

Criminal Detention in the EU Conditions and Monitoring

Update of FRA's Criminal Detention Database
(FRANET)

**Ireland
2021**

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Part I: National standards

1. Cells

- a) **Cell space:** What is the national standard for cell space available to detainees in m²? Are the calculation requirements spelled out by the CJEU in its *Dorobantu* ruling¹ observed?

The legislative framework under which Irish prisons are run is based largely around the Prisons Act 2007 and the Prison Rules 2007 made thereunder.² Rule 18 of the Rules requires a system of certification of cells in respect of size, lighting, heating, ventilation and fittings, and this certification should specify the number of prisoners to be held in each cell. Exceptionally, under Rule 19, a prisoner may be accommodated in non-certified cells. The Rules do not specify the actual size that cells should be. However, the Inspector of Prisons has recommended that single occupancy cells should be at least 7m² with at least 2m between the walls. For each additional prisoner, there should be an additional 4m².³ The Inspector reiterated this recommendation three years later.⁴ The Inspector also recommended that long-term prisoners should be accommodated in single cells.⁵ The Irish Penal Reform Trust has also been advocating the use of single cells.⁶ The Prison Service, however, considers single-cell occupancy “in absolute terms [as] neither a goal nor appropriate in all circumstances”, but accepts that providing such occupancy where it is the preference of the prisoner has become an achievable goal given both the increase in prison capacity and the decline in the number of prisoners.⁷

In 2019, the Supreme Court took note of the Jurisprudence of the European Court of Human Rights as regards cell size, noting that an allocation of less than 3m² per prisoner would create a presumption of a violation of Article 3 of the European Convention on Human Rights.⁸ There is no reference in the decision to the *Dorobantu* decision or any jurisprudence from the Court of Justice of the European Union. However, the *Dorobantu* decision has been noted by the High Court in several decisions concerning European Arrest Warrants.⁹

In its most recent report on Ireland (2019), the European Committee for the Prevention of Torture reported that in Cork, Cloverhill, Midlands and Mountjoy Prisons (which hold roughly two-thirds of Irish prisoners), single cells were of adequate size (between 8m² and 11m²) and were well furnished.¹⁰ Single cells in Arbour Hill were more cramped at 6m². Multi-prisoner cells were not so good, however. In Cloverhill Prison, for example, the majority of cells are designated as triple occupancy, but measure only 11m², so each prisoner has less than 4m² living space each. The Committee recommended that

¹ For the CJEU’s calculation requirements please see: CJEU, [C-128/18, Dorobantu](#) [GC], Judgment of 15 October 2019, oper. part.

² [The Prison Rules 2007](#), These Rules, drawn up by the Minister for Justice and Equality, have statutory force being enacted in SI 252/2007 under authority granted by section 35 of the Prisons Act 2007.

³ Office of Inspector of Irish Prisons, [The Irish Prison Population – an examination of duties and obligations owed to prisoners](#), 2010, section 2.3.

⁴ Office of Inspector of Irish Prisons, [An Assessment of the Irish Prison System](#), 2013, section 2.6.

⁵ Office of Inspector of Irish Prisons, [An Assessment of the Irish Prison System](#), 2013, section 2.9.

⁶ Irish Penal Reform Trust, [Progress in the Penal System: Assessing progress in a pandemic](#), 2020, p. 20.

⁷ Irish Prison Service, [Capital Strategy 2016-2021](#), 2016, p. 21.

⁸ [Simpson v. Governor of Mountjoy Prison](#) [2019] IESC 81, para. 72.

⁹ [Minister for Justice and Equality v. Dicu](#) [2020] IEHC 607; [Minister for Justice and Equality v. Iancu](#) [2020] IEHC 316; [Minister for Justice and Equality v. Gheorghe](#) [2020] IEHC 618; [Minister for Justice and Equality v. Pal](#) [2020] IEHC 143.

¹⁰ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, para. 65.

such cells be refurbished such that no more than two prisoners will be accommodated therein.¹¹

The most recent figures from the Irish Prison Service (October 2020) indicate that only 1,964 prisoners out of 3,768 (52%) were in single cells.¹² A further 1,498 prisoners, or 40% of the total, were in double cells.¹³ A report from the Irish Penal Reform Trust indicates that some prisoners are still occasionally without proper beds: 75 in March 2020 were sleeping on mattresses, although this had declined to only 1 in June 2020.¹⁴ This suggests that overcrowding is still an issue in Irish prisons, although the Prison Service increased temporary release early in the pandemic in order to reduce the prison population as an infection control measure.¹⁵

It might be noted that the Inspector of Prisons has specifically recommended that prisoners held on remand be detained where possible in single cells, and be separated from sentenced prisoners.¹⁶ Male remand prisoners are held in Castlerea and Cloverhill Prisons, the latter of which is designed as a remand prison. Female remand prisoners are held at the Dóchas Centre in Dublin.

b) **Cell equipment, furniture and facilities:** Are there any national standards for cell equipment (heating, ventilation, cooling, etc.), furniture (bed, mattress, shelf, wardrobe, seating, table, etc.) and/or facilities (lighting, incl. windows, washbasin, toilet, shower etc.), including any measurements? If so, what do they require?

The Irish Prison Rules, at Rule 22(1), provide that each prisoner “shall be issued with separate bedding adequate for warmth and health and shall be cleaned regularly”. Further, Rule 22(2) prohibits requiring a prisoner to sleep without a mattress. The European Committee for the Prevention of Torture complained in 2019 of one prisoner who had spent a month sleeping on a mattress on the floor, there being no bed available for him. The Committee also noted that this occurred to another prisoner, a foreign national who suffered from Parkinson’s Disease.¹⁷

c) **Video-surveillance of cells:** Are there any national standards for video-surveillance of cells? If so, what do they require?

The Irish Prison Service has established a CCTV Surveillance Policy Document which provides, at section 4.2.2, that cameras “will not be installed in areas where people have a reasonable expectation of privacy such as toilets, shower rooms, staff canteens, prison cells”.¹⁸ At section 4.1.2, the policy states that where CCTV cameras are installed, unless a criminal offence has been or is being committed, respect for the individual’s liberty and privacy should be the primary consideration. Accordingly, CCTV footage should be reviewed only at random 20 minute periods in a shift unless investigating a specific incident.¹⁹

¹¹ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, para. 39.

¹² Irish Prison Service, [Census Prison Population October 2020 – Cell Occupancy – In-Cell Sanitation](#), 2021.

¹³ Irish Prison Service, [Census Prison Population October 2020 – Cell Occupancy – In-Cell Sanitation](#), 2021.

¹⁴ Irish Penal Reform Trust, [Progress in the Penal System: Assessing progress in a pandemic](#), 2020, p. 54.

¹⁵ Irish Penal Reform Trust, [Progress in the Penal System: Assessing progress in a pandemic](#), 2020, pp. 14-18. In March 2020, there were 4,200 prisoners in the system; within a month, the number had dropped to 3,800.

¹⁶ Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland](#), 2011, Standard 22.

¹⁷ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, para. 66.

¹⁸ Irish Prison Service, [CCTV Surveillance Policy](#), 28 March 2013.

¹⁹ Irish Prison Service, [CCTV Surveillance Policy](#), 28 March 2013, section 4.1.2.

d) **Hygienic conditions in cells:** Are there any national standards with regard to cleaning and/or cleanliness of cells? If so, what do they require?

The Prison Rules 2007, at Rule 20(1), require all prisoners to maintain their cells, utensils, books, clothing, bedding and other articles in a clean and neat condition. Prisoners are also required to comply with any local orders "in relation to housekeeping, including the maintenance of a healthy and safe living environment".²⁰

e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

The standards described herein apply generally to the prisons in Ireland regardless of the inmate being detained on remand or as a punishment. This is clear from the Prison Rules 2007, at Rule 2, which defines a prisoner as including a person being "lawfully detained in prison [...] on committal by a court or awaiting a trial". The Inspector of Prisons has indicated, however, that there are certain extra obligations regarding remand prisoners. Where relevant, these extra obligations were stated in the text.

f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 1. a) – e), including their respective legal basis.

1) Access to the Courts

In *Simpson v. Governor of Mountjoy Prison*, the Supreme Court made the following observation:

The fact of imprisonment necessitates a restriction on freedom and other fundamental rights; but this does not mean that all of a detainee's personal constitutional protections are abrogated. In addition to the fundamental constitutional rights which, subject to necessary limitations, continue to apply, statutory provisions such as the Prisons Act 2007 ... and the Prison Rules, 2007 ... not only set out specific disciplinary procedures and principles governing prison conditions, but also outline the obligations of administrators toward those under their care and supervision.²¹

All prisoners are entitled to defend their constitutional and statutory rights through the courts. The *Simpson* case concerned a constitutional challenge brought by a protected prisoner who shared a cell that did not have in-cell sanitation and was required to slop-out each morning. As a protected prisoner under Rule 63 (see below) of the Prison Rules 2007, he was confined to the cell for 23 hours per day. MacMenamin J., for the Supreme Court, decided that the appellant had been exposed to humiliating and distressing conditions that infringed his personal rights under the Constitution, especially his right of privacy, and contravened the constitutional values of dignity and autonomy. The appellant was awarded €7,500 in damages.

Prisoners are also entitled to bring an application for judicial review to the High Court seeking to challenge the decisions or decision-making procedures of administrative bodies such as the Irish Prison Service or prison governors. Applicants can seek an Order of Certiorari or an Order of Mandamus to quash a decision or to compel the performance of an obligation, respectively. The Courts Service provides a basic overview of the process on its website.²² There are numerous examples of prisoners making use of this

²⁰ Ireland, [Prison Rules 2007](#), Rule 20(2).

²¹ *Simpson v. Governor of Mountjoy Prison* [2019] IESC 81, at para. 2.

²² For details see: www.courts.ie/judicial-review.

procedure. In *Murray v. Ireland*, Finlay J. held that in making its decision, a court cannot strike down a decision merely because the court would have come to a different conclusion.²³ In *Nash v. Irish Prison Service*, in the context of a challenge to refuse a transfer to another prison, the High Court pointed out that prisoners “cannot expect or demand bespoke arrangements for where they serve their sentences”.²⁴ The court went on to hold that the courts should not attempt to micro-manage criminal detention arrangements, and should interfere with such matters as little as possible. Judicial review should be granted if the decision or the decision-making process was arbitrary or capricious.

Attempting to enforce non-statutory documents such as Irish Prison Service policy documents or Inspector of Prisons’ reports is more difficult as they do not have statutory force. In *PMcD v. Governor X Prison*, the Court of Appeal considered a claim from a prisoner for damages in respect of an alleged breach of the Prison Service’s Complaints Policy.²⁵ The Court of Appeal described the policy as aspirational in nature and dependent on proper resourcing, and noted that it had no statutory force. Nor did the policy create a common law duty of care (a prerequisite for a negligence claim). Thus, the prisoner’s claim for damages failed.

