Monitoring places of detention

Fifth **Annual Report**
of the United Kingdom's
National Preventive Mechanism
2013–14

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Fifth annual report of the United Kingdom's National Preventive Mechanism

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Any enquiries regarding this publication should be sent to us at:
hmiprisons.enquiries@hmiprisons.gsi.gov.uk
or HM Inspectorate of Prisons, Victory House, 6th Floor, 30–34 Kingsway, London WC2B 6EX

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Introduction by Nick Hardwick

Her Majesty's Chief Inspector of Prisons

The UK has a long tradition of the independent inspection and monitoring of places of detention. Over the years the rigour of these monitoring processes and the degree to which they have been truly independent have varied, and the different nations that make up the UK and different types of custody have all developed their own inspection systems. Nonetheless, few other states can match the breadth of the UK's detention monitoring mechanisms, the experience the different monitoring bodies bring to their roles or the public support they enjoy.

Long experience in the UK has taught that those detained in any setting, out of sight and with little recourse to safeguards, are especially vulnerable and that regular, independent monitoring has a vital role in preventing ill-treatment or worse. It was not surprising therefore that the UK had a key role to play in the development of the United Nations Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT), which had at its heart the development of a system of international and national independent monitoring of all places of detention. At a national level, States Parties are required to establish an independent National Preventive Mechanism (NPM) to undertake inspections and other preventive activity. OPCAT was adopted by the UN in 2002 and entered into force in 2006. The UK was one of the first states to ratify OPCAT in December 2003.

Most States Parties have created a new organisation as their NPM or given the NPM's responsibilities to an existing human rights ombudsman or similar organisation. The situation in the UK is different. There were already a number of well-established individual bodies with statutory independent inspection, monitoring or visiting powers and so, rather than dismantle existing structures and create a new body, in March 2009 the UK designated 18 existing bodies as its NPM and gave HM Inspectorate of Prisons in England and Wales responsibility for coordinating their NPM activities. This decision meant the UK could make best use of the powers, resources and experience that existing monitoring bodies already had. It created the potential for these bodies to

better learn from each other, coordinate their work and improve the consistency with which they approached human rights issues in detention. However, realising that potential without an explicit statutory footing or structure for so doing, among so many organisations with different powers and priorities operating across four nations with different levels of devolution, has undoubtedly been challenging.

Five years after the UK NPM was designated, much of this report focuses on the extent to which that potential has been realised and those challenges met. We have had a number of processes for making that assessment. In June 2013 we met with the Subcommittee on Prevention of Torture (SPT) in Geneva, the UN body that oversees OPCAT implementation, to discuss the work of the UK NPM and the strengths and weaknesses of its structure. All NPM members completed a self-assessment of the degree to which they comply with OPCAT requirements, based on the guidance the SPT had issued to NPMs. We will repeat this process every year and NPM members are committed to bringing a greater external perspective to that assessment. In April 2014 the UK NPM, in conjunction with the University of Bristol Human Rights Implementation Centre, hosted a conference for NPM members, inspected bodies, non-governmental organisations (NGOs), academics and other stakeholders to consider the progress the NPM had made in the five years since its designation and priorities for the future. We were grateful that the Rt. Hon. Simon Hughes MP, the Minister of State for Justice and Civil Liberties, took the opportunity to attend the conference and were encouraged by his statements of support for OPCAT and the future work of the NPM.

The key strength of the NPM is the hundreds of independent monitoring visits conducted every year, with its preventive approach further supported by the capacity of its individual members to undertake other activity such as training or commenting on legislative proposals. As a direct consequence of OPCAT, the scope of NPM members' monitoring has been extended to include new areas of custody such as police cells and military detention in the UK, although it is frustrating that we cannot inspect UK military detention overseas. The criteria used in our monitoring increasingly draw directly on human rights standards. OPCAT has supported members in their efforts to ensure that their independence and need to be adequately resourced are properly understood by government. Work and best practice on issues such as the detention of children is shared between members and NPM members work together to comment on draft UK and European legislation. The UK NPM is a constant source of experience and expertise for other states wishing to establish NPMs or develop their work in detention settings.

