Ombudsman has a special responsibility for protecting children's rights pursuant to, among others, the UN Convention on the Rights of the Child.

The Ombudsman's work on preventing degrading treatment, etc., pursuant to the Protocol is carried out in cooperation with the Danish Institute for Human Rights and DIGNITY – Danish Institute Against Torture.

The Danish Institute for Human Rights and DIGNITY contribute to the cooperation with human rights and medical expertise. This means, among other things, that staff with expertise in these two areas participate on behalf of the two institutes in the planning and execution of and follow-up on monitoring visits.

In addition, a special advisor on children's issues from the Ombudsman's office participates in monitoring visits to the children's sector.

3. Use of physical force

3.1. The rules

The best interest of the child shall be a primary consideration in all actions concerning children, says the UN Convention on the Rights of the Child.

It follows from the Act on Adult Responsibility that staff at accommodation facilities and residential institutions can use physical force towards a child or a young person when certain specified conditions are met.

However, the physical force must only be used as an exception. And the use of physical force must never take the place of care and social-pedagogical measures. In addition, the force must always be in reasonable proportion to the aim and must be exercised as gently and as briefly as conditions allow, and with the highest possible regard for the personal integrity of the child or young person.

The rules on the use of physical force also apply to the in-house schools connected with accommodation facilities and residential institutions.

USE OF PHYSICAL FORCE

Who and what

Staff can restrain or lead a child or a young person to another room.

When

Physical force can be used when the child or the young person exhibits a behaviour, including persistent harassment, which *endangers the child or the young person or others at the location.*

Documentation and hearing

The facility or institution shall *record and report* the use of physical force.

The child or young person shall be *informed of the report* and given the *opportunity to make a statement.*

Information

The child or young person and custodial parents shall be *informed of their rights in relation to the use of force and other restrictions of the right to self-determination*, including channels of complaint, when they arrive at the placement.

3.2. Extent of the use of physical force

The monitoring visits showed that the majority of the facilities and institutions used physical force towards the children only to a limited extent. Some places, however, had overall many instances of use of physical force – in all of the most recent three years or in individual years. In these instances, a significant part of the use of force was centred on one child or on a few children. Often, the child or children in question was or were no longer living at the places.

All the visited facilities and institutions explained to a relevant extent how they worked on preventing the use of force by means of, among other things, so-called 'low arousal', diversion, staff changes and risk assessments.

The Ombudsman recommended to four places to continue their work of preventing and reducing the number of incidences of the use of force.

3.3. Examples of reports on the use of physical force

The Ombudsman asked to receive the five most recent reports on the use of physical force from all the facilities and institutions to be visited.

The Ombudsman received a total of 42 reports on the use of physical force which were reviewed prior to the monitoring visits (see check-up form in Appendix 3). The review of the reports formed a basis for discussions between the visiting teams and the visited facilities and institutions during the monitoring visits.

3.3.1. Observance of deadlines for recording and reporting the use of physical force

If force has been used towards a child or a young person, the manager of the facility or institution (or the deputy manager) shall, pursuant to the rules on adult responsibility, record the incident in a specific report form within 24 hours. The short deadline is primarily out of regard for the legal rights of the child or young person, but also out of regard for the staff involved in the incident.

Then the manager (or deputy manager) of the facility or institution shall without undue delay send a copy of the report form to the placing municipality and inform the custodial parent. By the requirement of 'without undue delay' is meant that the forms must be sent as quickly as possible within 24 hours once the recording has been completed. At the end of the month, a copy of the report form must be sent to the local social supervisory authority, and a possible municipal or regional operator must be informed.

If the use of force has taken place in an in-house school, the use of force shall in addition be reported to the municipality of location (the municipality in which the school is located).

The review of the reports showed that none of the visited facilities or institutions fully observed the deadlines for recording and reporting the use of physical force. In some cases, the places stated that reporting had been carried out but just not been correctly entered in the forms. Several places indicated that the deadlines were very short and difficult to meet, particularly if the use of force had taken place on a Friday or during the weekend.

On this basis, the Ombudsman recommended to five places that they observe the deadlines for both recording and reporting the use of force, while two places were recommended to observe the deadlines for reporting use of force. One place was recommended to ensure that the report forms are completed correctly as far as the time of recording and reporting are concerned.

On that basis, the Ombudsman generally recommends that accommodation facilities and residential institutions observe the deadlines for recording and reporting the use of physical force.

In addition, the Ombudsman gave recommendations to the effect that the report forms be completed satisfactorily. The Ombudsman also recommended that the form in the Executive Order on Adult Responsibility on recording the use of force be used in in-house schools, and that the use of force in an in-house school be reported to the municipality of location (the municipality in which the school is located).

3.3.2. *Prohibited uses of force*

During use of physical force staff may *restrain* or *lead* a child or young person to another room.

By *restrain* is meant that a child or a young person can be restrained physically, for instance by holding the child or the young person in the form of placing your arms around the child/young person while you are standing still. Restraint must never include violence, including violent armlocks, punches or kicks. Neither can the one carrying out the restraint lay down on top of the child or young person and restrain the individual with his or her body weight.

By *lead* to another room is meant that a child or young person can be led to another room in the facility or institution, for instance the individual's own room. When it is a younger child, restraining or leading could take place by carrying the child to another room. When it is an older child or a young person, restraining and leading can for instance be done by having a firm hold of the individual's hand and leading him or her to another room. You can also lead the child or young person while you have your arms around them. The crucial factor is that the child or young person do not suffer harm.

Not all staff at an accommodation facility, a residential institution or an in-house school are allowed to use force. Only the staff carrying out pedagogical work or teaching in in-house schools are allowed to do so. This means that for instance kitchen staff, cleaning staff and janitors are not allowed to use force.