2) Grievance Procedure

The Prison Rules set out an extensive grievance procedure as an aspect of Part 3 (treatment of prisoners) for breach of the Rules. Under Rule 55(1), the prison governor will meet with a prisoner. At such a meeting, the prisoner may make a complaint and the Governor is obliged to notify the prisoner of his decision as soon as possible.²⁶ Prisoners are also entitled to request a meeting with the Inspector of Prisons, and the Governor is obliged to forward that request without undue delay.²⁷ Alternatively, a prisoner may seek a meeting with an officer of the Minister for Justice and Equality, and again the Governor is obliged to forward that request without delay.²⁸ A ministerial officer, nominated by the Director General of the Irish Prison Service, will meet the prisoner as soon as possible,²⁹ and this meeting will take place within the view but out of the hearing of prison staff.³⁰ The ministerial officer may make a recommendation to the Governor,³¹ who must notify the Minister of his reasons if he refuses to give full effect to the recommendation.³²

The Prison Rules (Amendment) 2013 introduced a further procedure to enable a prisoner to make a complaint about a criminal offence.³³ Any allegation of a crime by a prisoner shall be notified to both the Governor and An Garda Síochána.³⁴ The Governor is obliged to keep a detailed record of the complaint, and to assemble relevant evidence including CCTV recordings, and to arrange for the prisoner to be interviewed and a record kept of

²³ [Murray and Murray v. Ireland](#) [1991] ILRM 465

²⁴ [Mark Nash and the Chief Executive of The Irish Prison Services, the Minister for Justice and Equality and the Attorney General v. Governor of Mountjoy Prison and Governor Of Arbour Hill Prison](#) [2015] IEHC 504.

²⁵ [PMcD v. Governor of X Prison](#) [2020] IECA 189.

²⁶ [Prison Rules](#), 2007, Rule 55(2).

²⁷ [Prison Rules](#), 2007, Rule 56.

²⁸ [Prison Rules](#), 2007, Rule 57(1).

²⁹ [Prison Rules](#), 2007, Rule 57(2).

³⁰ [Prison Rules](#), 2007, Rule 57(3).

³¹ [Prison Rules](#), 2007, Rule 57(4).

³² [Prison Rules](#), 2007, Rule 57(5).

³³ [Prison Rules \(Amendment\) 2013](#), SI No. 11/2013. These new rules were introduced as a result of two reports from the Inspector of Prisons. See also Inspector of Prisons, [Guidance on Best Practice relating to Prisoners’ Complaints and Prison Discipline](#), 2010 and [Suggested Prisoner Complaints Model for Irish Prisons](#), 2012.

³⁴ [Prison Rules](#), 2007, Rule 57(A), as inserted by the [Prison Rules \(Amendment\) 2013](#), Rule 2.

any injuries.³⁵ Further, a specific procedure exists in the event of a complaint of assault or excessive force against a prisoner, or ill treatment, racial abuse, discrimination, intimidation, threats or other misconduct likely to bring discredit upon the Prison Service.³⁶ All evidence must be secured,³⁷ and the complaint and evidence must be referred within seven days to the Director General of the Prison Service and notified to the Inspector of Prisons.³⁸ The Director General will appoint an investigating team unless he is satisfied that the complaint is vexatious.³⁹ The purpose of the investigation is to determine whether there are grounds for the complaint.⁴⁰ All prison staff are duty-bound to cooperate with the investigation.⁴¹ The resulting report will be sent to the Governor and the Director General, with a copy being sent to the Inspector of Prisons.⁴² The prisoner has a right of complaint if he is dissatisfied with the conclusion of the report.⁴³

To implement these complaints procedures, the Irish Prison Service issued a Prisoner Complaints Policy document in 2015.⁴⁴ Under this policy, a standard complaints form should be freely available in all prisons, which can be placed in complaints post boxes which should be located in prisoner-accessible locations throughout the prisons. These boxes are to be emptied every day, the complaint forms are to be stamped and copied with a copy returned to the prisoner in a sealed envelope. The Policy also sets out an investigation policy, distinguishing between different categories of complaints. The most serious complaints (Category A) are to be investigated according to Rules 57A and 57B (see above). The complaints' categories are as follows:⁴⁵

- Category A = complaints from prisoners alleging serious ill treatment, use of excessive force, serious intimidation/discrimination or threats by a member of staff;
- Category B = mid-range complaints from prisoners in terms of seriousness, including discrimination, verbal abuse by staff, inappropriate searches, etc.;
- Category C = service level complaints such as complaints about visits, phone calls, missing clothing, delayed post, not getting appropriate exercise, etc.;
- Category D = complaints against professionals such as dentists, doctors, etc.; and,
- Category E = complaints made by visitors to the prison; and,
- Category F = complaints against decisions made by the Prison Service centrally such as decision relating to transfer requests.

In 2019, a total of 1,051 complaints were received:⁴⁶

Category	Number	Percentage of Total
A	64	6
B	147	14

³⁵ [Prison Rules](#), 2007, Rule 57(A)(2).

³⁶ [Prison Rules](#), 2007, Rule 57(B)(1).

³⁷ [Prison Rules](#), 2007, Rule 57(B)(3).

³⁸ [Prison Rules](#), 2007, Rule 57(B)(4).

³⁹ [Prison Rules](#), 2007, Rule 57(B)(5).

⁴⁰ [Prison Rules](#), 2007, Rule 57(B)(6).

⁴¹ [Prison Rules](#), 2007, Rule 57(B)(7).

⁴² [Prison Rules](#), 2007, Rule 57(B)(10).

⁴³ [Prison Rules](#), 2007, Rule 57(B)(11).

⁴⁴ Irish Prison Service, [Policy for Prisoner Complaints](#), 2015.

⁴⁵ Irish Prison Service, [Policy for Prisoner Complaints](#), 2015, pp. 4-15.

⁴⁶ Irish Prison Service, [Policy for Prisoner Complaints](#), 2015, p. 43.

C	687	66
D	138	13
E	14	1
F	1	0
TOTAL	1051	100

A total of 265 were listed as not upheld, and 105 were still outstanding/ongoing.⁴⁷

In a 2016 review, the Inspector of Prisons concluded that there had been a “litany of failures” at all levels of the Irish Prison Service which rendered the procedure ineffectual.⁴⁸ The procedure did not have the confidence of prisoners, prison staff or the public. The Inspector recommended that prisoners be able to make a complaint to a judicial or other authority⁴⁹ (citing the UN Mandela Rules⁵⁰), and suggested that this authority be the Ombudsman.⁵¹ The prisoners should, however, have to exhaust internal prison complaints’ procedures first.⁵² Each prison should put in place a robust investigative mechanism to deal with serious allegations.⁵³ All investigations must follow fair procedures,⁵⁴ and all relevant prison staff should receive relevant and adequate training in the complaints process.⁵⁵ In its *Annual Report* for 2019, the Inspector of Prisons concluded again that there were “serious deficiencies” in the operation of the complaints’ procedure, not least instances of non-compliance with the law.⁵⁶ The Inspector noted receiving multiple letters from prisoners detailing failings with the complaints procedures, including complaint forms not being accessible, a fear of retaliation, a failure to investigate complaints, delays in the investigation process, and results not being made known to the prisoner.⁵⁷ The Inspector’s previous concerns had not been allayed, and the Inspector called on the Service to deal with these concerns as a matter of extreme urgency.⁵⁸ In her *Annual Report* for 2020, the Inspector reiterated its concern at “the poor adherence by the IPS to the law in relation to prisoner complaints”.⁵⁹

The Irish Prison Service has committed itself to taking into account the Mandela Rules in its prisons.⁶⁰ In a later Strategic Policy, the Irish Prison Service asserted that they had strengthened the complaints mechanism through a review of the complaints procedure “with a view to introducing a greater involvement and oversight by an

⁴⁷ Irish Prison Service, [Policy for Prisoner Complaints](#), 2015, pp. 44-46.

⁴⁸ Inspector of Prisons, [Review, Evaluation and Analysis of the IPS Prisoner Complaints Procedure](#), 2016, para. 7.2.

⁴⁹ Inspector of Prisons, [Review, Evaluation and Analysis of the IPS Prisoner Complaints Procedure](#), 2016, Recommendation 1.

⁵⁰ United Nations (UN), [Standard Minimum Rules for the Treatment of Prisoners \(2015 Revision\)](#), A/RES/70/175, 17 December 2015.

⁵¹ Inspector of Prisons, [Review, Evaluation and Analysis of the IPS Prisoner Complaints Procedure](#), 2016, Recommendation 2. The Office of the Ombudsman was established in 1984 to deal with complaints from individuals about their dealings with Government departments and State agencies.

⁵² Inspector of Prisons, [Review, Evaluation and Analysis of the IPS Prisoner Complaints Procedure](#), 2016, Recommendation 3.

⁵³ Inspector of Prisons, [Review, Evaluation and Analysis of the IPS Prisoner Complaints Procedure](#), 2016, Recommendation 5.

⁵⁴ Inspector of Prisons, [Review, Evaluation and Analysis of the IPS Prisoner Complaints Procedure](#), 2016, Recommendation 10.

⁵⁵ Inspector of Prisons, [Review, Evaluation and Analysis of the IPS Prisoner Complaints Procedure](#), 2016, Recommendation 11.

⁵⁶ Office of Inspector of Prisons, [Annual Report 2019](#), 2020, p. 49.

⁵⁷ Office of Inspector of Prisons, [Annual Report 2019](#), 2020, p. 42.

⁵⁸ Office of Inspector of Prisons, [Annual Report 2019](#), 2020, p. 49.

⁵⁹ Office of Inspector of Prisons, [Annual Report 2020](#), 2021, p. 24.

⁶⁰ Irish Prison Service, [Strategic Plan 2016-2018](#), 2016, Goal 2.9.

independent body, the Ombudsman".⁶¹ The Policy itself committed the Service to implementing the recommendations of the Inspector of Prisons arising from an audit of the complaints system.⁶² The Service also committed itself to the introduction of a system of internal review and an external independent appeal system, again utilising the good offices of the Ombudsman.⁶³ These commitments grew from the Service's human rights public sector duty; recognising that the Service did not always meet its own commitments, prisoners must have a right to make a complaint to the prison authorities and to independent bodies. Prisoners must "have access to a credible and independent complaints system that deals with genuine complaints in an open, transparent and independent way and provides appropriate redress".⁶⁴

The Court of Appeal held recently that the Complaints Policy "seeks to improve the lot of prisoners by providing a grievance procedure for their benefit. It provides a framework within which prisoners can make complaints which will be dealt with confidentially, properly investigated and with procedural fairness".⁶⁵ The court went on to hold, however, that the Policy is "aspirational in nature and ... [is] dependent to a significant degree on having the resources to implement it."⁶⁶ Accordingly, the court held that the Policy did not create a duty of care towards prisoners, and thus could not give rise to a claim for damages based in negligence. Nor was the Policy itself actionable, not having any statutory authority. Thus, the plaintiff's claim for damages arising out of a failure by the Irish Prison Service to abide by the terms of the Policy Document failed.

3) Complaints to Inspector of Prisons

The Prison Rules provide, in Rule 44, that prisoners are permitted to communicate confidentially with the Inspector of Prisons (among other bodies).⁶⁷ In 2019, the Inspector received 46 letters from 34 prisoners in 9 prisons.⁶⁸ Thirteen prisoners requested a meeting with the Inspector, and various other issues were raised including alleged assaults, unfair treatment, healthcare issues and solitary confinement. One letter wanted to compliment staff.⁶⁹

4) Prisons Visiting Committees

Each Irish prison has a visiting committee which will visit the prison several times each year.⁷⁰ During the visit, the committee will also meet with prisoners, and others may write to the committee requesting a meeting.

g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports

⁶¹ Irish Prison Service, [Strategic Review 2019-2022](#), 2019, p. 6.

⁶² Irish Prison Service, [Strategic Review 2019-2022](#), 2019, Strategic Priority 3.3.

⁶³ Irish Prison Service, [Strategic Review 2019-2022](#), 2019.

⁶⁴ Irish Prison Service, [Strategic Review 2019-2022](#), 2019, p. 21.

⁶⁵ *PMcD v. Governor of X Prison* [2020] IECA 189, para. 49.

⁶⁶ *PMcD v. Governor of X Prison* [2020] IECA 189, para. 51.