However, as this report also shows, 2013–14 was undoubtedly a challenging year for many of the bodies we monitor. Increased demand and reduced resources created pressures that sometimes contributed to the

poor treatment of detainees in a number of different settings. There was a growing, if overdue, awareness of the increased vulnerability of many of those held in different forms of custody, because of their age, mental health, physical disability, previous history of exploitation or other characteristics. Individual members focus on these issues in the day-to-day work that is described in their own annual reports. In addition, the NPM seeks to bring its collective effort to examining cross-cutting themes that affect most, if not all, forms of detention.

Restraint is one of these issues. Too many lives have been lost because the same mistakes have been made again and again. The NPM took up this issue in 2013–14 and members agreed to take the work of the Ministerial Board on Deaths in Custody in England and Wales, progressing common principles of safer restraint, as a basis for their own work.

Individuals and organisations that cooperate with an NPM in the course of its work must be free from sanctions or prejudice for doing so. Over the last year some NPM members have begun work together to ensure there are reporting and investigation mechanisms in place to deal with any allegation of sanctions and, perhaps even more importantly, to ensure detainees feel they can speak freely to inspectors or monitors.

In 2014–15 the NPM has agreed to work on the issue of solitary confinement and isolation – which may come under many different names and guises in different forms of detention, but is always a severe measure that should only be used for the shortest possible time, when strictly necessary and be subject to close supervision. We will report more fully on this issue in the NPM's next annual report.

Despite making progress in many areas, we are clear that the NPM is not yet fully able to realise its potential. It is a challenge to coordinate the activities of so many different bodies, all of which have different powers and many of which have much wider remits than the monitoring of places of detention. In my view, the responsibilities and powers that members derive from being part of the NPM need to be clearly set out in legislation. Experience has also shown the benefits of establishing a legal duty for inspecting bodies to cooperate with each other. Strengthening the basis with which the NPM performs its functions would strengthen the protection of those detained. It would require inspected establishments and relevant authorities to engage with NPM members' recommendations, provide a clear basis for taking forward joint work and safeguard NPM members' independence.

In the short-term, members have agreed a number of measures to develop the NPM's work. To strengthen the NPM's governance members intend to appoint an external chair to its Steering Group. To raise the profile of its work in preventing ill-treatment in detention, the NPM will improve its external communications and establish a self-standing website. And as with the work on solitary confinement and isolation, the NPM will focus its work on a small number of key issues that are common to most members as a way to strengthen its impact.

Five years after its designation, the NPM is well established and the powers and responsibilities afforded by OPCAT have been integrated by members to strengthen their reach, expertise and independence. However, this is only the first stage.

Over the next five years I hope that the NPM's work will be developed further, its powers strengthened, the cooperation and coordination between members improved, and detainees – wherever they are held – will be better protected from ill-treatment. In this way I believe the UK's long tradition of work in this area will continue to be an example that others will wish to follow.

Nick Hardwick
Her Majesty's Chief Inspector of Prisons

Section one
Context

About the Optional Protocol to the Convention against Torture (OPCAT)

The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) is an international human rights treaty designed to strengthen the protection of people deprived of their liberty. Its adoption by the United Nations General Assembly in 2002 reflected a consensus among the international community that people deprived of their liberty are particularly vulnerable to ill-treatment and that efforts to combat such ill-treatment should focus on prevention. OPCAT embodies the idea that prevention of ill-treatment in detention can best be achieved by a system of independent, regular visits to all places of detention. During such visits, the treatment of and conditions for detainees are monitored.

OPCAT entered into force in June 2006. States that ratify OPCAT are required to designate a 'national preventive mechanism' (NPM). This is a body or group of bodies that regularly examine the treatment of detainees, make recommendations and comment on existing or draft legislation with the aim of improving treatment and conditions in detention.

In order to carry out its monitoring role effectively, the NPM must:

- be independent of government and the institutions it monitors;
- be sufficiently resourced to perform its role; and
- have personnel with the necessary expertise and who are sufficiently diverse to represent the community in which it operates.