Review of the reports showed examples of children between the ages of 8 and 13 years having been lifted or carried in connection with an incidence involving the use of physical force. The review also showed that physical force in two instances had been exercised by a janitor.

On that basis, the Ombudsman recommended that it be ensured that staff are aware that it is not allowed to lift older children, and that it is remembered that according to the Act on Adult Responsibility only pedagogical staff, etc., are allowed to use force.

The Ombudsman will discuss the issue of lifting children, including the age limit for when staff can carry a younger child to another room as part of a use of force, with the Ministry of Social Affairs and the Interior.

3.3.3. Inclusion of the child

The child or the young person who has been involved in a physical force incident must be informed of the recording of the episode and be given the opportunity to have the record include his or her own views on the episode. This follows from the legislation on adult responsibility.

The review of the reports showed that the children in most, but not all, cases were informed of the contents of the report on the use of force.

Correspondingly, the review showed that the staff, as a main rule, had spoken with – or tried to speak with – the child about the use of force.

All visited facilities and institutions stated that they had spoken with or endeavoured to speak with children towards whom physical force had been used. This was confirmed during interviews with the staff. However, the interviews that the visiting teams had with children towards whom physical force had been used could not in all places fully confirm that this was the case.

In two places, the Ombudsman recommended that it should be ensured that the children and the young persons be informed of the contents of the report on the use of force and be given the opportunity to have the record include their own account of the episode. In addition, the Ombudsman recommended one place to ensure that the children and the young persons be given the opportunity to have a record on the use of force include their own account of the incident.

3.4. Knowledge of the Act on Adult Responsibility and the use of force

Children and young persons living at accommodation facilities and residential institutions or attending in-house schools in accommodation facilities and residential institutions must be treated with dignity, consideration and in accordance with their rights. In order to ensure this, it is among other things crucial that staff are familiar with the rules applying to the use of physical force towards the children and the young persons.

A use of physical force shall be applied as gently and as briefly as possible, as circumstances allow, and with greatest possible consideration for the personal integrity of the child or young person. This presupposes, among other things, that staff know what restraining holds to use in connection with a use of force.

The visiting teams got the impression during the majority of the monitoring visits that not all staff, including in-house school staff, were sufficiently familiar with the rules and scope of application of the Act on Adult Responsibility, or had sufficient knowledge of how a use of force is carried out most gently.

On that basis, the Ombudsman gave a recommendation to five places to ensure that staff, including in-house school staff, have sufficient knowledge of the rules and scope of application of the Act on Adult Responsibility. The Ombudsman also gave a recommendation to three places with the aim of ensuring that staff achieve a sufficient knowledge of what restraining holds to use in connection with a use of force, and how a use of force is carried out most gently.

In the light of this, the Ombudsman recommends generally that accommodation facilities and residential institutions ensure that staff have a sufficient knowledge of the rules and scope of application of the Act on Adult Responsibility and of what restraining holds to use in connection with a use of force so that the use of force is carried out most gently.

3.5. Information on rights

It is important that children, young people and custodial parents are informed of their rights.

When a child or a young person is placed at an accommodation facility or a residential institution, the manager shall inform the child or young person and the custodial parents of their rights in relation to use of force and other restrictions of the right to self-determination, including channels of complaint. This follows from the legislation on adult responsibility.

The visits showed that several visited facilities and institutions had not on arrival informed children, young persons and custodial parents of their rights in relation to use of force, etc.

Some places stated that it was difficult to give information about the possibility of use of force at the time when a child was moving in. The information could seem violent and frightening and could give a wrong impression of the place.

Several parents stated during the interviews that they were not – or could not remember having been – informed of their rights in relation to use of force when their child moved into the accommodation facility or residential institution.

The Ombudsman recommended to five places that they ensure that the children, the young people and the custodial parents are informed on arrival of their rights in relation to use of force and other restrictions of the right to self-determination. In addition, The Ombudsman recommended to one place that it complete the preparation of written material with information of both children's and parents' rights and channels of complaint.

The Ombudsman recommends in general that accommodation facilities and residential institutions ensure that children, young people and custodial parents are informed of their rights in relation to use of force and other restrictions of the right to self-determination, including channels of complaint, when moving in. In this connection, the Ombudsman recommends that accommodation facilities and residential institutions consider drawing up written material on rights and channels of complaints which can be given to the children, the young people and the custodial parents on arrival.

4. Education in in-house schools

4.1. The rules

A child is entitled to education. This follows from the UN Convention on the Rights of the Child.

The rules on primary and lower secondary school education appear from the Danish Folkeskole Act (Act on the Danish municipal primary and lower secondary school) with related executive orders and guidelines. Among other things, an executive order has been issued on special education, etc., in in-house schools at accommodation facilities and residential institutions. At the time of the monitoring visits, the applicable rules were found in Executive Order No. 702 of 23 June 2014 on the Folkeskole's Special Educational Teaching and Other Kinds of Specialist Pedagogical Assistance pursuant to the Danish Folkeskole Act in day-care facilities and placement facilities (now Executive Order No. 693 of 26 May 2020).

Children and young people attending an in-house school are entitled to the same education as children and young people attending a Folkeskole (the Danish primary and secondary State or municipal school). This means that they must be taught the full range of subjects and the number of hours laid down in the Folkeskole Act.

An in-house school must have a capacity of at least 10 pupils at the start of the school year.

4.2. Number of pupils in the in-house schools

The Ombudsman asked all the visited facilities and institutions to state, among other things, what schools the children attended. Some children attended in-house schools, others attended an ordinary Folkeskole or special educational school. The teaching in the ordinary Folkeskole and special educational schools was not included in the monitoring visits.

