



NPM Scotland Subgroup

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Angela Constance MSP
Cabinet Secretary for Justice and Home Affairs

Sent by email

14th December 2023

Dear Cabinet Secretary for Justice and Home Affairs,

Response to Serious Article 3 Concerns in Scotland's Separation and Reintegration Units (SRUs)

You will be aware the UK NPM is made up of 21 bodies that monitor and inspect places of detention in the UK to prevent torture and ill-treatment for those deprived of their liberty. NPM members work collectively to fulfil the NPM's mandate under the United Nations [Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment](#) (OPCAT).

The NPM Scotland Subgroup exists to improve collaboration and pursue joint work as a cohesive body to meet the UK's obligations under OPCAT in Scotland. Members identify areas of shared concern and take joint action on Scotland-specific issues.

The members of the NPM Scotland Subgroup are:

- Care Inspectorate
- His Majesty's Inspectorate of Constabulary in Scotland
- His Majesty's Inspectorate of Prisons for Scotland
- Independent Custody Visitors Scotland
- Mental Welfare Commission for Scotland
- Scottish Human Rights Commission.

The group met following the publication of HM Chief Inspector of Prisons [Thematic Review of Segregation in Scottish Prisons](#). We are aware the inspectorate is working with Ministers and the SPS directly on an action plan to address the many recommendations and findings of the report, and we do not wish to interfere with this important process and dialogue.

That said, you will be aware the report raises a number of very serious concerns which, in our judgement, risk crossing the threshold into Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment – for which it is our mandate to prevent. The prohibition of torture is an absolute right for which there can be no derogation or assessment of proportionality. The state must take proactive steps to stop, correct and prevent such action.

The NPM Scotland Subgroup would therefore appreciate information from your Department on what actions you are taking following the publication of this report, and reassurance that the serious findings made in the report are being actively addressed.

Separately, the NPM Scotland Subgroup is working with the Scottish Human Rights Commission to examine the state of progress in implementing absolute rights in places of detention – the right to life and the prohibition on torture and ill-treatment. The scope of this project covers prisons and the forensic mental health estate. We are collating human rights recommendations made by international, European and domestic bodies which identify gaps in the protection of these rights. We will be examining the state of progress in implementing these recommendations and remedying any gaps. The issues raised in relation to segregation and any progress made in remedying them will also be highlighted through this work. The Scottish Human Rights Commission intends to publish the findings in Spring 2024.

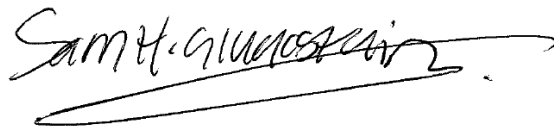
We will be closely monitoring the implementation of recommendations and progress to achieving a prison system which truly places the legal requirements of human rights firmly at the centre of policy making and practice.

I plan to publish this letter on the National Preventive Mechanism website.

Yours, on behalf of the NPM Scotland Subgroup,



Jim Farish
NPM Scotland Subgroup Chair



Sam Gluckstein
Head of UK NPM

Copy to:

UK NPM Scotland Subgroup:

Cathy Asante, Scottish Human Rights Commission

Arun Chopra, Mental Welfare Commission for Scotland

Wendy Sinclair-Gieben and Stephen Sandham, His Majesty's Inspectorate of Prisons for Scotland