Additionally, the NPM must have the power to:

- access all places of detention (including those operated by private providers);
- conduct interviews in private with detainees and other relevant people;
- choose which places it wants to visit and who it wishes to interview;
- access information about the number of people deprived of their liberty, the number of places of detention and their location; and
- access information about the treatment and conditions of detainees.

The NPM must also liaise with the Subcommittee on Prevention of Torture (SPT), an international body established by OPCAT with both operational functions (visiting places of detention in States Parties and making recommendations regarding the protection of detainees from ill-treatment) and advisory functions (providing assistance and training to States Parties and NPMs). The SPT is made up of 25 independent and impartial experts from around the world, and publishes an annual report on its activities.[1]

The UK's National Preventive Mechanism

The UK ratified OPCAT in December 2003 and designated its NPM in March 2009. Designation of the NPM was the responsibility of the UK government and it chose to designate multiple existing bodies rather than create a new, single-body NPM. This took into account the fact that many

1 See http://www2.ohchr.org/English/

types of detention in the UK were already subject to monitoring by independent bodies, as envisaged by OPCAT, and the different political, legal and administrative systems in place in the four nations that make up the UK. In addition, parallel systems of professional inspection and lay monitoring exist in criminal justice and immigration sectors in all four nations of the UK. In designating existing bodies as members of the NPM, the government explicitly required that they have a statutory basis and be able to make unannounced visits to places of detention. The government concluded that 18 bodies operating in England, Wales, Scotland and Northern Ireland met those requirements, and they were formally designated in a statement to Parliament on 31 March 2009.

On 3 December 2013, three new members were designated to the NPM, reflecting the merger of bodies monitoring care and social work in Scotland into the Care Inspectorate, the separate membership of Scottish Independent Custody Visitors, and the incorporation of Lay Observers to reflect their OPCAT-compliant role in monitoring court custody and transfers in England and Wales.

England and Wales

Her Majesty's Inspectorate of Prisons (HMI Prisons)
Independent Monitoring Board (IMB)
Independent Custody Visiting Association (ICVA)
Her Majesty's Inspectorate of Constabulary (HMIC)
Care Quality Commission (CQC)
Healthcare Inspectorate Wales (HIW)
Office of the Children's Commissioner for England (OCC)
Care and Social Services Inspectorate Wales (CSSIW)
Office for Standards in Education, Children's Services and Skills (Ofsted)
Lay Observers (LO)

Scotland

Her Majesty's Inspectorate of Prisons for Scotland (HMIPS)
Her Majesty's Inspectorate of Constabulary for Scotland (HMICS)
Scottish Human Rights Commission (SHRC)
Mental Welfare Commission for Scotland (MWCS)
Care Inspectorate (CI)
Independent Custody Visitors Scotland (ICVS)

Northern Ireland

Independent Monitoring Boards (Northern Ireland) (IMBNI)
Criminal Justice Inspection Northern Ireland (CJINI)
Regulation and Quality Improvement Authority (RQIA)
Northern Ireland Policing Board Independent Custody Visiting Scheme (NIPBICVS)

The bodies which make up the UK NPM monitor different types of detention across the jurisdictions, including prisons, police custody, court custody, customs custody facilities, secure accommodation for children, immigration facilities, mental health and military detention, as follows:

<table>
<tr><th rowspan="2">DETENTION SETTING</th><th colspan="4">Jurisdiction</th></tr>
<tr><th>England</th><th>Wales</th><th>Scotland</th><th>Northern Ireland</th></tr>
<tr><td rowspan="2">Prisons</td><td>HMI Prisons with CQC and Ofsted</td><td>HMI Prisons with HIW</td><td rowspan="2">HMIPS with CI</td><td>CJINI and HMI Prisons with RQIA</td></tr>
<tr><td colspan="2">IMB</td><td>IMBNI</td></tr>
<tr><td rowspan="2">Police custody</td><td colspan="2">HMIC and HMI Prisons</td><td>HMICS</td><td>CJINI with RQIA</td></tr>
<tr><td colspan="2">ICVA</td><td>ICVS</td><td>NIPBICVS</td></tr>
<tr><td>Court custody</td><td colspan="2">HMI Prisons & Lay Observers</td><td>HMIPS</td><td>CJINI</td></tr>
<tr><td rowspan="2">Children in secure accommodation</td><td rowspan="2">Ofsted (jointly with HMI Prisons in relation to secure training centres)</td><td rowspan="2">CSSIW</td><td rowspan="2">CI</td><td>RQIA</td></tr>
<tr><td>CJINI</td></tr>
<tr><td>Children (All settings)</td><td>OCC</td><td></td><td></td><td></td></tr>
<tr><td>Detention under mental health law</td><td>CQC</td><td>HIW</td><td>MWCS</td><td>RQIA</td></tr>
<tr><td rowspan="2">Deprivation of liberty[2] and other safeguards in health and social care</td><td rowspan="2">CQC</td><td>HIW</td><td rowspan="2">CI and MWCS</td><td rowspan="2">RQIA</td></tr>
<tr><td>CSSIW</td></tr>
<tr><td rowspan="2">Immigration detention</td><td colspan="4">HMI Prisons</td></tr>
<tr><td colspan="4">IMB</td></tr>
<tr><td>Military detention</td><td colspan="4">HMI Prisons and IMB</td></tr>
<tr><td>Customs custody facilities</td><td colspan="4">HMIC and HMI Prisons</td></tr>
</table>

On 24 February 2014, OPCAT was extended to the Isle of Man. As the Isle of Man is a Crown Dependency, it is not part of the UK but the UK will remain responsible for ensuring that the Isle of Man meets its international obligations under OPCAT. The Isle of Man authorities confirmed that they would establish a separate National Preventive Mechanism in accordance with OPCAT criteria, and that it will initially consist of three bodies: the Independent Monitoring Board for the Isle of Man Prison, the Independent Monitoring Board for the Isle of Man Secure Care Home, and the Mental Health Commission.

The essential requirement of OPCAT – that all places of detention are independently monitored – is fulfilled by individual members of the NPM or by members working in partnership with one another. Detailed findings relating to the treatment and conditions of detainees are published in the inspection or annual reports of each NPM member.

Coordination is essential to the full and effective implementation of OPCAT in the UK, given the scale and complexity of the UK NPM's unusual multi-body structure, and the fact that each member has a different mandate, power and geographical remit. At the same time, the independence of each individual NPM member must be respected, as well as their ability to set their own priorities for detention monitoring.

2 Deprivation of liberty legal safeguards apply only to England and Wales but organisations in Scotland and Northern Ireland visit and inspect health and social care facilities where people may be deprived of liberty.

HMI Prisons fulfils the role of NPM coordination and this function is performed with the purpose of:

- promoting cohesion and a shared understanding of OPCAT among NPM members;
- encouraging collaboration and the sharing of information and good practice between UK NPM members;
- facilitating joint activities between members on issues of common concern;
- liaising with the SPT, other NPMs and other relevant international human rights bodies;
- sharing experience and expertise between the UK NPM and NPMs in other States;
- representing the NPM as a whole to government and other stakeholders in the UK; and
- preparing the annual report and other publications.

The coordination function, activities and governance of the NPM are overseen by a Steering Group of five NPM members who meet regularly and are representative of members in all four nations of the UK and the different remits of organisations that make up the NPM (for terms of reference see Appendix Three).

An NPM sub-group focused on children and young people in detention, chaired by the Office of the Children's Commissioner, serves as a mechanism for NPM members whose work includes visiting children in detention to exchange information and intelligence and to consider joint work on issues affecting detained children (see section 2, Thematic areas (iii)).

Political and economic context

Resource pressure continued to affect both the bodies that NPM members monitor, and the members themselves. For example, the National Offender Management Service (NOMS), which is responsible for prisons across England and Wales and directly manages public sector prisons in these jurisdictions, delivered savings of £274 million which represented 7% of its resource budget. The savings were made by a range of measures, including reducing prison running costs and closing older prisons, in anticipation of cheaper places being made available elsewhere.