The in-house schools typically had between 12 and 17 pupils.

In five of the six in-house schools visited by the Ombudsman there were both children living at the facility or institution (live-in pupils) and children who lived at home or were living at another facility or institution (external pupils). In one of the in-house schools, there were only live-in pupils.

4.3. Agreements on education

4.3.1. A private accommodation facility with an in-house school must enter into an agreement with the municipality of location regarding education. The Executive Order on Special Educational Teaching, etc. (mentioned above under heading 4.1) lists a number of elements which the agreement must observe as a minimum, including the pedagogical-psychological services and the recording and reporting to the municipal council of use of force towards pupils.

The Ombudsman visited five private accommodation facilities with an in-house school.

4.3.2. During the monitoring visits to accommodation facilities with in-house schools, the Ombudsman examined whether the facilities had entered into an agreement with the municipality of location, and whether the contents of the agreement met the requirements in the Executive Order.

All five accommodation facilities had entered into an agreement with the municipality of location on education but none of the five agreements fully met the requirements of the Executive Order as to content.

One agreement did not, for instance, contain any stipulations on recording and reporting any use of force towards pupils in the in-house school to the municipality of location. Other agreements had such stipulations but either did not contain an adequate description of the legal basis for using force, or the description was not correct. Correspondingly, several agreements' description of the pedagogical-psychological services was so brief as to be inadequate.

On that basis, the Ombudsman recommended to the five accommodation facilities that they – in cooperation with the municipality of location – update the agreement on education in the in-house school.

On that basis, the Ombudsman recommends in general that private accommodation facilities with in-house schools – in cooperation with the municipality of location – ensure that the agreement on education is in accordance with the applicable rules.

4.4. Educational plan assessment

4.4.1. If a municipality wants to place a child at a placement facility located in another municipality, the placing municipality must involve the municipality of location prior to the placement with a view to establishing a professional dialogue regarding the child's education plan. If it is an emergency placement, the placing municipality must, at the latest when the child is placed, notify the municipality of location thereof with a view to establishing the professional dialogue regarding the pupil's education plan. This appears from the applicable rules, cf. heading 4.1 above.

In addition, no more than three weeks (15 school days) from the placement must pass before an education plan is established for the child. In the interim period, individual teaching must be established, unless the placing municipality can approve an alternative education plan.

4.4.2. Several places stated that it is a general problem that the placing municipalities either not at all or very late, possibly not until the child has moved in, contact the municipality of location regarding education for the child. One place stated that it experienced that the placing municipalities contacted the place directly regarding schooling instead of contacting the municipality of location which made the assessment of the children for schooling difficult and delayed it.

The information could indicate that some municipalities are not sufficiently familiar with or focused on when and who they should contact regarding education for children whom the municipality want to place at a placement facility in another municipality. In consequence, the education plan assessment for children placed in social care is delayed in some cases, so that the children for a period of time do not receive the schooling to which they are entitled.

The Ombudsman did not give any recommendation on this subject but will discuss the issue with the Ministry of Social Affairs and the Interior and the Ministry of Children and Education.

4.5. Schooling in full range of subjects and hours

4.5.1. As mentioned above, children and young people attending an in-house school are entitled to schooling in the full range of subjects and to the number of hours stipulated in the Danish Folkeskole Act.

Range of subjects and hours, including the minimum hours in, respectively, Danish and history and the overall annual minimum hours, vary from grade to grade.

4.5.2. In the in-house schools at the places the Ombudsman visited, the pupils were in several places divided up into two or three groups so that each group included pupils from different grade levels. One place had divided the pupils into three groups – one group for the younger pupils aged 9-10, another group for pupils aged 11-14, and a third group for pupils in 9th and 10th grade.

Another place had divided the pupils into two groups – one group for pupils in 1st till 3rd grade and another group for pupils in 7th till 9th grade.

The fact that the children were taught in groups across grade levels meant that there were doubts in several cases whether the individual pupils received schooling in the full range of subjects and hours corresponding to their grade level.

Furthermore, the visits showed that the in-house schools were particularly challenged in relation to offering lessons in physics and chemistry. Only two of the six in-house schools had their own physics laboratory. However, one of the two in-house schools did not use its physics laboratory for physics lessons. In some of the in-house schools, the physics lessons took place at a local Folkeskole. Two in-house schools did not provide physics and chemistry lessons.

During one of the visits, management stated that having to teach the full range of subjects gave rise to quite a number of challenges. At another place, the school staff said, among other things, that teaching the full range of subjects far from always made sense in relation to the pupils who attended the in-house school.

The visits showed that three of the six in-house schools did not observe the rules on teaching a full range of subjects. However, two of those schools were working on ensuring that the full range of subjects and number of hours were taught.

On that basis, the Ombudsman recommended to two places to continue the work of ensuring that the rules on teaching the full range of subjects and number of hours are observed. One place was recommended to ensure that the rules on teaching the full range of subjects were observed.

The Ombudsman recommends in general that accommodation facilities and residential institutions ensure that all pupils are taught the full range of subjects and number of hours, and that exceptions therefrom are only made if a pupil – based on a concrete and individual assessment – is exempted from lessons in one or more subjects or has the class hours reduced.

4.6. Exemption from lessons in subjects

4.6.1. It is possible to exempt pupils from lessons in one or more subjects, though not in Danish and Maths. This follows from the executive orders on special educational teaching issued pursuant to the Danish Folkeskole Act.