⁶⁷ Rule 44 also allows prisoners to communicate with a lawyer, a member of prison's visiting committee, the Minister for Justice and Equality, senior Irish judges, the European Court of Human Rights, the European Committee on the Prevention of Torture, the parole board, the Irish Human Rights and Equality Commission and International Committee of the Red Cross.

⁶⁸ Office of Inspector of Prisons, [Annual Report 2019](#), 2020, p. 50.

⁶⁹ Office of Inspector of Prisons, [Annual Report 2019](#), 2020, p. 51.

⁷⁰ The reports of the *Visiting Committees* are available at <http://www.justice.ie/en/JELR/Pages/Prison-Visiting-Committee-Annual-Reports>.

from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

Ireland signed the OPCAT in October 2007 but has yet to ratify it.⁷¹ Similarly, Ireland has yet to establish a National Preventive Mechanism as required by OPCAT. The UN Committee against Torture, in its Concluding Observations on the second periodic review in August 2017, was critical of this delay and recommended ratification of OPCAT.⁷² The Irish Human Rights and Equality Commission has published research on the implementation of OPCAT,⁷³ and the Department of Justice and Equality is consulting with stakeholders on foot of this research.⁷⁴ The Minister for Justice has indicated that this research and the consultations will inform a new Inspection of Places of Detention Bill which will be the primary mechanism for a National Preventive Mechanism. These consultations were still ongoing in mid-2019,⁷⁵ and a speech from the Secretary General of the Department of Justice and Equality in January 2021 suggests that a Bill was due to be drafted "in the coming weeks".⁷⁶ There is no sign that the Bill has been drafted as of this writing.

2. Sanitary conditions

a) What is the national standard with regard to access to toilets? Are these located in cells? If not, do detainees have access to these facilities without undue delay, even during the night? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

The Prison Rules 2007, in Rule 24(1), requires the provision of sanitary and washing facilities in a prisoner's cell insofar as practicable. Where this is not the case, Rule 24(2) requires prisoners to have reasonable access to sanitary and washing facilities. And under Rule 25(3), prisoners should be provided with such toiletries as are necessary for health and cleanliness, and additional toiletries should be available for purchase.

The Inspector of Prisons recommended in 2010 and again in 2013 that single cells should have in-cell screened toilets; in multi-prisoner cells, in-cell sanitation facilities should be required, and in all cases such toilets should be screened.⁷⁷ As noted above, the Supreme Court in 2019 awarded damages to a prisoner who had to share a cell that had no in-cell sanitation and had to slop out each morning.⁷⁸ The Court noted that the conditions under which the appellant had been held "fell substantially below the standards to be expected of an Irish prison in the year 2013".⁷⁹ Nevertheless, the most recent census of prisoners indicates that 1,734 prisoners (46%) in October 2020 must

⁷¹ United Nations, [UN Committee against Torture, Concluding Observations on the Second Periodic Report of Ireland](#), August 2017, para. 7(a).

⁷² United Nations, [UN Committee against Torture, Concluding Observations on the Second Periodic Report of Ireland](#), August 2017, para. 8(a).

⁷³ Murray R. and Steinerte E., [Ireland and the Optional Protocol to the UN Convention against Torture](#), IHREC, Dublin, 2017.

⁷⁴ Ireland, [Parliamentary Query 291](#) from Deputy Clare Daly, 30 January 2018.

⁷⁵ Ireland, [Parliamentary Query 22](#) from Deputy Donnchadh O'Laoghaire, 16 May 2019.

⁷⁶ Ireland, Secretary-General Oonagh McPhillips, [Keynote address at the launch of 'Progress of the Irish Prison Service'](#), 26 January 2021.

⁷⁷ Office of Inspector of Prisons, [The Irish Prison Population – an examination of duties and obligations owed to prisoners](#), 2010, section 2.3; Inspector of Prisons, [An Assessment of the Irish Prison System](#), 2013, section 2.6

⁷⁸ [Simpson v. Governor of Mountjoy Prison](#) [2019] IESC 81. Note that this case related to conditions in Mountjoy Prison in 2013.

⁷⁹ [Simpson v. Governor of Mountjoy Prison](#) [2019] IESC 81, para. 86.

use toilet facilities in the presence of others, 2,007 prisoners (53%) have 24-hour access to a toilet, while 47 prisoners (1.25%) were still required to "slop-out".⁸⁰ The slopping out takes place only in Limerick and Portlaoise Prisons. The Prison Service considers the elimination of slopping out as the "single most pressing objective of estate modernisation in recent times".⁸¹

The European Committee for the Prevention of Torture noted that in-cell toilets had only partial screens,⁸² and recommended that all in-cell toilets have floor-to-ceiling partitions.⁸³

b) What is the national standard with regard to access to regularly cleaned shower/bathing facilities? How often is this access provided? Do these facilities have to offer privacy to detainees who use them and, if so, in how far?

The Prison Rules 2007, at Rule 25(2), provide that prisoners are entitled to take a hot shower or bath "as often as is reasonably practicable" but is entitled to do so at least once per week. Rule 25(1) also requires that all prisoners keep his or her person clean. The Irish Penal Reform Trust reports that there are 849 in-cell showers across the prison estate, compared to a prison population of some 3,800.⁸⁴ The IPRT has recommended that "Ireland should be striving for better prison conditions with single-cell accommodation available to all, along with the provision of in-cell showers".⁸⁵

c) What are the national standards with regard to cleaning and cleanliness of sanitary facilities?

There are none specific to sanitary facilities, but there is a general obligation on all prisoners to keep their facilities clean.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

See 1e above.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 2. a) – d), including their respective legal basis.

See 1f above.

⁸⁰ Irish Prison Service, [Census Prison Population October 2020 – Cell Occupancy – In-Cell Sanitation](#), 2021.

⁸¹ Irish Prison Service, [Capital Strategy 2016-2021](#), 2016, p. 21.

⁸² Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, para. 65.

⁸³ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, p. 39.

⁸⁴ Irish Penal Reform Trust, [Progress in the Penal System: Assessing progress in a pandemic](#), 2020, p. 54.

⁸⁵ Irish Penal Reform Trust, [Progress in the Penal System: Assessing progress in a pandemic](#), 2020.

f) Please, provide a link to the National Preventive Mechanism’s reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

See 1g above.

3. Time out of cell

a) What is the national standard set for time per day/week spent by detainees outside of their cells:
 a. Outdoors (within the boundary of the prison)?
 b. Indoors in the common area?

At a minimum, a prisoner will generally be permitted to spend at least two hours out of his or her cell “with an opportunity during that time for meaningful human contact”.⁸⁶ This period will include any periods out-of-cell in which the prisoner engaged in any authorised activity which offers the opportunity for meaningful human contact.⁸⁷ Meaningful human contact is defined to mean “interaction between a prisoner and another person of sufficient proximity so as to allow both to communicate by way of conversation”.⁸⁸ Further, prisoners “shall be allowed to spend as much time each day out of his or her cell or room as is practicable”, and at the Governor’s discretion, to associate with other prisoners.⁸⁹

Early in the pandemic, a restricted regime was the norm in Irish prisons, with the general population being locked up for an average of 19 hours per day.⁹⁰ The *Irish Times* reported that in April 2020 some prisoners awaiting Covid tests were locked up for 24-hours per day.⁹¹ The most recent figures from the Irish Prison Service indicate that in October 2020 a total of 728 prisoners were subject to a restricted regime.⁹² That represents almost one fifth of the total prison population. The following table shows the breakdown:⁹³

23 Hours in Cell	22 Hours in Cell	21 Hours in Cell	20 Hours in Cell	19 Hours in Cell	Total
103	224	234	18	149	728

⁸⁶ Prison Rules, 2007, Rule 27(1)(a), as inserted by [Prison \(Amendment\) Rules 2017](#), SI No. 276/2017.

⁸⁷ Prison Rules, 2007, Rule 27(1A).

⁸⁸ Prison Rules, 2007, Rule 27(4).

⁸⁹ Prison Rules, 2007, Rule 27(1)(b).

⁹⁰ Irish Penal Reform Trust, [Progress in the Penal System: Assessing progress in a pandemic](#), Dublin 2020, p. 54.

⁹¹ Gallagher C., ‘[Inmates with Covid-19 symptoms kept in 24-hour lock-up](#)Some prisoner with virus symptoms kept in 24-hour lockup with no showers’, *The Irish Times*, 24 April 2020.

⁹² Irish Prison Service, [Census of Restricted Regime Prisoners, October 2020](#), 2021, p. 3.

⁹³ Irish Prison Service, [Census of Restricted Regime Prisoners, October 2020](#), 2021, p. 3.

Of these prisoners, the vast majority (523 or 72%) were on a restricted regime at their own request. A further 161 were subject to a restricted regime due to Covid-19 infection control measures.

Regarding visits, prisoners should be assigned to a prison as close to their homes as possible, in order that prisoners maintain contact with their families.⁹⁴ All prisoners should receive at least one thirty-minute visit per week.⁹⁵ The Inspector of Prisons has recommended that generally remand prisoners should be entitled up to six visits per week, but at least three, and the visits should be of at least fifteen minutes in duration.⁹⁶

b) Do sports or other recreational and/or educational facilities have to be available to detainees? If so, what types?

Rule 27(2) of the Prison Rules 2007 provides that a prisoner may engage in authorised structured activity, “including work, vocational training, education, or programmes intended to ensure that a prisoner, when released from prison, will be less likely to reoffend or better able to reintegrate into the community”. Further, each prisoner should be engaged as far as practicable in such activity for at least five hours on each of five days each week (Rule 27(3)). In its most recent published strategy statement, the Irish Prison Service stated that they “ensure that prison regimes provide for appropriate out-of-cell time and sufficient constructive activities are provided during periods of unlock”.⁹⁷ Action 2.10 committed the Prison Service to improving employment opportunities for offenders, partly through increased productivity of prison work training facilities.

The Inspector of Prisons commented in 2010 that it was reasonable to assume that a prison would have sufficient services for the population it was intended to accommodate.⁹⁸ The provision of services would be inadequate, however, in prisons experiencing overcrowding. He also pointed out that the provision of services did not necessarily mean that those services were available to prisoners. As an example, he referred to workshop facilities in Portlaoise Prison which had been built but not commissioned.⁹⁹

The precise facilities vary from prison to prison. The Inspector of Prisons noted in 2010, for example, in Arbour Hill Prison (in which most prisoners have been convicted of sexual offences), prisoners had educational facilities, a library a gym, a variety of workshops, and various work details.¹⁰⁰ Castlerea Prison, consisting of three different blocks, had different facilities in each. In the older parts, prisoners theoretically had access to educational classes, a library, a gym, workshops and work details, but in many cases

⁹⁴ Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland](#), 2011, Standard 93.

⁹⁵ Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland](#), 2011, Standard 95.

⁹⁶ Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland](#), 2011, Standard 97.

⁹⁷ Irish Prison Service, [Strategic Plan 2016-2018](#), 2016, p. 5.

⁹⁸ Inspector of Prisons, [The Irish Prison Population – An Examination of Duties and Obligations owed to Prisoners](#), 2010, para. 3.11.

⁹⁹ Inspector of Prisons, [The Irish Prison Population – An Examination of Duties and Obligations owed to Prisoners](#), 2010, para. 3.13.