In some areas of the UK NPM's work, increases in the detained population and reductions in capacity put pressures on the systems for managing detainees. The total prison population in England and Wales rose from 84,083 at the end of April 2013 to 85,252 by 28 March 2014. This unplanned increase meant that at the end of this period the prison system as a whole was running at 99% of its usable operational capacity (85,972).[3] In mental health detention, the 50,408 detentions under the Mental Health Act 1983 across the NHS and independent hospitals in England during 2012–13 marked a 4% increase on the total for the previous year.[4]

3 *Prisons and Probations Statistics, Population Bulletin – Weekly 26 April 2013* and *Population Bulletin – Weekly 28 March 2014*, Ministry of Justice

4 http://www.hscic.gov.uk/searchcatalogue?productid=13209&q=title%3a%22Inpatients+formally+detained+in+hospitals+under+the+Mental+Health+Act+1983+and+patients+subject+to+Supervised+Community+Treatment%22&sort=Relevance&size=10&page=1#top

The number of applications to use deprivation of liberty safeguards[5] in England continued to rise, with 11,886 applications made (a 4% increase on the number of applications in 2011–12 and a 66% increase on the applications in 2009–10). The number of authorisations granted (55% of all applications) to use the safeguards remained similar to the previous year.[6,7] Application rates increased sharply for people in the two oldest age bands (75–84 and 85 and over).[8]

Some NPM members reported their concerns that pressures were a significant factor in the inadequate provision of timely access to care and staffing levels (in mental health settings in England and Wales) and in detainees' safety (in prisons in England and Wales). The reintroduction of night-time confinement as a cost-saving measure in high security mental health hospitals in England and Wales demonstrates the direct impact of budget cuts on detention practices.[9] There was an unacceptable increase in the number of self-inflicted deaths in prisons in England and Wales, with 88 confirmed self-inflicted deaths between April 2013 and March 2014, a rise of 69% from the 52 recorded in 2012–13 and the highest number for comparable periods since the year ending March 2004.[10] Notifications of deaths of detainees under the Mental Health Act increased in 2012–13 from the previous year, with a total of 275 reported deaths, of which 48 were recorded as having unnatural causes and 27 were undetermined (in comparison to a total of 236, including 36 unnatural and nine undetermined in 2011/12).[11]

The run-up to the September 2014 referendum on Scottish independence[12] further shaped the political context in which NPM members operated. In practice, different legal systems and devolved responsibility for health matters have always meant that Scottish NPM members have very distinct responsibilities and relationships within the NPM are very positive.

At the same time, controversy about the UK's role in the European system for the protection of human rights occurred throughout the year, particularly in relation to the implementation of the European Court of Human Rights judgment *Hirst v. UK*, relating to the ban on prisoners' voting.[13] A parliamentary Joint Committee was appointed in May 2013 to consider and report on the government's proposals in its draft Voting Eligibility (Prisoners) Bill. This committee recommended extending the entitlement to vote in all UK parliamentary, local and European elections to all prisoners serving sentences of 12 months or less.

5 Deprivation of liberty safeguards were introduced in England under the Mental Capacity Act 2005 (subsequently introduced as an amendment under the Mental Health Act 2007), to provide a legal framework to ensure people are deprived of their liberty only when there is no other way to care for them or safely provide treatment.
6 Figures provided by the Health and Social Care Information Centre showed that 11,887 applications to use the safeguards were made in 2012–13 and 6,546 authorisations were granted.
7 http://www.hscic.gov.uk/searchcatalogue?productid=12141&q=title%3a%22Mental+Capacity+Act+2005%2c+Deprivation+of+Liberty+Safeguards+Assessments%22+!Bi-annual+!analysis&sort=Relevance&size=10&page=1#top
8 Care Quality Commission (2014) *Monitoring the use of the Mental Capacity Act Deprivation of Liberty Safeguards in 2012/13*, p.17 (https://www.cqc.org.uk/content/deprivation-liberty-safeguards-201213)
9 Care Quality Commission (2014) *Monitoring the Mental Health Act in 2012/13*, p.36 (http://www.cqc.org.uk/content/mental-health-act-annual-report-201213)
10 HM Inspectorate of Prisons (2014) *HM Chief Inspector of Prisons for England and Wales Annual Report 2013–14*, p.10 (http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/?post_type=inspection&s&prison-inspection-type=annual-reports)
11 http://www.cqc.org.uk/sites/default/files/documents/cqc_mentalhealth_2012_13_07_update.pdf (p.70–27)
12 The outcome of the referendum – in which 44.7% voted 'yes' and 55.3% 'no' to the question 'Should Scotland be an independent country?' – was announced before going to print.
13 Case of *Hirst v. the UK* (No.2) (Application no. 74025/01)

At the time of writing, the government has not tabled a bill to give legislative effect to these, or any alternative, proposals.