It is only possible to exempt a pupil from lessons in a subject if the pupil has extraordinary difficulties in mastering the subject, so that it is not deemed meaningful to give the pupil special educational teaching in the subject in question.

Exemption from lessons in a subject must be decided on the basis of a concrete and individual assessment of the pupil's difficulties with the subject. It is for instance not possible to exempt a pupil – or a group of pupils – from lessons in a subject on the grounds that the in-house school does not have a teacher who can teach the subject, that the in-house school does not have a classroom specially fitted for the subject, or that there are only one or a few pupils to be taught the subject in question.

A decision to exempt a pupil from lessons in a subject is made by the head of the school on the basis of a pedagogical-psychological assessment. In addition, the parents must give their consent to the exemption.

If a pupil is exempted from lessons in one or more subjects, the pupil must have other lessons instead of the subject(s) in question. It is therefore not possible to reduce a pupil's teaching hours by exempting the pupil from lessons in one or more subjects.

4.6.2. In connection with the monitoring visits to accommodation facilities and residential institutions, the Ombudsman received material concerning seven exemptions from lessons in one or more subjects. Generally, the exemptions had not been made in accordance with the underlying rules, and the reasons given for the exemptions were not adequate.

The basic condition for an exemption – that the pupil has extraordinary difficulties in mastering the subject, so that it is not deemed meaningful to provide the pupil with special educational teaching in the subject in question – was in several cases not mentioned in the exemptions, just as a number of the exemptions did not contain a description of the pupil's difficulties with the subject in which the pupil had been exempted from lessons.

It did not appear from any of the exemptions that a pedagogical-psychological assessment had been obtained from the municipality, or that the decisions on exemption had been made on the basis of such a pedagogical-psychological assessment. It was stated in one of the exemptions that the 'PPR' (Pædagogisk Psykologisk Rådgivning, Pedagogical Psychological Counselling) in the municipality of location was notified of the exemption.

It is important that the pupils are only exempted from lessons in one or more subjects if the basic conditions therefore are met. It is therefore also important that the in-house schools can document the grounds for the exemption, that the parents have given their consent to the exemption and that the decision has been made on the basis of a pedagogical-psychological assessment.

The Ombudsman recommended to five places that they ensure that the rules on exemption from lessons in subjects are observed.

The Ombudsman recommends in general that accommodation facilities and residential institutions with in-house schools ensure that decisions on exemption from lessons in school subjects are made in accordance with the rules, and that there is documentation therefore.

4.7. Exemption from tests and examinations

4.7.1. Pupils in in-house schools must complete mandatory tests and sit the Folkeskole examinations in the same way that pupils taught in the Folkeskole, unless the pupils are exempted according to the special rules applying therefore. This follows from executive orders issued pursuant to the Danish Folkeskole Act

In connection with a decision on exemption from a mandatory test, the head of the school shall, after consultation with the pupil's parents – and as far as possible with the pupil – determine which other methods for assessment of the pupil to use instead of the mandatory test.

Similarly, a decision on exemption from a test shall be followed by a decision on how the pupil's benefit from the schooling can be assessed in another way.

4.7.2. From four of the six places with an in-house school the Ombudsman received material on seven exemptions from mandatory tests and five exemptions from Folkeskole examinations.

A number of the exemptions did not contain information on the background for the exemption, whether the pupil and his or her parents had been included in the decision on exemption, or how the pupil would then be assessed.

On that basis, the Ombudsman recommended to two places that they be aware of the rules on, respectively, mandatory tests in the Folkeskole and the Folkeskole examinations, such as the rules on exemption from tests and examinations.

The Ombudsman recommends in general that accommodation facilities and residential institutions with in-house schools ensure that decisions on exemption from mandatory tests and Folkeskole examinations be made in accordance with the rules, and that there is documentation therefore.

4.8. Municipality's supervision of teaching in in-house schools

4.8.1. A municipality shall supervise the teaching in in-house schools in accommodation facilities and residential institutions located in the municipality. The municipality's supervision shall ensure that the teaching in the in-house schools lives up to the requirements in the Danish Folkeskole Act) with applicable executive orders, including the requirements for range of subjects, minimum hours, total class hours, etc. In addition, the supervision shall ensure that the rules on exemption from subjects, mandatory tests and Folkeskole examinations are observed.

The aim of the municipalities' supervision is thus to ensure that pupils taught in in-house schools receive the education they are entitled to.

4.8.2. The monitoring visits showed that one municipality had not carried out any supervision since 2017 in relation to two in-house schools.

In the rest of the cases, the municipalities' supervision reports were very brief in their mention of range of subjects, minimum hours, total class hours and exemptions from subjects, mandatory tests and Folkeskole examinations. Some reports contained information about for instance exemptions from

subjects, tests and examinations but not an assessment of whether the rules for these exemptions had been observed.

As the monitoring visits were not directed towards the municipalities of location, the Ombudsman did not give any recommendation on this topic. In the places where the municipality of location participated in the visit, the quality of the supervision and the supervision report was discussed with the municipality.

The Ombudsman will discuss the municipalities' supervision of the teaching in the in-house schools and the quality of the supervision reports with the Ministry for Children and Education.

5. Contact with relatives

5.1. The rules

A child has the right to maintain regular contact with both parents, if the child lives apart from one or both parents, except if it is contrary to the child's best interests. This follows from the UN Convention on the Rights of the Child.

It also appears from the Danish Act on Social Services that children have a right of visitation and contact with parents and network, including siblings, grandparents, other family members, friends, etc., while the child is in an out-of-home placement.

The municipal council shall, if necessary, make a decision on the scope and exercise of the visitation and contact, and may specify particular conditions therefore. In making this decision, the municipal council will have special regard to the best interest of the child and the purpose of the placement.