¹⁰⁰ Inspector of Prisons, [The Irish Prison Population – An Examination of Duties and Obligations owed to Prisoners](#), 2010, para. 6.5.

the workshops and the library were closed.¹⁰¹ The Inspector concluded that, at least in 2010, Castlerea Prison did not have adequate relevant structured activity for its population.¹⁰²

Note that the Inspector of Prisons has recommended that, in addition to the general requirements for prisons, remand prisoners be granted appropriate facilities to allow them to prepare their defence and to meet with their lawyers.¹⁰³

The Inspector of Prisons has also recommended that prison work be available to prisoners as a “positive aspect of prison regimes”, and should not be considered a form of punishment.¹⁰⁴ This work should help to prepare prisoners for work when released from prison.¹⁰⁵ This work should be paid.¹⁰⁶ Remand prisoners should not be required to work, but they should have the same opportunity to work as other prisoners and be paid at the same rate.¹⁰⁷

The Irish Prison Service has accepted the need to provide facilities for education, work training, recreation and faith as part of the Service’s obligation to provide prisoner care.¹⁰⁸ However, the Service indicates that there has been a trade-off between the provision of these facilities and the provision of sufficient capacity and the development of in-cell sanitation, with the latter taking priority.¹⁰⁹ In the Inspector of Prisons’ most recent report (for 2019), the Inspector commented that while an “impressive” array of educational courses were available to prisoners across the prisons estate, “there are frequent difficulties in escorting prisoners from their accommodation to classrooms and workshops”.¹¹⁰ These situations arise usually due to staff shortages. Nevertheless, over one-third of prisoners attended education courses in 2019.¹¹¹

The Prison (Amendment) Rules 2020 was enacted to empower prison authorities to take steps to restrict prisoner entitlements in order to prevent the spread of Covid-19.¹¹² A new Rule 32A empowers the Director General of the Irish Prison Service or the governor of an individual prison to restrict a prisoner’s entitlement to physical recreation, exercise or training to prevent or limit the spread of an infectious disease. They can do so, however, only on the advice of the Department of Health, the Health Service Executive, the Director of Prison Healthcare Services or a prison doctor.

c) Is there a national standard for time spent in cells? If so, what does it require?

¹⁰¹ Inspector of Prisons, [The Irish Prison Population – An Examination of Duties and Obligations owed to Prisoners](#), 2010, para. 7.8.

¹⁰² Inspector of Prisons, [The Irish Prison Population – An Examination of Duties and Obligations owed to Prisoners](#), 2010, para. 7.17.

¹⁰³ Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland](#), 2011, Standard 51.

¹⁰⁴ Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland](#), 2011, Standard 153.

¹⁰⁵ Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland](#), 2011, Standard 155.

¹⁰⁶ Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland](#), 2011, Standard 156.

¹⁰⁷ Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland](#), 2011, Standard 157.

¹⁰⁸ Irish Prison Service, [Capital Strategy 2016-2021](#), 2016, p. 22.

¹⁰⁹ Irish Prison Service, [Capital Strategy 2016-2021](#), 2016, p. 22.

¹¹⁰ Office of the Inspector of Prisons, [Annual Report for 2019](#), 2020, p. 39.

¹¹¹ Office of the Inspector of Prisons, [Annual Report for 2019](#), 2020, Table 2.

¹¹² Prison Rules 2007, Rule 32A, inserted by the [Prison \(Amendment\) Rules 2020](#), SI 250/2020, Rule 3.

See answer at a) above

- d) Are there any national standards with regard to activities and/or programmes that should be available to detainees when they are outside their cells? If so, what do they require?

See answer at b) above

- e) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

See 1e above.

- f) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 3. a) – e), including their respective legal basis.

See 1f above.

- g) Please, provide a link to the National Preventive Mechanism's reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the [OPCAT Database](#).

See 1g above.

4. Solitary confinement

- a) What are the national standards regarding solitary confinement?

Section 13(1)(c) of the Prisons Act 2007 explicitly allows for a prisoner who has breached prison discipline to be confined to a cell for up to three days. However, as the Irish Penal Reform Trust points out, other sanctions can be applied to prisoners for longer periods

the effect of which is akin to solitary confinement.¹¹³ The European Committee for the Prevention of Torture made a similar observation, noting that some prisoners were being held in de facto solitary confinement but whose situation was not being recorded as such.¹¹⁴

Rule 62 of the Prison Rules 2007 governs the implementation of an isolation regime on a prisoner. This Rule permits a prison governor to direct that a prisoner be prohibited from:

- Engaging in authorized structured activities generally,
- Participating in communal recreation, or
- Associating with other prisoners.

The governor's decision must be based upon information such as to cause him or her to reasonably believe that allowing the prisoner would otherwise constitute a "significant threat to the maintenance of good order or safe and secure custody".¹¹⁵ The order may remain in force for longer than is necessary to secure these objectives,¹¹⁶ and must be reviewed at least every seven days.¹¹⁷ The governor must inform the prisoner in writing of the reason for the order, and of the result of any review of the order.¹¹⁸ In complying with this provision, the governor must give actual reasons: in *Paget v. Governor of Midlands Prison*, the governor had invoked Rule 62 in respect of the applicant, and the reasons given simply restated the wording of Rule 62.¹¹⁹ The High Court found this to be inadequate and provided not even a minimal explanation for the decision.¹²⁰ The governor is also obliged to inform the prison doctor and a chaplain of the prisoner's denomination, both of whom may visit the prisoner.¹²¹ The doctor is obligated to visit the prisoner as soon as possible and to keep his medical condition under review.¹²² If the order is to remain in force for more than twenty-one days, the governor must provide a full report to the Director General of the Prison Service, which includes the prisoner's views, and the Director General must authorise any continuation of the order.¹²³ In *Killeen v. Governor of Portlaoise Prison*, the High Court ruled that periods of segregation that come within Rule 62(9) must be kept under review even though Rule 62(9) does not mention such reviews.¹²⁴

The power set out in Rule 62 is expressly subject to Rule 32, which entitles all prisoners to at least one hour of exercise in the open air per day. The new minimum requirement of two hours out of cell each day is expressly made subject to the requirements of prison discipline covered by Part 4 of the Prison Rules 2007 (which includes Rule 62).¹²⁵ The Irish Prison Service has made the following commitment:

¹¹³ Irish Penal Reform Trust, '[Behind the Door': Solitary Confinement in the Irish Penal System](#), 2018, p. 33. The Trust points to a variety of prohibitions such as restricting structured or recreational activities, receiving visits, sending or receiving letters, and using the telephone.

¹¹⁴ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, para. 39.

¹¹⁵ [Prison Rules, 2007](#), SI No.252/2007, Rule 62(2).

¹¹⁶ [Prison Rules, 2007](#), Rule 62(3).

¹¹⁷ [Prison Rules, 2007](#), Rule 62(4).

¹¹⁸ [Prison Rules, 2007](#), Rule 62(5).

¹¹⁹ [Paget v. Governor of Midlands Prison](#) [2019] IEHC 514.

¹²⁰ [Paget v. Governor of Midlands Prison](#) [2019] IEHC 514, para. 53.

¹²¹ [Prison Rules, 2007](#), SI No.252/2007, Rule 62(7) and (8).

¹²² [Prison Rules, 2007](#), Rule 62(7).

¹²³ [Prison Rules, 2007](#), Rule 62(9). The procedure to be followed is set out in Circular OPS/20/2013, appended to Irish Prison Service, [Policy Document: Elimination of Solitary Confinement](#), 2017.

¹²⁴ [Killeen v. Governor of Portlaoise Prison](#) [2014] IEHC 77, para. 6.5.

¹²⁵ Prison Rules 2007, Rule 27(1), as inserted by [Prison \(Amendment\) Rules 2017](#), SI No. 276/2017.

We are committed to reducing the use of solitary confinement to only extreme cases and where absolutely necessary for security, safety or good order reasons and for the shortest possible time. We ensure that in such cases prison management has in place an individual management plan for each prisoner and access to appropriate services is provided as far as possible and that the mental health of the prisoner is regularly reviewed.¹²⁶

The Service has introduced a policy to incorporate the Mandela Rules into the prison system for prisoners on restrictive regimes.¹²⁷

Finally, under Rule 63, vulnerable prisoners may be segregated from the general population, and this may be at the prisoner's own request. Such segregation will be permitted where there is a reasonable belief that other prisoners may harm the applicant. Rule 64 allows for the placement of a prisoner in a Safety Observation Cell for up to 24 hours (in the first instance) in order to prevent him or her from causing imminent injury to himself and other less restrictive methods are inadequate. Such prisoners must be observed by prison staff at 15-minute intervals.¹²⁸ Exceptionally, the detention may be extended for up to five days, after consultation with a doctor and with the approval of the Director General of the Prison Service.¹²⁹ Rule 64(13) provides that these cells may not be used for punitive purposes. It is also possible for a violent and distressed prisoner to be held in a close supervision cell for up to five days with the approval of the Director General.¹³⁰

The Irish Prison Service has issued a policy document on the elimination of solitary confinement.¹³¹ In line with Rules 44 and 45 of the Mandela Rules, all prisoners are to have at least two hours out-of-cell per day with the facility for meaningful human contact,¹³² subject to emergency situations that may require a temporary suspension of this policy.¹³³ Nevertheless, a Governor still has power to take immediate protective action to maintain order and discipline,¹³⁴ which may involve locking down a prisoner for more than 22 hours per day. Any such situations are to be recorded and notified to the Prison Service's Director of Operations.¹³⁵ As noted above, the Prison Service's figures indicate that in October 2020, 103 prisoners had been locked in their cells for 23 hours per day, and that attempts to restrict the transmission of Covid-19 had resulted in large numbers of prisoners being locked up for 24-hours per day.

b) Are there any national standards with regard to checking and/or monitoring the wellbeing of detainees in solitary confinement? If so, what do they require?

See answer at 4a above

¹²⁶ Irish Prison Service, [Strategic Review 2016-2018](#), 2016, p. 6.

¹²⁷ Irish Prison Service, [Policy Document: Elimination of Solitary Confinement](#), 2017.. The Mandela Rules are the colloquial name for the UN Standard Minimum Rules for the Treatment of Prisoners, 2015 Revision.

¹²⁸ [Prison Rules 2007](#), Rule 64(5).

¹²⁹ [Prison Rules 2007](#), Rule 64(6) and (7).

¹³⁰ Irish Penal Reform Trust, ['Behind the Door': Solitary Confinement in the Irish Penal System](#), 2018, p. 32.

¹³¹ Irish Prison Service, [Policy for Elimination of Solitary Confinement](#), 2017.

¹³² Irish Prison Service, [Policy for Elimination of Solitary Confinement](#), 2017, p. 1.

¹³³ Irish Prison Service, [Policy for Elimination of Solitary Confinement](#), 2017, section 4.7.

¹³⁴ Irish Prison Service, [Policy for Elimination of Solitary Confinement](#), 2017, section 4.8.

¹³⁵ Irish Prison Service, [Policy for Elimination of Solitary Confinement](#), 2017, section 4.10.

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).
See 1e above.
d) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 4. a) - c), including their respective legal basis.
See 1f above.
e) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference, a list of links can be found via the OPCAT Database .
See 1g above.

5. Access to healthcare

a) What is the national standard with regard to access to medical services in prisons, including emergency care? (E.g.: Do detainees have prompt access to medical services within prisons and/or externally? Do detainees have access to dentists, opticians, etc.?) If so, what does it require?
<p>The Irish courts have confirmed that prisoners have a constitutional right to bodily integrity, which requires that the executive – in whose care prisoners reside – must protect their health as well as practicable.¹³⁶ This has been held to include psychological health.¹³⁷</p> <p>Rule 33(1) of the Prison Rules, 2007 provides that “each prisoner shall be entitled, while in prison, to the provision of healthcare of a preventative, curative and rehabilitative nature ... that is, at least, of the same or a similar standard as that available to persons outside of prison who are the holders of a medical card”. Pregnant female prisoners are to be facilitated in giving birth outside the prison.¹³⁸ Healthcare professionals are required under Rule 100 to “treat prisoners with the same dignity and respect as would be afforded to any patient who is not a prisoner”, and to deal with a prisoner’s healthcare information in the same way as for non-prisoners.¹³⁹ Prisoners have a general right to</p>

¹³⁶ [Mulligan v. Governor of Portlaoise Prison](#) [2010] IEHC 269.