Legislative and policy developments

Some legislative and policy developments introduced during the year brought with them significant changes to aspects of the management of places of detention and the provision of services to detainees.

Scotland

A national police service in Scotland, Police Scotland, was formally established on 1 April 2013. As a result of this change, police custody is now managed centrally in Scotland.

Two major pieces of legislation affecting the work of Scottish NPM members were debated and passed during the year. The Children and Young People (Scotland) Act 2014,[14] which received Royal Assent on 27 March 2014, introduced new duties related to children's rights, including the requirement that the Care Inspectorate report every three years on steps taken to further children's rights in Scotland. The Public Bodies (Joint Working) (Scotland) Bill,[15] passed through the Scottish Parliament after being introduced on 28 May 2013. It received Royal Assent on 1 April 2014. The Act provided a new framework for integrating health and social care in Scotland and improving the quality and consistency of these services. The Care Inspectorate (an NPM member) will play a significant role in monitoring these services.

England and Wales

A number of policy changes were introduced in prisons in England and Wales during the year. Revisions to the 'incentives and earned privileges' scheme operating in prisons and young offender institutions in England and Wales were introduced in November 2013.[16] These changes make it harder for prisoners to earn privileges and restrict those available.

The commissioning arrangements for health services in prisons in England changed in April 2013, with NHS England taking on the commissioning of services which had previously been provided by local primary care trusts. There was some disruption and confusion as existing services were tendered as part of the new arrangements.

Plans to build the largest prison in the UK, a 2,000-place privately-run establishment in Wrexham, North Wales, were announced in September 2013.
Restrictions on legal aid for prison law matters were introduced in December 2013.[17]

Other developments included the Offender Rehabilitation Act 2014, which achieved Royal Assent on 13 March 2014[18] and set out new provisions around the release and supervision after release of offenders, as well as provisions for the extension period for extended sentence prisoners. It also expanded powers for drug testing in prisons.

14 http://www.legislation.gov.uk/asp/2014/8/introduction/enacted
15 http://www.scottish.parliament.uk/parliamentarybusiness/Bills/63845.aspx
16 https://www.gov.uk/government/news/major-shake-up-to-prisoner-incentives
17 https://www.justice.gov.uk/legal-aid/newslatest-updates/legal-aid-transformation
18 http://www.legislation.gov.uk/ukpga/2014/11/contents/enacted/data.htm

Mental health detention

The UK government published a 'Mental Health Crisis Care Concordat' in February 2014. This policy initiative was designed to improve outcomes for people experiencing mental health crisis in England – some of whom end up in detention – and contained commitments to drive multi-agency improvements in meeting their needs. Signatories include the Association of Chief Police officers (ACPO), the Association of Police and Crime Commissioners, British Transport Police, the College of Policing and the Home Office as well as key health and social care agencies.

On 13 March 2014 a House of Lords committee, set up to scrutinise how the Mental Capacity Act 2005 was working in practice, concluded that there was a widespread lack of understanding and awareness of the Act, and that deprivation of liberty safeguards, which had been added to the Act in 2007, were not fit for purpose, and needed to be reviewed with a view to being replaced. On 19 March 2014, the Supreme Court handed down its judgment in the cases of *P v Cheshire West and Chester Council and another* and *P and Q v Surrey County Council*. The Supreme Court ruling expanded the understanding of the definition of 'deprivation of liberty', and as a result has brought to light an increasing number of people who are recognised as deprived of their liberty, not only in care homes and hospitals but also in community-based settings such as supported living. In the light of these developments, the Law Commission (England and Wales) has begun to review how deprivation of liberty should be authorised and supervised in hospitals, care homes and community settings where it is possible that rights under Article 5 of the European Convention on Human Rights would otherwise be infringed. The Scottish Law Commission is reviewing Scottish safeguards and will report in 2014.[19]