If it is necessary in view of the health or development of the child, the municipality's Children and Young Persons Committee may decide that for a specified period visitation may only be exercised under supervision, or to stop visitation or contact via letter, e-mail or telephone between the child and the parents or network.

5.2. The children's visitation and contact with their relatives

By far the majority of the children living at the places visited by the Ombudsman were in contact with their relatives. The contact could – in addition to visitation – consist of telephone and FaceTime conversations and mobile phone texts.

Some children had reduced or only little visitation and contact with parents and other relatives, for instance supervised visitation or only a few hours of visitation every month.

Only a few children did not have contact with their relatives. In some cases this was because the child did not want to have contact.

Some children wanted more visitation with their relatives than they had.

It varied how the facilities and institutions visited by the Ombudsman were notified of the decisions on limitation of visitation and contact that were made by the authorities. One place was informed over the telephone, while another place sometimes received a copy of the decision that had been made on limitation of visitation or contact with the relatives.

One place stated that it was difficult to enforce the limitations that had been decided regarding telephone contact with relatives, for instance for children attending an external school.

Another place stated that it could be problematic that the children had their mobile phones with them when they had gone to bed at night, among other things because that made it possible for the children to telephone their parents.

It was the Ombudsman's impression that the places generally supported the visitation and contact between the children and their relatives. One place stated for instance that it had helped children to re-establish contact with parents who had been absent from the child's life or with whom the child had lost contact. Another place stated that – if the relationship between parents and child had been very difficult – the place to the widest possible extent took care of establishing contact between the child and its other network.

The Ombudsman gave no recommendation to the visited places on this topic.

5.3. Generally on the cooperation with parents

Generally, the Ombudsman got the impression that the facilities and institutions gave the cooperation with parents high priority, and that some places went to great lengths to make the cooperation work. Two places worked systematically to include the parents.

Several places organised activities with the aim of involving parents and other relatives in the children's lives. These were for instance communal eating, family days, newsletters, summer and winter events. At one place, the child's contact person had regular, weekly telephone talks with the parents, another place had set up a parent council.

A few places stated that they experienced challenges from time to time in the cooperation with parents, for instance parents who showed up unannounced – perhaps intoxicated – but that this was not a big or general problem.

Some of the parents that the visiting teams spoke with were satisfied with the cooperation, others were not satisfied. The parents who were dissatisfied with the cooperation stated that they missed being included and informed of how their children were doing.

The Ombudsman gave no recommendation to the visited places on this topic.

6. Health

6.1. The rules

A child has a right to the enjoyment of the highest attainable standard of health, access to facilities for the treatment of illnesses and rehabilitation of health. This follows from the UN Convention on the Rights of the Child.

Correct medicines management is crucial to patient safety, and the Danish Health Authority has issued partly a guidance on drawing up instructions and partly a guidance on prescription and medicines management. In addition, the Danish Patient Safety Authority has issued a folder on correct medicines management as a tool for care facilities, home care, community nursing, accommodation facilities, etc. (*'Korrekt håndtering af medicin – Et værktøj for plejecentre, hjemmehjælp, hjemmesygepleje, bosteder m.v.'*; in Danish only).

6.2. Access to healthcare service

The children and the young people were registered with a General Practitioner (GP). In several places the children and the young people were registered with the same GP, medical practice or medical centre.

A few places stated that they had a procedure whereby the children and the young people had a medical check-up with the doctor shortly after moving in.

Several places stated that staff helped the children to book an appointment with the doctor, if the children needed to or expressed a wish to see the doctor. Older children typically booked an appointment with the doctor themselves. Staff accompanied the children, if necessary, and participated in the appointment with the doctor, if the child wanted them to. It was also possible for the children to have a confidential talk with the doctor, if the children wanted to.

The children normally followed the vaccination programme. However, a few places stated that it could be difficult to get an overview of previous vaccinations, just as it could be difficult to obtain parental consent to the vaccinations.

6.3. Medicines management

The visits showed that several places did not fully observe the applicable rules for medicines management.

The majority of the visited places were recommended to ensure that medicines management take place according to the applicable rules. The shortcomings consisted for instance of a lack of name and social security number on medicine organiser boxes, and that medicine that had been dispensed, including *pro necessitate* medicine (meaning medicines which can be taken or administered according to need), was not labelled correctly. In a number of cases, the places were issued with recommendations to either draw up or update their instructions on medicines management with a view to ensuring that they observed the Danish Health Authority's guidance on drawing up instructions.

The Ombudsman recommends in general that accommodation facilities and residential institutions ensure that medicines management take place in accordance with applicable rules and that the places' instructions on medicines management are drawn up in accordance with the Danish Health Authority's guidance on drawing up instructions.

Yours sincerely,



Niels Fenger

Danish Parliamentary Ombudsman

Appendix 1: The Ombudsman's work with themes

1. Themes for monitoring activities

Every year, the Ombudsman selects one or more themes for the year's monitoring visits, in cooperation with the Danish Institute for Human Rights (IMR) and DIGNITY – Danish Institute Against Torture.

The choice of theme is particularly dependent on which areas are in need of an extra monitoring initiative. The Ombudsman will often select a narrow theme, such as for instance the Prison and Probation Service's use of security cells. Other times the Ombudsman will select a broad theme such as for instance children and young people who, due to a substantial and permanent impairment of their physical or mental function, attend or reside at an institution.

The themes give the Ombudsman the opportunity to include current topics in his monitoring activities and also to make in-depth and transverse investigations of particularly problematic issues and to gather experience about practice, including best practice.