¹³⁷ [Kinsella v. Governor of Mountjoy Prison](#) [2010] IEHC 235.

¹³⁸ [Prison Rules, 2007](#), Rule 33(2).

¹³⁹ [Prison Rules, 2007](#), Rule100(1)(c) and (d).

refuse medical treatment and tests unless such procedures are required under the Prison Rules.¹⁴⁰

In 2011, the Irish Prison Service published its Health Care Standards which are intended to “guide the provision of healthcare services to prisoners”.¹⁴¹ All prisoners are to be medically assessed upon reception into prison, which will involve a clinical assessment within the first 24 hours.¹⁴² Prisoners have the right to refuse the examination and will be required to sign a disclaimer to that effect.¹⁴³ The Standards reiterate the statutory requirement to provide prisoners with a standard of healthcare equal to that available in the general community.¹⁴⁴ To that end, suitable and properly equipped accommodation and facilities will be provided, and “[a]ccess to specialist services appropriate to the health care needs of prisoners will be provided within the prison”.¹⁴⁵ Access to such specialist services will also be on the same basis as would apply to anyone holding Medical Cards.¹⁴⁶ Standard 2.2 provides that “[p]risoners will be referred to external specialist services as clinically indicated”. If emergency attendance at an external hospital is required, it will be “effected with appropriate urgency”.¹⁴⁷ Standard 8 provides that prisoners will have access to the services of a qualified dentist. Any prisoner requesting treatment should be seen within a reasonable period of time. Prisons will make suitable arrangements for the “provision of appropriate mental health services, including consultant psychiatric and other related services”.¹⁴⁸ And prisons are required to “provide clinical services for the assessment, treatment, and care of substance misusers comparable to those available in the community”.¹⁴⁹

b) Are there any national standards concerning the availability of qualified medical and nursing personnel? If so, what do they require?

The Prison Rules 2007, in Rule 99(1), requires the Minister for Justice and Equality to arrange for the provision of healthcare to prisoners. To that end, the Minister is required to appoint a Director of Prison Healthcare Services,¹⁵⁰ and to engage such and such number of registered medical practitioners as he or she considers necessary to perform the functions of prison doctors.¹⁵¹

The Prison Service’s Healthcare Standards, 2011, provides that healthcare in the prisons estate will be provided “by staff trained in relevant aspects of clinical practice and health promotion or by outside specialists/external agencies with relevant expertise”.¹⁵²

The European Committee for the Prevention of Torture provided a breakdown of the healthcare coverage for Arbour Hill, Cork and Midlands prisons which account for one-third of the prisoners in Irish prisons.¹⁵³ Arbour Hill has a health care manager and six

¹⁴⁰ [Prison Rules, 2007](#), Rule 100(1)(g). Rule 33(3) provides that prisoners will “not be subjected to, or required to, or participate in any experiment or trial of a produce or process”.

¹⁴¹ Irish Prison Service, [Health Care Standards](#), 2011.

¹⁴² Irish Prison Service, [Health Care Standards](#), 2011, Standard 1.

¹⁴³ Irish Prison Service, [Health Care Standards](#), 2011, Standard 1.1.8.

¹⁴⁴ Irish Prison Service, [Health Care Standards](#), 2011, Standard 2.

¹⁴⁵ Irish Prison Service, [Health Care Standards](#), 2011, Standard 2.

¹⁴⁶ Irish Prison Service, [Health Care Standards](#), 2011, Standard 2.3.2.

¹⁴⁷ Irish Prison Service, [Health Care Standards](#), 2011, Standard 2.2.5.

¹⁴⁸ Irish Prison Service, [Health Care Standards](#), 2011, Standard 3.1.1.

¹⁴⁹ Irish Prison Service, [Health Care Standards](#), 2011, Standard 9.

¹⁵⁰ [Prison Rules, 2007](#), Rule 99(2).

¹⁵¹ [Prison Rules, 2007](#), Rule 99(3).

¹⁵² Irish Prison Service, [Health Care Standards](#), 2011, Standard 5.1.1.

¹⁵³ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, at para. 73.

nurses; a doctor visits three mornings each week; a dentist and a psychiatrist visit once a week; and two psychiatric nurses each hold one session per week. Cork Prison employs a nursing manager, a care assistant and ten nurses; a dentist visits once per week; a psychiatrist holds three half-day sessions each week; a mental health nurse visits four times per week; a chiropodist and an optometrist visit on a monthly basis. The Midlands Prison has twenty-one nurses and several care assistants; there is a fulltime general practitioner with support from two others, and others provide out-of-hours coverage. The Committee found the three prisons to be well equipped and generally adequately staffed, although they had some suggestions for improving the out-of-hours coverage in the Midlands Prison.¹⁵⁴

c) Are there any national standards for an initial medical examination upon deprivation of liberty or transfer of a detainees? If so, what do they require?

Yes. Rule 11(1) of the Prison Rules 2007 requires all prisoners to be given a medical examination by a doctor on the day of his or her committal. If a doctor is not then available, a nurse should conduct a preliminary examination, to be followed by a full examination when the doctor becomes available.¹⁵⁵ The purpose of this medical examination is to diagnose any physical or mental illnesses, to isolate a prisoner who may have a communicable disease, to determine the prisoner's fitness for work, to note any medical condition that might impede the prisoner's integration into the prison community, to note any indication of recent injuries, and to record any prescribed medication for the prisoner.¹⁵⁶ The same rule applies to a prisoner being transferred to another prison – he or she should be medically examined at the first scheduled visit of the doctor to the prison.¹⁵⁷

The Prison Service's Healthcare Standards, 2011, provide that all prisoners will receive a full medical examination by a doctor within 24 hours of committal.¹⁵⁸ The Standards also require that a doctor be available either in person or by telephone to deal with any urgent clinical issues arising from a newly committed prisoner.¹⁵⁹ Surprisingly, however, the Standards also allow for a prisoner refusing the initial examination – the refusal is to be noted on the prisoner's file, and medical personnel should continue to offer an examination.¹⁶⁰ How this Standard meets the requirement of an initial medical examination mandated by the Prison Rules is unclear: Part of the reason for the mandatory examination is to determine the existence of a communicable disease, so it is difficult to see how such an examination could be at the discretion of the prisoner.

d) Are there any national standards relating to the provision of specialist care? (E.g. for long-term diseases, for sick and elderly detainees, the mentally ill, drug addicted detainees, etc.) If so, what do they require?

The Healthcare Standards require, in Standard 2.3.2, that prisoners be referred to specialist healthcare on the same basis as would apply to individuals holding Medical Cards in the general community". Standard 2.3.3 requires prison governors to ensure that prisoners keep external appointments, while Standard 2.3.4 provides that visiting specialists will be accommodated in the prisons. Standard 3 commits the Irish Prison Service to providing treatment of prisoners suffering from a mental disorder. In prisons

¹⁵⁴ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37.

¹⁵⁵ [Prison Rules 2007](#), Rule 11(2).

¹⁵⁶ [Prison Rules 2007](#), Rule 11(1).

¹⁵⁷ [Prison Rules 2007](#), Rule 11(3).

¹⁵⁸ Irish Prison Service, [Health Care Standards](#), 2011, Standard 1.1.7.

¹⁵⁹ Irish Prison Service, [Health Care Standards](#), 2011, Standard 1.1.6.

¹⁶⁰ Irish Prison Service, [Health Care Standards](#), 2011, Standard 1.18.

in Dublin and in Portlaoise, the Central Mental Hospital provides consultant psychiatrist-led sessions.¹⁶¹ In other prisons around the country, visiting psychiatrists provide a similar service. If residential mental health treatment is required, the Prisons Service has access to a limited number of places at the Central Mental Hospital. The European Committee for the Prevention of Torture visited the Mountjoy Prison unit and a similar six-bed unit in Cork Prison, and noted the lack of structured activities for the prisoners housed in these units.¹⁶² Additionally, Cloverhill Prison has the largest unit which consists of fifteen single cells and five double cells. The Committee noted that mentally ill prisoners in Cloverhill are frequently accommodated in two Special Observation Cells and four Close Supervision Cells. The Committee noted that overcrowding is not uncommon and this results in prisoners sleeping on mattresses on the floor.¹⁶³ Further, waiting lists to access psychology services are long; as at 9 March 2021, 1,206 prisoners were on those lists.¹⁶⁴

As regards drug-addicted prisoners, the Irish Prisons Service issued a drugs policy document in 2005 that put drug rehabilitation as a core element of its policy.¹⁶⁵ To that end, the Service has identified three key elements: identifying and engaging drug misusers, providing treatment options, and ensuring throughcare.¹⁶⁶ The Service provides a variety of services to prisoners as part of this policy.¹⁶⁷ In particular, methadone substitution treatment is available in 11 out of the 14 prisons in Ireland (covering 80 percent of Irish prisoners). Mountjoy Prison has nine places specifically allocated for a drug free programme. Cloverhill and Wheatfield Prisons have a consultant-led addiction service, and other prisons also offer an addiction specialist GP service. The Committee for the Prevention of Torture noted that drug misuse is prevalent in most Irish prisons, and recommended that the Service continues to pursue its policy vigorously.¹⁶⁸

e) Are there any national standards with regard to a medical treatment of the detainee's own choosing? If so, what do they require?

As the preceding paragraphs show, prisoners will receive the medical treatment that is clinically indicated. There are no standards regarding elective medical treatments.

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

See 1e above.

¹⁶¹ This and the following details are drawn from the Prison Service's website at <https://www.irishprisons.ie/prisoner-services/prison-healthcare-service/mental-health-services/>.

¹⁶² Council of Europe, European Committee for the Prevention of Torture, *Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019*, CPT/Inf (2020) 37, para. 80.

¹⁶³ Council of Europe, European Committee for the Prevention of Torture, *Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019*, CPT/Inf (2020) 37, para. 81.

¹⁶⁴ Ireland, Minister for Justice & Equality, *Answer to Parliamentary Query 181 from Sorca Clarke, TD*, 11 March 2021.

¹⁶⁵ Irish Prison Service, *Keeping Drugs Out of Prison: Drugs Policy and Strategy*, 2005.

¹⁶⁶ Irish Prison Service, *Keeping Drugs Out of Prison: Drugs Policy and Strategy*, 2005, p. 10.

¹⁶⁷ The following details are taken from the Irish Prison Service's website: <https://www.irishprisons.ie/prisoner-services/drug-treatment-services/>.

¹⁶⁸ Council of Europe, European Committee for the Prevention of Torture, *Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019*, CPT/Inf (2020) 37, para. 78.

g) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 5. a) – f), including their respective legal basis.

See 1f above.

h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspects (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

See 1g above.

6. Special measures in place to protect young detainees

a) Are there any national standards with regard to the separation of young detainees from adults? If so, what do they require? (e.g. a separate juvenile ward, or part of the building, canteen, common area etc.?)

The Children Act 2001, which is the guiding legislation when dealing with juvenile offenders, defines a child as a person under the age of 18.¹⁶⁹ Section 156 of the Act prohibits a court from passing a sentence of imprisonment upon any child. Instead, section 142 allows a court to pass a sentence of detention on a child, which results in a child offender being detained in a children detention school. Section 96(2), however, requires that detention in such a school be considered the sanction of last resort. Since 2017, no child will be accommodated in an adult prison.