Women in detention

In July 2013, the UK Parliament's Justice Select Committee issued a report of its inquiry into women offenders, assessing progress five years after Baroness Corston's groundbreaking review of women with particular vulnerabilities in the criminal justice system.[20] The Committee noted there was general agreement that the majority of women offenders pose little risk to public safety and that imprisonment is frequently an ineffective response, as well as broad recognition that the specific needs of women offenders are often neglected in a system designed for a majority of male offenders. Furthermore, the Committee found that the women's prison population had not fallen sufficiently fast and urged the gradual reconfiguration of the female estate with the sort of smaller units and more responsive regimes that Baroness Corston recommended. HMI Prisons gave evidence to the Justice Select Committee inquiry and sat as an observer to the Ministerial Advisory Board on Female Offenders, established to support the implementation of the government's new strategy for women prisoners. NPM members have seen evidence of some positive responses to the concerns the Committee addressed.

19 For more information, see http://www.parliament.uk/business/committees/committees-a-z/lords-select/mental-capacity-act-2005/news/, http://lawcommission.justice.gov.uk/areas/capacity-and-detention.htm and http://www.scotlawcom.gov.uk/law-reform-projects/adults-with-incapacity/

20 http://www.publications.parliament.uk/pa/cm201314/cmselect/cmjust/92/9202.htm

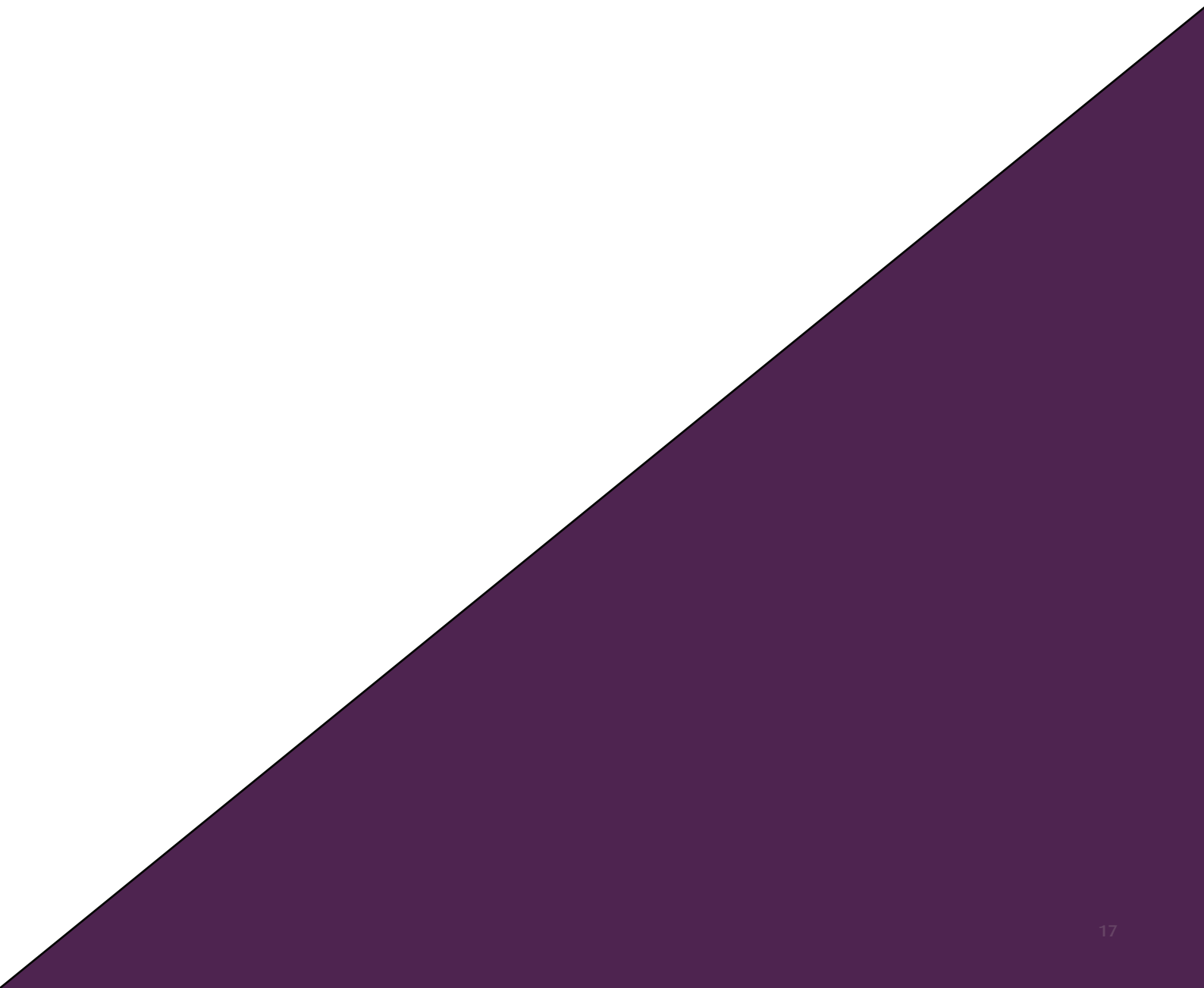
The Scottish government continued to report on its progress in implementing the final report of the Commission on Women Offenders (published April 2012).[21,22] HM Chief Inspector of Prisons for Scotland noted plans to design and develop HMP Inverclyde, a national facility that would replace the current women's prison HMP & YOI Cornton Vale, and acknowledged with satisfaction the considerable investment to improve the living conditions at Cornton Vale during the year. A regional unit for women opened at the new HMP & YOI Grampian in March 2014 and plans for a further regional unit at HMP Edinburgh were announced.[23]