A principle aim of any year's monitoring visits is to shed light on and investigate the year's themes. The majority of the year's monitoring visits will therefore go to the institutions where the themes are relevant.

2. Thematic reports

At the end of the year, the Ombudsman, together with the Danish Institute for Human Rights (IMR) and DIGNITY, reports on the outcome of the year's monitoring activities.

The themes are especially reported in separate reports on the individual themes. In these reports the Ombudsman sums up and imparts the most important results of the themes.

3. General recommendations

Results of the themes may be general recommendations to the authorities, such as for instance a recommendation to draw up a policy for the prevention of violence and intimidation between users/residents.

General recommendations are based on the Ombudsman's experience of the field in question. Usually, they will also have been given as concrete recommendations to particular institutions during the year's monitoring visits.

Typically, the Ombudsman will discuss the follow-up to his general recommendations with the central authorities. In addition, the Ombudsman will follow up on the recommendations during monitoring visits.

The general recommendations have a preventive aim. The basis for the preventive work in the monitoring field is that the ombudsman has been appointed National Preventive Mechanism (NPM) according to the Optional Protocol to the UN Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT).

The thematic reports are published on the Ombudsman's website, en.ombudsmanden.dk/publications/thematic_reports. In addition, the Ombudsman sends the reports to all relevant authorities so that the authorities can include the reports in their deliberations regarding the various sectors. The Ombudsman also sends the thematic report to the facilities and institutions, etc., which the Ombudsman has visited in that year. Lastly, the Ombudsman informs the Danish Parliament, Folketinget, of the reports.

For further details, please see the Ombudsman's manual for monitoring activities at en.ombudsmanden.dk/introduction/Monitoring_visits/manual_for_monitoring_activities/

Appendix 2: Overview of visited facilities and institutions and recommendations given

Where	What	Interviews with users ¹	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
8 visits		80 interviews	40 interviews	7 visits	3 visits	Visit concluded with recommendations: 8 Visit concluded without recommendations: 0

¹ Number of children and young people with whom the visiting teams had interviews.

Where	What	Interviews with users ²	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Villa Kokkedal in Hørsholm	Open residential institution for children and young people	7	7			<ul style="list-style-type: none"> • Strive to observe deadlines for recording and reporting use of force • Ensure – in accordance with Centre for Social Education and Psychiatry's (CSP) guidelines and working method for forcible measures in the Centre – that it always appears from the report forms what has gone before the use of force itself. • Ensure adequate completion of the report forms, for instance when the form is sent to the local social supervisory authority. • Consider (possibly in cooperation with the municipality) drawing up in-house guidelines for the use of force, explaining in an easily understandable way what staff may and may not do. • Finalise (possibly in cooperation with the municipality) drawing up written material with information on both children's and parents' rights and access to complaint. • Finalise work of laying down a written list of house rules. • Ensure that all staff are aware that the Act on Adult Responsibility does not apply to children in respite care. • Ensure that, in accordance with CSP's guideline, a local procedure for follow-up on use of force is drawn up.

² Number of children and young people with whom the visiting teams had interviews.

Where	What	Interviews with users ³	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Mini-institutions Solbrinken, Tøften and Sølyst in Aarhus	Open residential institution for children and young people	17	3	√		<ul style="list-style-type: none"> • Ensure that staff – in accordance with their wishes – are trained in/taught how a use of force is carried out in practice, including how to carry it out as gently as possible. • Ensure that there is an evaluation with staff of any use of force, and that this will appear from the Mini-institutions' guidance on use of force. • Ensure that the children, young people and custodial parents are informed of their rights in relation to use of force and other restrictions of the right to self-determination, including channels of complaint, when the children and young people take up residence at the institution, cf. Section 24(1)(ii) of the Act on Adult Responsibility. • Adjust the guidance on use of force so that it shows that children and young persons above the age of 12 years can complain about use of force to the municipal council. • Ensure that the report forms are completed adequately with regard to the time of recording and reporting. • Ensure that staff are aware of the City of Aarhus' policies and procedures regarding violence and sexual assault and suspicion thereof, and that, in addition, management consider drawing up own guidelines for prevention of violence and sexual assault between the children/young people.

³ Number of children and young people with whom the visiting teams had interviews.

Where	What	Interviews with users ⁴	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Hostruphøj S/I in Hobro	Social-pedagogical accommodation facility for children and young people In-house school	10	2	√		<ul style="list-style-type: none"> • Continue the work of preventing and reducing the number of use of force. • Update the procedure description concerning the use of force so that it refers to the applicable rules in the legislation on adult responsibility. • Consider extending the procedure description with an easily accessible guideline for the staff regarding the applicable rules on the use of force. • Ensure that children, young people, custodial parents and any guardians are informed – when the children and the young people take up residence at the institution – of their rights in relation to the use of force (and other restrictions of the right to self-determination). • Ensure that staff, including in-house school staff, are familiar with the scope of application of the Act on Adult Responsibility. • Ensure that staff are aware that it is not allowed to lift and carry the children and the young people in connection with a use of force. • Ensure that the grounds in reports recording use of force are adequate. • Strive to observe the deadlines for reporting of use of force. • Ensure that the use of force carried out in the in-house school is reported to the municipality of location. <p>(Continued next page)</p>

⁴ Number of children and young people with whom the visiting teams had interviews.