Children sentenced to detention, or held on remand, will be sent to the Oberstown Children Detention Campus in Lusk, Co. Dublin. This campus is under the control of the Minister for Children and Youth Affairs rather than the Minister for Justice and Equality. The campus can accommodate 48 boys and 6 girls at any one time.¹⁷⁰

b) Please indicate the age categories of young persons falling under your country's (juvenile) detention regime.

As noted above, a child is defined in s.3 of the Children Act 2001 as a person under the age of 18.

¹⁶⁹ Ireland, [Children Act no. 24/2001](#), s.3(1).

¹⁷⁰ Oberstown Children Detention Campus, [Annual Report 2019](#), 2020, p. 4.

c) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

Juveniles, whether on remand or on foot of a detention order, are detained at Oberstown.¹⁷¹ It seems, however, that detainees on remand are housed in older accommodation units, while those present on foot of detention orders are housed in newer facilities of a higher standard.

d) Please indicate any remedies available to young detainees in case of a breach or violation of the standards addressed under 6. a) – c), including their respective legal basis.

Juvenile detainees are entitled to enforce their constitutional and statutory rights through the courts in the same way as other prisoners; see 1g above.

The Irish Youth Justice Service has established *Standards and Criteria for Children Detention Schools*.¹⁷² All schools are required to establish a written complaints procedure written in age-appropriate language.¹⁷³ All juvenile detainees must be informed of their right to make a complaint,¹⁷⁴ and of the person outside the centre to whom a complaint may be made.¹⁷⁵ Staff should encourage detainees “to bring dissatisfaction into the open” and assist them in formulating a complaint.¹⁷⁶

Oberstown’s current Complaints Policy dates from 2017,¹⁷⁷ which is rather light on details as to how a complaint can be made. Nevertheless, the Health Information and Quality Authority (HIQA) found during its most recent inspections in July 2019 that complaints were well managed.¹⁷⁸ HIQA was critical, however, of Oberstown’s recording practices, noting that there was no record of outcomes or detainee satisfaction levels.¹⁷⁹ Oberstown has developed a new Young Person’s Participation Strategy as part of the National Strategy on Children and Young People’s Participation in Decision-Making 2015-2020.¹⁸⁰ Under this new Strategy, each complainant is required to sign a copy of their complaint, and to record their satisfaction level at the outcome of the complaint.¹⁸¹

Detainees can also make a complaint to the Ombudsman for Children,¹⁸² established under the Ombudsman for Children Act 2002. The Ombudsman will deal with a complaint from anyone that concerns a children’s service offered in Ireland. This includes complaints from children themselves.

e) Please, provide a link to the National Preventive Mechanism’s reports **from the reference period** (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language). These reports can be found on the webpage of the

¹⁷¹ HIQA, [Report of Oberstown Detention Campus](#), 2019, pp. 6-7.

¹⁷² Irish Youth Justice Service, [Standards and Criteria for Children Detention Schools](#), 2008.

¹⁷³ Irish Youth Justice Service, [Standards and Criteria for Children Detention Schools](#), 2008, Standard 4.1.

¹⁷⁴ Irish Youth Justice Service, [Standards and Criteria for Children Detention Schools](#), 2008, Standard 4.3.

¹⁷⁵ Irish Youth Justice Service, [Standards and Criteria for Children Detention Schools](#), 2008, Standard 4.4.

¹⁷⁶ Irish Youth Justice Service, [Standards and Criteria for Children Detention Schools](#), 2008, Standard 4.6.

¹⁷⁷ Oberstown Children Detention School, [Complaints Policy](#), 2017.

¹⁷⁸ HIQA, [Report of Oberstown Detention Campus](#), 2019, p. 19.

¹⁷⁹ HIQA, [Report of Oberstown Detention Campus](#), 2019, p. 19.

¹⁸⁰ HIQA, [Report of Oberstown Detention Campus](#), 2019, p. 16. The National Strategy is available at <https://assets.gov.ie/24462/48a6f98a921446ad85829585389e57de.pdf>.

¹⁸¹ Oberstown Children Detention Campus, [Annual Report 2019](#), 2020, p. 16.

¹⁸² See the Ombudsman’s website at www.oco.ie/complaints.

National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

See 1g above.

7. Special measures in place to protect detainees from violence

- a) Are any special measures in place to protect detainees against violence from guards/prison staff, including sexual violence? (E.g.: Are there emergency call buttons? Do guards receive special training? Do detainees have access to a complaints mechanism?)

The general rules of the criminal law, including those concerning unlawful violence, apply within prisons to the same extent as in the general community. Therefore, anyone who commits an act of violence against a prisoner – be it another prisoner or a Prison Officer – commits an offence that can result in a criminal prosecution. In addition, the Prison Rules indicate that each prison cell “shall be fitted with a mechanism by which a prisoner locked inside may attract the attention of a prison officer and such mechanism shall be capable of being operated by such a prisoner at all times”.¹⁸³ In February 2018, the Minister for Justice and Equality pointed to a variety of measures taken by the Irish Prison Service to reduce the possibility of prison violence: use of hand-held metal detectors, netting over prison yards, “boss chairs”, and security screening machines to detect and prevent weapons from entering the prisons.¹⁸⁴

The Prison Rules impose various obligations on prison officers as regards the security of prisoners. All prison officers are duty-bound to respect the dignity and human rights of prisoners.¹⁸⁵ The Rules prohibit individual prison officers from imposing punishment on prisoners without authorisation.¹⁸⁶ There are also restrictions on the use of force by prison officers. Rule 93 provides that only such force as is reasonably necessary and proportionate to maintain or restore good order or safe/secure custody. Striking a prisoner is expressly prohibited unless necessary to prevent injury to himself or another.¹⁸⁷ Where force has been used, the officer in question must make a written report to the prison governor,¹⁸⁸ and the prisoner must be seen by a doctor as soon as reasonably practicable.¹⁸⁹

Rule 57A of the Prison Rules requires that any allegation from a prisoner as to an incident that might constitute a criminal offence be reported to the Governor and the Gardaí.¹⁹⁰ The Governor is required to take a record of the allegation, and to preserve possible evidence for the Gardaí. A separate rule exists in relation to allegations of assault,

¹⁸³ [Prison Rules, 2007](#), Rule 18(4).

¹⁸⁴ Ireland, [Statement by Minister for Justice and Equality](#) in relation to the launch of the Irish Penal Reform Trust (IPRT) Report on Solitary Confinement in the Irish Penal System, 2 February 2018.

¹⁸⁵ [Prison Rules 2007](#), Rule 85(3).

¹⁸⁶ [Prison Rules 2007](#), Rule 92.

¹⁸⁷ [Prison Rules 2007](#), Rule 93(2)

¹⁸⁸ [Prison Rules 2007](#), Rule 93(4)

¹⁸⁹ [Prison Rules 2007](#), Rule 93(3)

¹⁹⁰ Prison Rules 2007, Rule 57A inserted by [Prison \(Amendment\) Rules 2013](#), SI 11/2013, Rule 2.

excessive force against a prisoner, or ill treatment, racial abuse, discrimination, intimidation, threats or any other conduct against a prisoner “or a nature and gravity likely to bring discredit on the Irish Prison Service”.¹⁹¹ This Rule places an obligation on all members of the Irish Prison Service and prisoners to whom a complaint of such an incident is made to notify the prison Governor.¹⁹² The Governor is obliged to preserve relevant evidence, to arrange for a medical examination of the prisoner in question and to record and photograph physical force, and to record the names of all potential witnesses.¹⁹³ The Governor must also notify the Director General of the Irish Prison Service and the Inspector of Prisons.¹⁹⁴ The Director General will appoint an investigation team from outside the prison in question unless the Director General is satisfied that the complaint is vexatious.¹⁹⁵ The purpose of the investigation is to determine whether there are grounds for the complaint and to make recommendations for the future management of such complaints.¹⁹⁶ All members of the Irish Prison Service are obliged to fully cooperate with the investigation.¹⁹⁷ The investigation should result in the production of a report, generally within three months.¹⁹⁸

The existing figures suggest that violence conducted by prison staff against prisoners is a relatively slight problem. In 2018, a total of thirty seven such assaults were recorded;¹⁹⁹ the total prison population in October 2018 was 3,818 prisoners.²⁰⁰ This is corroborated by the European Committee for the Prevention of Torture; in their 2019 visit to Ireland, they reported that prisoners had told that “the vast majority of prison officers treated them correctly, and relations between staff and prisoners could be categorised as respectful in most of the prisons visited”.²⁰¹ Nevertheless, the Committee recommended that prison officers be reminded of their obligations, and that they receive refresher training courses on the use of control and restraint techniques. Training in de-escalation and communication skills would also be useful.²⁰²

b) Are any special measures in place to protect detainees against violence from other detainees, including sexual violence? (E.g.: Are detainees supervised by prison staff? Are there emergency call buttons? Do guards receive training in de-escalation? Do detainees have access to a complaints mechanism?)

Again, the general rules of the criminal law can be invoked if a prisoner is assaulted by another prisoner. See also above regarding Rule 57A. Further, under Rule 85, a prison officer is duty-bound to ensure the maintenance of good order and safe and secure custody. Rule 86 require prison officers to keep prisoners in their care under observation in order to maintain good order and safe and secure custody.

¹⁹¹ Prison Rules 2007, Rule 57B inserted by [Prison \(Amendment\) Rules 2013](#), SI 11/2013.

¹⁹² Prison Rules 2007, Rule 57B(7) inserted by [Prison \(Amendment\) Rules 2013](#), SI 11/2013.

¹⁹³ Prison Rules 2007, 57B(3) inserted by [Prison \(Amendment\) Rules 2013](#), SI 11/2013.

¹⁹⁴ Prison Rules 2007, 57B(4) inserted by [Prison \(Amendment\) Rules 2013](#), SI 11/2013.

¹⁹⁵ Prison Rules 2007, 57B(5) inserted by [Prison \(Amendment\) Rules 2013](#), SI 11/2013.

¹⁹⁶ Prison Rules 2007, 57B(6) inserted by [Prison \(Amendment\) Rules 2013](#), SI 11/2013.

¹⁹⁷ Prison Rules 2007, 57B(7) inserted by [Prison \(Amendment\) Rules 2013](#), SI 11/2013.

¹⁹⁸ Prison Rules 2007, 57B(10) inserted by [Prison \(Amendment\) Rules 2013](#), SI 11/2013.

¹⁹⁹ Irish Penal Reform Trust, [Violence in Irish Prisons](#), 2019.

²⁰⁰ Irish Prisons Service, [Census Prison Population October 2020 – Cell Occupancy – In-Cell Sanitation](#), 2021.

²⁰¹ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, para. 33.

²⁰² Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, para. 33.

The Prison Service's figures indicate that there were 452 prisoner-on-prisoner assaults recorded in 2019.²⁰³ This compares to 418 in 2018 and 417 in 2017. The European Committee for the Prevention of Torture noted in 2019 the success of the Irish Prison Service in reducing the extent of such violence (in 2012, there were 715 such incidents) due principally to protecting prisoners from other prisoners who wish to hurt them. However, these efforts have resulted in a large number of protection prisoners who have to be kept separate from other prisoners. In Mountjoy Prison, for example, there were 208 such prisoners in 16 different groups, while at Midlands Prison there were 47 protection prisoners across 10 different groups.²⁰⁴ (For context, the total prisoner populations in these prisons on the last day of 2019 were 842 and 829, respectively).²⁰⁵

c) Are there any special measures in place to protect LGBTI detainees, who are particularly vulnerable to violence/sexual violence?