Ray Jones, His Majesty's Inspectorate of Constabulary in Scotland

Kirsty Scott, Independent Custody Visiting Scotland

Helen Happer, Care Inspectorate

Audrey Nicoll MSP, Convener of the Criminal Justice Committee

Key areas of concern

Nature of concern	Human Rights Standard	Report excerpt
Allegation of physical abuse	Article 3 of European Convention on Human Rights - Prohibition of torture	<p>"Some serious allegations of violence, bullying and heavy-handedness by staff towards SRU prisoners, including during control and restraint procedures, were made by prisoners during the review. One prison in particular was singled out by several prisoners across the estate who had spent time in its SRU during the previous couple of years. Numerous allegations were made of violence, aggression, and intimidation by SRU staff, as well as a failure to take prisoners' mental health seriously.</p> <p>While many of these reports, and the name of the prison in question, cannot be published here to protect interviewees' anonymity, one prisoner summarised the general tone of the complaints. He reported that in that particular prison:</p> <p><i>...[staff are] overboard you know. See the amount of times I've been down there and there's boys with two broken wrists and all that. [Prisoners are] asking for the phone and they're [the staff] like 'you're not getting the f***ing phone' you know what I mean? And just leaving them for like two weeks trying to get their lawyers and all that up. They're like that: 'You'll not be going anywhere, we'll let you use the phone and get your lawyer basically once your bruises have healed up', know what I mean?"</i> (p. 25)</p>
Lack of appropriate support to those suffering mental health distress	Article 2 of European Convention on Human Rights – Right to life	<p>"...in HMP Inverness ... staff mentioned that certain prisoners' call bells would be switched off as a result of overuse, including in the case of a prisoner who was severely mentally unwell." (p. 27)</p>
Length of time in SRU, Treatment and Conditions in Solitary Confinement	Rules 43, 44 and 45 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) prohibiting prolonged solitary confinement and the use of solitary confinement in the case of prisoners with mental disabilities when their conditions would be exacerbated by such measures	<p>"SRU stays ranged in duration from several hours to over two years. As the report highlights, the treatment and conditions of those spending prolonged periods in segregation is of significant concern." (p. 20)</p> <p>"The CPT reports raised concerns about the fact that many "prisoners were being segregated for extremely long periods of time... either in 'carousel' (moved between different prison SRUs) or a 'yo yo' situation (moved between the SRU to the mainstream and then back to the SRU" (2019:6; 2020:3). Following up this concern, the review found that between 1 April 2021 and 31 March 2022, 138 prisoners were referred to the Prisoner Management Assurance Group (PMAG), having spent three months or longer in an SRU. In total there were 82 instances in which prisoners were transferred directly from one SRU to another SRU – on the SRU "carousel" – during this period." (p. 20)</p> <p>"...the longest continuous SRU stay on 28 September 2022 was 1,017 days – almost three years. Eight individuals had been held continuously in SRUs for over a year, including seven who had</p>

		<p>been in an SRU for over 600 days, and four who had been in an SRU for over two years. Those staying in the SRU long term were those who were most difficult to reintegrate due to their complex characteristics, often including poor mental health, behavioural issues, SOCG links, and substance misuse.” (p. 20)</p> <p>4.Conclusion: Segregated prisoners are generally not able to access even the minimum of two hours of meaningful human contact per day in line with the UN Mandela Rules. There is an urgent need to address this, given the risks associated with prolonged solitary confinement. (p. 66)</p>
Lack of MH support, individuals in mental crisis being held in wholly unsuitable conditions	Article 2 of European Convention on Human Rights – Right to life	<p>“In some cases, SRUs held prisoners with serious and complex mental health illness and needs for extended periods because they could not be managed in mainstream accommodation and were awaiting assessment by a psychiatrist, or a bed in a secure mental health facility. In some prisons officers reported that a psychiatric assessment could take weeks to arrange.</p> <p>More concerning still, staff reported that in many cases in which prisoners appeared clearly extremely unwell and unable to function normally, gaps in NHS provision meant that NHS facilities would not accept them for treatment. In these cases, the SRU was usually considered the only safe place for the prisoner to stay. A number of officers and senior managers reported that psychiatric services would refuse to admit prisoners to secure units if it was felt that the condition could not be treated or improved. Some felt that these decisions were taken by clinicians, at least in part, because of concerns about managing prisoners’ risk in hospital settings.” (p. 41)</p>
Conditions of imprisonment	Rule 45 of the UN Standard Minimum Rules for the Treatment of Prisoners (the Nelson Mandela Rules) per above	“The combination of dark, bleak, uncomfortable surroundings – both inside and outside – and unwanted noise throughout the night is clearly not conducive to prisoners’ well being or mental health, especially when combined with the extremely limited access to sensory stimulation, natural spaces or light” (p. 27)
Prisons covering up details about use of SRU	Article 20 of the OPCAT regarding NPM access to information	“While most prisons were open and transparent with the review team about their SRU use, in one prison the written information provided by the SRU did not match the reality that the review team found or the verbal detail provided by prison staff. The review team was also concerned during this visit by the apparent removal of a mentally unwell prisoner from the SRU on the day of our visit, who an HMIPS Independent Prison Monitor confirmed was moved back into the SRU immediately after the review team had concluded their visit.” (p. 64)