Where	What	Interviews with users ⁴	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Hostruphøj S/I in Hobro (continued)						<ul style="list-style-type: none"> • In cooperation with Mariagerfjord Municipality, update the agreement on education for the in-house school with a paragraph on recording and reporting to the Municipal Council any use of force towards the pupils. • Ensure that the rules on exemption from lessons in school subjects are observed. • Awareness of the rules on, respectively, mandatory tests in the Folkeskole and the Folkeskole examinations, including the rules of exemption from tests and examinations. • Revise house rules so that they do not contain rules that could constitute a restriction of the right to self-determination for the children and the young people. • Continue the work of implementing the policy on prevention of violence and sexual assaults. <p>(Continued next page)</p>

Where	What	Interviews with users ⁴	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Hostruphøj S/I in Hobro (continued)						<ul style="list-style-type: none"> • Consider the background for the paragraph in the guidelines on prevention of violence and sexual assault that the children are not allowed to date each other, to kiss and touch each other, and in the light thereof ensure that the guideline – if it is maintained – in its content and application does not go further than what the regard for the facility's aim and function intends, including not constituting a disproportionate restriction of the rights of the children and the young people. • Update instructions on the medicines management in relation to date indication and clarification of target group pursuant to guideline on drawing up instructions.

Where	What	Interviews with users ⁵	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Altiden Solskovgaard ApS in Brovst	Social-pedagogical accommodation facility for children and young people In-house school	8	4	√		<ul style="list-style-type: none"> • Continue the work of preventing and reducing number of use of force. • Consider drawing up guidance notes for the use of physical force and other restriction of the right to self-determination. • Strive to observe deadlines for recording and reporting the use of force. • Use the form in the Executive Order on Adult Responsibility for recording and reporting use of force, if such are used in the in-house school towards children placed at Solskovgaard. • In cooperation with Jammerbugt Municipality, update the education agreement for the in-house school so that the paragraph on the use of force takes into account the rules in the Act on Adult Responsibility on recording and reporting the use of force. • Ensure documentation for the pedagogical-psychological assessment carried out in connection with exemption for pupils from lessons in one or more subjects. • Awareness of the rules on, respectively, mandatory tests in the Folkeskole and the Folkeskole examinations, including the rules on exemption from tests and examinations. <p>(Continued next page)</p>

⁵ Number of children and young people with whom the visiting teams had interviews.

Where	What	Interviews with users ⁵	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Altiden Solskovgaard ApS in Brovst (continued)						<ul style="list-style-type: none"> • Consider drawing up written material with information on the rights of the children and young people, including in connection with the use of force, etc., in a language which is targeted at children and young people and which is perhaps tailored to age. • Draw up a local instruction for the medicines management which is practical to use in daily routines, cf. the applicable guidance note on drawing up instructions.

Where	What	Interviews with users ⁶	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Det Social-pædagogiske opholdssted Munkegården at Avernakø	Social-pedagogical accommodation facility for children and young people In-house school	12 ⁷	5	√	√	<ul style="list-style-type: none"> • Consider a training course for the staff on using gentle restraining holds in connection with the use of force. • Resume work on drawing up risk assessments in order to prevent the need for using force. • Consider extending guidelines on the use of force as guidance for staff. • Ensure that children, young people and custodial parents are informed of their rights in relation to the use of force when the children and the young people take up residence at the facility. • Ensure that staff are familiar with the legislation on the use of force. • Strive to observe deadlines for recording and reporting the use of force. • Ensure that the children and the young people are informed of the contents of the report on the use of force and are given the opportunity to have the report include their own account of the episode. • Ensure compliance with the rules on teaching the full range of subjects so that it is also possible to have lessons in physics/chemistry. • Ensure compliance with rules on exemption from lessons in subjects, including especially that exemption is decided on the basis of a pedagogical-psychological assessment carried out by PPR. <p>(Continued next page)</p>

⁶ Number of children and young people with whom the visiting teams had interviews.

⁷ Including a young person above the age of 18 years.

Where	What	Interviews with users ⁶	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Det Social-pædagogiske opholdssted Munkegården at Avernakø (continued)						<ul style="list-style-type: none"> • In cooperation with the municipality of location, update the agreement on education in accordance with applicable rules (concerning assessment and use of force). • Consider the background for the house rule on telephone access, and in light thereof ensure that the rule – if it is maintained – in its content and application does not go further than what the aim and function of the facility intend, including not constituting a disproportionate restriction of the rights of the children and the young people. • Ensure correct labelling of <i>pro necessitate</i> medicine so that it appears when the medicine has been dispensed and when it must be discarded (4 weeks after dispensing).

Where	What	Interviews with users ⁸	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Fonden Asgaard-Sødinge in Ringe	Social-pedagogical accommodation facility for children and young people In-house school	7 ⁹	3	√	√	<ul style="list-style-type: none"> • Ensure that staff are sufficiently familiar with the rules on force in the legislation on adult responsibility, possibly by giving staff a training course in the subject. • Consider a training course for staff on using gentle restraining holds in connection with use of force. • Ensure awareness of the fact that according to legislation on adult responsibility, it is only pedagogical staff who are allowed to use force. • Consider drawing up guidelines on the use of force as guidance for staff. • Ensure that children, young people and custodial parents are informed of their rights in relation to the use of force (and other restrictions of the right to self-determination) when the children and the young people take up residence at the facility. • Strive to observe deadlines for recording and reporting the use of force. • Continue the work of ensuring documentation in reports on the use of force, and ensure that the manager's assessment is included in the report form. • Ensure that the children and the young people are informed of the contents of the report on the use of force and are given the opportunity to have the report include their own account of the episode, and document that this has taken place. <p>(Continued next page)</p>

⁸ Number of children and young people with whom the visiting teams had interviews.

⁹ Including two young persons above the age of 18 years.