Again, the general rules of the criminal law are applicable with respect to LGBTI prisoners. None of the Prison Rules are specific to LGBTQI prisoners, but Rule 63 applies to the protection of vulnerable prisoners. Rules 63(1) empowers a prison governor to keep a vulnerable prisoner separate from other prisoners, either at the prisoner's request or at the discretion of the governor. Such prisoners may engage in structured activities with prisoners in a similar category if the governor considers that such activities will be beneficial to the prisoner's welfare. The governor is required to record all Rule 63 decisions, including the grounds on which the Rule was invoked. Rule 63 results in prisoners being released from their cells for only short daily periods, and such prisoners made up the vast majority of prisoners on extended lockdown in October 2020 (533 out of 728).²⁰⁶

It is also worth mentioning Rule 64 which allows for the use of Special Observation Cells if the governor considers that a prisoner is in danger of harming himself or herself or others, and other restrictions are inadequate. Any such prisoner must be seen by a doctor as soon as possible, and will be observed by a prison officer at least once every fifteen minutes. Generally, prisoners should not be placed in SOC's for more than 24 hours, but Rule 64 does allow for extensions in exceptional circumstances.

In 2016, the Irish Prison Service committed itself to providing a "safe and inclusive environment for all minority groups".²⁰⁷ Specifically, the Service promised to establish a working group to prepare a new policy for LGBT prisoners,²⁰⁸ and would take account of a recent report on the issue from the Irish Penal Reform Trust.²⁰⁹ This report recommended that the Service develop policies "to protect LGBT prisoners from harm".²¹⁰ There is no indication of whether the Service established the working group, whether the group reported or went on to develop an LGBTQ policy. However in 2018, the Irish Penal Reform Trust condemned the Irish Prison Service for its failure to publish

²⁰³ Irish Prison Service, [Table of Assaults on Prison Staff and Prisoners 2012-2019](#), 2019, para 37. Note that the Committee found that across the prison estate (excluding Cork Prison) there was poor and inconsistent record keeping of prisoner-on-prisoner assaults.

²⁰⁴ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, at para. 36.

²⁰⁵ Irish Prison Service, [Prisoner Population on Tuesday 31st December 2019](#). The Mountjoy figure includes both male and female prisoners (696 and 146, respectively).

²⁰⁶ Irish Prison Service, [Census of Restricted Regime Prisoners October 2020](#). The vast majority of the Rule 63 prisoners were on this regime voluntarily – 523 out of 533.

²⁰⁷ Irish Prison Service, [Strategic Plan 2016-2018](#), 2016, Goal 2.8.

²⁰⁸ Irish Prison Service, [Strategic Plan 2016-2018](#), 2016, Goal 2.8.

²⁰⁹ Irish Penal Reform Trust, [Out on the Inside: The Rights, Experiences and Needs of LGBT Persons in Prison](#), Dublin, 2016.

²¹⁰ Irish Penal Reform Trust, [Out on the Inside: The Rights, Experiences and Needs of LGBT Persons in Prison](#), Dublin, 2016, p. 36.

such a policy.²¹¹ In 2019, the Department of Justice and Equality published a *LGBTQ Inclusion Strategy*.²¹² The strategy included an Action Plan, as part of which the Department and the Irish Prison Service committed themselves to “develop a placement and accommodation policy to reflect and build upon existing good practice in the accommodation of vulnerable prisoners including LGBTI+ people”.²¹³ In that same year, a pioneering LGBTQ awareness course was launched at Wheatfield Prison.²¹⁴

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

See 1e above.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 7. a) – d), including their respective legal basis.

See 1f above.

f) Please, provide a link to the National Preventive Mechanism’s reports from the reference period (1 May 2018 to 15 April 2021; if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

See 1g above.

8. Women in detention

a) Are there any national standards for conditions of detention of women in general? If so, what do they require?

The Inspector of Prisons published a set of standards specific to female prisoners in 2011, noting that treating male and female prisoners in the same way would not

²¹¹ See Quinn T., ‘[Irish Prison Service slammed for not protecting LGBT prisoners](#)’, *Irish Mirror*, 11 June 2018.

²¹² Government of Ireland, [National LGBTQI+ Inclusion Strategy 2019-2021](#), 2019.

²¹³ Government of Ireland, [National LGBTQI+ Inclusion Strategy 2019-2021](#), 2019, Action Plan Point 13.3.

²¹⁴ Lavery C., ‘[Prisoners to start round-breaking LGBT awareness course](#)’, *Herald.ie*, 19 June 2019.

constitute equality.²¹⁵ Standard 260 provides that prison staff dealing with female offenders should receive specific training in doing so. In particular, they should be trained to identify vulnerable women and how to deal with incidents of self-harm.²¹⁶ Further, prisons should put in place clear protocols on staff dealing with female prisoners in order to protect both groups against false allegations.²¹⁷ Only female officers should be permitted to conduct searches of female prisoners, and must respect their dignity.²¹⁸ In particular, female prisoners should not generally be required to remove their underwear during a search.²¹⁹

Standards 250-255 deal with female prisoners being able to maintain contact with their children and families. Contact between the prisoner and their families should be fostered and encouraged, and subject to good order, prison visits involving children should allow for physical contact between mother and children. Contact with children should not be withdrawn as a punishment. Female prisoners should be able to participate as far as possible in parental decisions relating to their minor children. If the prisoner is being held in a prison that is far from her home, this should be compensated for by allowing longer visits from children and immediate family or giving additional phone calls.

An unpublished chaplain's report from 2019, reported in the *Irish Examiner* in 2020, indicates that notwithstanding these standards, women in the Dóchas Centre have been finding it hard to book family visits with their children.²²⁰

In a joint strategy document for 2014-16, the Irish Probation Service and Irish Prison Service acknowledged that as most sentenced offenders are men, there is a "tendency to provide generic offender based services to women offenders designed for men in the first instance".²²¹ The Irish Prison Service committed itself to maintaining a "woman centric focus and ethos for female prisoner by upholding positive practices and standards from the committal stage and throughout sentence management".²²² The Service also committed to exploring the development of an "open centre/open conditions" for low-risk women offenders.²²³ The Service's *Annual Report* for 2019 points to a programme of refurbishment at Limerick Prison that will provide a "more appropriate, rehabilitative and open environment for female prisoners".²²⁴

b) Are there any national standards for holding and accommodating male and female detainees separate from each other? If so, what do they require?

²¹⁵ Office of Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland – Women Prisoners' Supplement](#), 2011, para. 2.8.

²¹⁶ Office of Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland – Women Prisoners' Supplement](#), 2011, Standard 261.

²¹⁷ Office of Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland – Women Prisoners' Supplement](#), 2011, Standard 262.

²¹⁸ Office of Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland – Women Prisoners' Supplement](#), 2011, Standard 258.

²¹⁹ Office of Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland – Women Prisoners' Supplement](#), 2011, Standard 259.

²²⁰ Clifford M., '[Internal report reveals overcrowding and verbal abuse at women's prison](#)', *Irish Examiner*, 8 September 2020.

²²¹ Irish Probation Service and Irish Prison Service, [Strategy 2014-2016: An Effective Response to Women who Offend](#), 2014, p. 5. The Inspector of Prisons had earlier made the same point. See Office of the Inspector of Prisons, [Standards for the Inspection of Prisons in Ireland – Women Prisoners' Supplement](#), 2011, para. 2.3. As of October 2020, women made up just over 4 percent of the prison population. See Irish Prison Service, [Census of Prison Population October 2020 – Cell Occupancy – In-Cell Sanitation](#), 2020, Table 1 (154 female prisoners out of 3,768 prisoners).

²²² Irish Probation Service and Irish Prison Service, [Strategy 2014-2016: An Effective Response to Women who Offend](#), 2014, p. 8.

²²³ Irish Probation Service and Irish Prison Service, [Strategy 2014-2016: An Effective Response to Women who Offend](#), 2014, p. 8.

²²⁴ Irish Prison Service, [Annual Report 2019](#), 2020, p. 4.

The Prison Rules 2007 state at Rule 52(1) that male and female prisoners must be accommodated "in separate areas to which prisoners of the opposite gender do not normally have access", and should generally be kept apart. Rule 52(2), however, makes allowance for male and female prisoners to engage together in structured activities. There are two facilities for female prisoners in Ireland. The primary detention facility for women is the Dóchas Centre, a medium security prison for up to 105 female offenders located at Mountjoy Prison, Dublin.²²⁵ Limerick Prison can also accommodate up to 28 female prisoners.²²⁶ The Prison's Visiting Committee has highlighted a problem with overcrowding at both facilities.²²⁷ The Irish Prison Service's in-cell census for October 2020 shows 125 female prisoners in the Dóchas Centre, and 29 at Limerick Prison.²²⁸

c) Are there any national standards for special hygiene conditions and/or hygiene products for female detainees? If so, what do they require?

The Inspector of Prisons has recommended that provision be made in women's prisons for the sanitary needs of female prisoners, and that such provision respects the privacy of the prisoners.²²⁹ Further, if a female prisoner has suffered any form of abuse, her particular needs should be provided for (Standard 239).

d) Are there any national standards for special healthcare for female detainees that respond to their specific needs, including i.e. pregnancy and post-natal treatment, and treatment/support of mother and child? If so, what do they require?

The Inspector Prisons' Standard 236 requires that "gender specific healthcare facilities and services for women prisoners " be available in women's prisons. Those facilities and standards should be "equivalent to those available to women in the community". Standard 241 provides that pregnant prisoners should receive a level of care equivalent to that available in the community.

Standard 237 provides that female prisoners should, where possible, have access to a female doctor and/or a female nurse". A female member of staff should be present if a male medical practitioner conducts an examination when the prisoner has requested a female practitioner. Standard 240 provides that female prisoners should not be placed in any restraints, including handcuffs, while undergoing any medical procedure. This requirement is expressly subject to security considerations. If a prison officer is accompanying the prisoner, he or she must be mindful of medical confidentiality and must respect the prisoner's privacy and dignity. As regards giving birth, Standard 242 prohibits the use of restraints during labour, during birth or immediately after giving birth.

e) Are there any national standards on pregnant detainees in terms of special prison cells for pregnant detainees and/or special facilities for female detainees with babies or young children? If so, what do they require?

²²⁵ See the Irish Prisons Service website at: <https://www.irishprisons.ie/prison/dochas-centre/>. Dóchas is an Irish word for "hope".

²²⁶ See the Irish Prison Service website at: <https://www.irishprisons.ie/prison/limerick-prison/>.

²²⁷ See, for example, Prison Visiting Committee, *Annual Report 2018 Dóchas Centre*, 2019, p. 4; *Annual Report 2018 Limerick Prison*, 2019, p. 2.

²²⁸ Irish Prison Service, *Census of Prison Population October 2020 – Cell Occupancy – In-Cell Sanitation*, 2020, at Table 1.

²²⁹ Inspector of Prisons, *Standards for the Inspection of Prisons – Women Prisoners' Supplement*, 2011, Standard 238.

Between 2010 and 2017, a total of 14 babies were born to women in custody.²³⁰ Standard 243 of the Inspector of Prisons' Standards provides that a prisoner who has just given birth shall not be returned to prison unless authorised by a doctor. Standard 244 requires that the best interests of the child should be the basis of the decision as to whether a baby can stay with his or her mother. If the baby is to remain with the mother, then Standard 246 provides that the healthcare facilities and services must be appropriate for babies and should be equivalent to those available in the community. If the mother and baby are to be separated, this should be planned in advance, and all necessary supports should be provided to the mother (Standard 245). If babies are to be accommodated, then Standard 248 requires that a clear and comprehensive child protection policy should be in place. Relevant programmes designed for pregnant women, nursing mothers and women with babies in prison should be available (Standard 248).