Where	What	Interviews with users ⁸	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Fonden Asgaard-Sødinge in Ringe (continued)						<ul style="list-style-type: none"> • Review the reported use of force with staff and carry out an assessment and discussion thereof in order to learn (and prevent the need for the use of force). • Continue the work of ensuring compliance with the rules on teaching the full range of subjects and on number of hours. • Ensure compliance with the rules on exemption from lessons in subjects, including especially that exemption is based on a pedagogical-psychological assessment carried out by PPR. • In cooperation with the municipality of location, finalise the agreement on education and ensure accordance with applicable rules (particularly on exemption from lessons in subjects and on the use of force). • Ensure notification to the relevant extent pursuant to Section 153 of the Social Services Act in connection with unlawful absence from school. • Ensure that the formal requirements for instructions in the field of health care are followed, cf. the Danish Health Authority's guideline on drawing up instructions. • Ensure that the temperature in the fridge is checked regularly when medicines are kept there.

Where	What	Interviews with users ¹⁰	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Magnoliegården in Hårlev	Open residential institutions for children and young people In-house school	6	7	√		<ul style="list-style-type: none"> • Continue the work of preventing the need for and reducing the number of use of force. • Ensure that staff are sufficiently aware of the conditions in the Act on Adult responsibility for using physical force. • Strive to observe the deadlines for recording and reporting the use of force. • Ensure that incident descriptions in report forms on the use of force are adequate. • Ensure that the children and the young people are given the opportunity to have a report on a use of force include their own account of the incident. • Continue the work of ensuring that the rules on teaching the full range of subjects and number of hours are observed. • Continue the work of ensuring that the rules on exemption from lessons in individual subjects are observed. • Ensure that in-house school staff are familiar with the scope of application of the Act on Adult Responsibility. • Consider drawing up written guidelines on prevention of violence and sexual assaults, and on procedure in connection with suspicion of assault. • Ensure that the instructions on medicines management are updated with clarification of target group pursuant to guidance on drawing up instructions. <p>(Continued next page)</p>

¹⁰ Number of children and young people with whom the visiting teams had interviews.

Where	What	Interviews with users ¹⁰	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Magnoliegården in Hårlev (continued)						<ul style="list-style-type: none"> • Ensure that the instruction regarding <i>pro necessitate</i> medicine is updated so that the description corresponds to the actual procedure. • Ensure that medicine organiser boxes are labelled with name and social security number.

Where	What	Interviews with users ¹¹	Interviews with relatives and others	DIGNITY participated	IMR participated	Recommendations
Skole- og behandlings-hjemmet Orøstrand	Social-pedagogical accommodation facility for children and young people In-house school	13	9	√	√	<ul style="list-style-type: none"> Continue the work of preventing the need for and reducing the number of use of force. Ensure that children, young people and custodial parents are informed of their rights in relation to the use of force (and other restrictions of the right to self-determination) when the children and the young people take up residence at the facility. Strive to observe deadlines for reporting the use of force. Ensure that the grounds for the use of force in the report forms are adequate. Ensure that the instructions on medicines management are updated with date indication and clarification of managerial responsibility and target group pursuant to guidance on drawing up instructions. Ensure that dispensed medicine is labelled with drug name and dispensing date, pursuant to guidance on prescription and medicines management.

¹¹ Number of children and young people with whom the visiting teams had interviews.

Appendix 3: Check-up form for review of report forms on use of physical force

DANISH PARLIAMENTARY OMBUDSMAN

Check-up form on use of physical force

Institution, including any specific unit: _____

Age of the child or the young person at the start of the use of force: _____

Name of the child or the young person: _____

Date of use of force: _____

In general

- | | | |
|---|--------------------------|--------------------------|
| Has the standard form of Order 94/2019, appendix 1 a, been used | <input type="checkbox"/> | <input type="checkbox"/> |
| | Yes | No |
| Have the mandatory blue boxes been (largely) filled in | <input type="checkbox"/> | <input type="checkbox"/> |
| | Yes | No |
| Have the voluntary green boxes been (largely) filled in | <input type="checkbox"/> | <input type="checkbox"/> |
| | Yes | No |

The intervention

Physical use of force: Duration: ____ hours ____ minutes

Does the description give grounds for doubt about the lawfulness,
of the intervention, including proportionality? Yes No Unclear

If yes, state reasons briefly _____

Has the intervention been sufficiently documented? Yes No Unclear

Inclusion of the child or the young person

Has the child or the young person been informed about the report?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	No info.
Has the child or the young person had the opportunity to comment on the episode?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	No info.
Has the child or the young person commented on the episode?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	No info.
Has a solution been found on how the use of force can be avoided in future?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	No info.
Does the inclusion of the child or the young person give grounds for other comments?	<input type="checkbox"/>	<input type="checkbox"/>	
	Yes	No	

State reasons briefly _____

Recording and reporting

Has the episode been recorded in the report form 'within 24 hours'?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	No info.
Has a copy of the report form been sent to the placing municipality 'without undue delay'/'within 24 hours after recording'?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	No info.
Has the custodial parent been informed 'without undue delay'/'immediately after recording'?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	No info.
Has a copy of the report form been sent to the Social Supervision Authority 'by the end of the month'?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	No info.
Has municipal or regional operator been informed 'by the end of the month'?	<input type="checkbox"/>	<input type="checkbox"/>	<input type="checkbox"/>
	Yes	No	No info. Not relevant

Has the episode been reported to the school municipality?

Yes

No

No info.

Not relevant

NOTE: Special rules apply on recording and reporting an action which is subject to prosecution, including a possible criminal liability.

Best interest of the child

Has the best interest of the child been a primary concern when using force,

including in relation to the inclusion of the child or the young person?

Yes

No

Unclear

Briefly state reasons for reply _____

Other remarks