Standard 247 suggests that consideration be given to the provision of a mother and baby unit in any women's prison where mothers and babies are to be accommodated. Such a unit has been established at the Dóchas Centre.²³¹ All mothers in the unit have their own room after giving birth, and necessities including a cot, baby food, nappies are provided.²³² There is no similar unit in Limerick Prison, so any female prisoner there can be transferred to the Dóchas Centre.²³³ The purpose behind the unit is to minimise disruption to the bonding of mother and child.²³⁴ The Dóchas Centre Visiting Committee stressed the importance of this policy in its 2017 Report.²³⁵ The Committee noted the high quality of the Unit and that it was well stocked.²³⁶ The Committee also noted, however, that some women and their babies had been removed from the Unit to ordinary rooms as a disciplinary measure.²³⁷ Noting the impact that such a move might have on the child, the Committee demanded that this practice be ended and that the women be returned to the Unit.²³⁸

f) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

See 1e above.

g) Please indicate any remedies available to female detainees in case of a breach or violation of the standards addressed under 8. a) – f), including their respective legal basis.

²³⁰ Ireland, Minister for Justice and Equality, [Answer to Parliamentary Queries 130, 133 and 134 from Deputy Clare Daly T.D.](#), 11 April 2017.

²³¹ Ireland, Minister for Justice and Equality, [Answer to Parliamentary Queries 130, 133 and 134 from Deputy Clare Daly T.D.](#), 11 April 2017.

²³² Ireland, Minister for Justice and Equality, [Answer to Parliamentary Queries 130, 133 and 134 from Deputy Clare Daly T.D.](#), 11 April 2017.

²³³ Ireland, Minister for Justice and Equality, [Answer to Parliamentary Queries 130, 133 and 134 from Deputy Clare Daly T.D.](#), 11 April 2017.

²³⁴ Ireland, Minister for Justice and Equality, [Answer to Parliamentary Queries 130, 133 and 134 from Deputy Clare Daly T.D.](#), 11 April 2017.

²³⁵ Dóchas Centre Visiting Committee, [Annual Report for 2017](#), 2018, p. 3.

²³⁶ Dóchas Centre Visiting Committee, [Annual Report for 2017](#), 2018, p. 2. This was in contrast to the rest of the Centre; the Committee noted that it was in urgent need of an upgrade.

²³⁷ Dóchas Centre Visiting Committee, [Annual Report for 2017](#), 2018, p. 3.

²³⁸ Dóchas Centre Visiting Committee, [Annual Report for 2017](#), 2018, p. 3.

See 1f above.

- h) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding this aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

See 1g above.

9. Nutrition

- a) Are there any national standards with regard to nutrition in detention in general? If so, what do they require?

Rule 23(1) of the Prison Rules 2007 requires prisoners to receive a sufficient quantity of properly-prepared wholesome and nutritious food. Rule 23(4) requires that each prisoner have available sufficient clean drinking water.

- b) Are there any national standards with regard to frequency and regularity of provision of meals (warm and cold)? If so, what do they require?

There are no such standards. The European Committee for the Prevention of Torture found that a common complaint regarding food was the timing of tea at 4.15pm, due mainly to the organisation of the day.²³⁹ This timing, however, leaves prisoners almost 16 hours without food. Those with money can buy certain foodstuffs from the canteen, but the Committee recommended that either this last meal of the day be served later, or that prisoners be given a snack later in the evening.²⁴⁰

- c) Are there any national standards with regard to healthy food, special diets or dietary restrictions? If so, what needs to be provided to detainees?

Rule 23(2) requires prison authorities, in so far as practicable, to prepare food in accordance with the dietary practices of any religion or culture professed by the prisoner. Rule 23(3) provides that where the prison doctor so advises, special provision should be made in relation to dietary needs of a prisoner who suffers from a medical condition the treatment of which requires adherence to a special diet.

²³⁹ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, para. 67.

²⁴⁰ Council of Europe, European Committee for the Prevention of Torture, [Report to the Government of Ireland on the visit to Ireland from 23 September to 4 October 2019](#), CPT/Inf (2020) 37, para. 67.

d) Please indicate whether there are different standards applicable to different detention regimes (pre-trial and post-trial detention and for example, if applicable in your jurisdiction: open, semi-open, closed etc.).

See 1e above.

e) Please indicate any remedies available to detainees in case of a breach or violation of the standards addressed under 9. a) – d), including their respective legal basis.

See 1f above.

f) Please, provide a link to the National Preventive Mechanism's reports from the reference period (1 May 2018 to 15 April 2021, if no report is available for this period, please provide links to the most recent one and the relevant CPT reports from the reference period) and whether there are any recommendations regarding these aspect (please provide the exact quotation in both, the national as well as in English language) These reports can be found on the webpage of the National Preventive Mechanism. For ease of reference a list of links can be found via the [OPCAT Database](#).

See 1g above.

Part II: National jurisprudence

Paget v. Governor of Midlands Prison [2019] IEHC 514, Ireland, High Court, Dublin, [2017 No.708 JR], 9 July 2019

Thematic area	<i>Isolation/Solitary Confinement</i>
Decision date	9 July 2019
Reference details	[2019] IEHC 514
Key facts of the case	Respondent put applicant into a segregated regime under Rule 62 of the Prison Rules. Applicant argued that respondent did not provide adequate reasons for doing so as required by Rule 62.
Main reasoning/argumentation	Applicant argued that the Prison Rules 2007 required a prison governor to provide reasons for his/her decision to restrict a prisoner's activities. Respondent argued that he had complied with the strict legal requirements in that he had given a form to the applicant stating reasons. However, the court noted that the form merely repeated verbatim the statutory wording and did not refer to any factual circumstances that justified the decision.
Key issues (concepts, interpretations) clarified by the case	The nature and content of the reasons required to be sent to a prisoner whose activities have been restricted by order of the prison governor.
Results (sanctions) and key consequences or implications of the case	Court held that the requirement for reasons was mandatory and that the form given in this case was insufficient as it did not offer any factual explanation for the decision. Main consequence is that prison governors will now have to factually justify a decision to restrict a prisoner's activities, although the court accepted that security situations may arise that would justify a minimal explanation.
Key quotation in original language and translated into English with reference details	"To recite almost pro forma, the provisions of Rule 62(2) when providing a statement of reasons under Rule 62(5) is to state a conclusion and provides no reasonable or even minimal explanation as to why the conclusion was arrived at. ... [I]t seems to me that in most cases this will be fulfilled by even the most minimal statement of reasons which can be understood as forming the basis

	for the conclusion reached. Each situation must of necessity be fact dependent” (paras. 52 and 54).
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Simpson v. Governor of Mountjoy Prison [2019] IESC 81, Ireland, Supreme Court, Dublin, Record No. 170/17, 19 November 2019

Thematic area	<i>Sanitation of Cells</i>
Decision date	19 November 2019
Reference details	[2019] IESC 81
Key facts of the case	Appellant was under a protected regime in Mountjoy Prison. He was locked in a shared cell for 23 hours a day; the cell had no in-cell sanitation and appellant was required to slop out each morning.
Main reasoning/argumentation	Appellant argued that his cell conditions breached his constitutional rights, especially his right to privacy. Respondent pointed to efforts to ameliorate appellant’s cell conditions; also pointed to the fact that the Prison has now been fully refurbished, rendering the case moot.
Key issues (concepts, interpretations) clarified by the case	Whether the cell conditions suffered by the appellant breached constitutional rights and norms; whether a person in such a situation can recover damages.
Results (sanctions) and key consequences or implications of the case	Court found a breach of the appellants constitutional rights and a violation of constitutional norms. Appellant awarded damages in the sum of €7,500. Slopping out no longer occurs in Mountjoy Prison, but it does in Limerick and Portlaoise Prisons. The Prison Service is now on notice that this practice has constitutional implications and must end.
Key quotation in original language and translated into English with reference details	“Society reserves to itself the right to sentence persons who commit serious crimes to imprisonment. But the conditions of detention must comply with national and international standards, which Ireland has pledged itself to uphold. ... Here the appellant was exposed to conditions that would have fallen below acceptable standards, even if this case had been taken a decade or more earlier” (paras. 148-149).

PMcD v. Governor of X Prison [2020] IECA 189, Ireland, Court of Appeal, Dublin, Record No. 2019/261, 14 July 2020

Thematic area	<i>Breach of the Prison Service’s Complaints Policy</i>
Decision date	14 July 2020
Reference details	[2020] IECA 189
Key facts of the case	Respondent under a protected regime at his own request. Complained about various issues and was unhappy with how his complaints were dealt with, even going on hunger strike for 50 days. Respondent claimed damages for the Prison Service’s failure to follow its own Complaints Policy. Respondent awarded damages in respect of the Service’s negligence.
Main reasoning/argumentation	Respondent pointed to the Prison Service’s Complaints Policy which indicated that complaints such as those he had made would be dealt with usually in 48 hours. Appellant argued that trial judge had erred in finding that their failings constituted negligence justifying damages.
Key issues (concepts, interpretations) clarified by the case	Confirmed that the Complaints Policy has no statutory force, and that such a policy does not create a legal duty towards prisoners, and thus did not engage the law of negligence.
Results (sanctions) and key consequences or implications of the case	Finding of negligence and award of damages overturned. Makes the enforcement of Prison Service’s policies more difficult.
Key quotation in original language and translated into English with reference details	“The Policy Document is aspirational in nature and, as the evidence in the present case shows, dependent to a significant degree on having the resources available to implement it. ... To impose such a duty here would potentially represent a significant disincentive to prison authorities against the voluntary adoption of policies, procedures and practices designed to improve and enhance the situation of prisoners in their care. The imposition of such a duty would thus not be in the interests of prisoners as a whole and indeed the wider public” (para. 51).

SM v. Governor of Cloverhill Prison [2020] IEHC 639, Ireland, High Court, Dublin, Record No. 2020/1765 SS, 7 December 2020

Thematic area	<i>Access to Healthcare for Prisoners</i>
Decision date	7 December 2020
Reference details	[2020] IEHC 639
Key facts of the case	Applicant sought a transfer from Cloverhill Prison to the Central Mental Hospital. He suffered from OCD, epilepsy and schizophrenia. Applicant receiving psychiatric treatment in the prison, was visited by nursing staff twice a day, he had adequate prescription drugs (which he did not always take) and he was on a waiting list to go to the CMH. Sought declaration that his imprisonment was accordingly unlawful and an order of habeas corpus.
Main reasoning/argumentation	Applicant argued that a transfer to the CMH was essential to meet his medical needs. Respondent argued that applicant was receiving extensive psychiatric care in the prison, to a standard that would meet or exceed that available in the general community on a medical card (the required legal standard).
Key issues (concepts, interpretations) clarified by the case	The extent of the obligation on the Prison Service to meet the medical needs of prisoners clarified. No obligation to go beyond the standard of care that could be accessed by members of the community in receipt of a medical card. Court also noted the absence of any intention on the part of the prison staff to breach any of the applicant's rights. Failure to transfer applicant did not cause applicant's condition or make it worse.
Results (sanctions) and key consequences or implications of the case	Application for an order of habeas corpus failed. Case provided clarity as to the level of deficiency in provision of healthcare that will render continued incarceration unlawful. The Prison Service is meeting its legal obligation as regards access to healthcare by providing in the prison a standard of healthcare comparable to that available in the community. Applicant would be worse off if he were released into the community.
Key quotation in original language and translated	"[I]t is accepted that release would do nothing to remedy the position of the applicant but rather make it significantly less likely that he would access even the

into English reference details	with treatment he is currently receiving and undermine his chances of being admitted to the CMH. Because the applicant is on balance better off in prison than in the community, that mitigates against his current treatment reaching the necessary level of egregiousness" (para. 38).
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