Future legislation

Legislative proposals that include reforms to detention in the UK were presented during the year:

- Criminal Justice (Scotland) Bill, introduced in June 2013, containing a broad range of new measures[24]
- Immigration Bill, introduced in October 2013, which includes provisions relating to the detention of unaccompanied children and pre-departure accommodation for families[25]
- Criminal Justice and Courts Bill, introduced in February 2014, which sets out the legislative framework for the creation of new 'secure colleges' for the detention of under-18-year-olds.[26]

21 http://www.scotland.gov.uk/About/Review/commissiononwomenoffenders/finalreport-2012
22 http://www.scotland.gov.uk/Topics/Justice/policies/reducing-reoffending/women-offenders and http://www.scottish.parliament.uk/S4_JusticeCommittee/Inquiries/20131024_CSfJ_2nd_progress_report_on_CWO.pdf
23 http://www.scotland.gov.uk/Resource/0045/00454059.pdf p. 8
24 http://www.scottish.parliament.uk/parliamentarybusiness/Bills/65155.aspx
25 This bill achieved Royal Assent in May 2014. http://services.parliament.uk/bills/2013-14/immigration.html
26 http://services.parliament.uk/bills/2014-15/criminaljusticeandcourts.html



Section two
The fifth year

In 2013–14, all members of the UK NPM continued to make regular visits to places of detention, monitor the treatment of and conditions for detainees and make recommendations to the relevant authorities.

At this five-year juncture in the NPM's history, efforts have been made to strengthen OPCAT compliance in areas of the NPM's governance and practical monitoring work. In our NPM-wide annual report, we provide a brief overview of the main activity of the different NPM governance and coordination structures, as well as the priority areas of work for the NPM as a whole. We also note some of the areas in which NPM members furthered OPCAT compliance within their institutions as well as in joint working arrangements with other NPM members.

NPM structure and coordination

In October 2013 representatives from MWCS and CJINI stepped down from their roles on the NPM steering group. After consultation with members in their respective jurisdictions it was agreed at the NPM business meeting that representatives from HMIPS and RQIA would join the steering group. The steering group membership is as follows:

- Nick Hardwick, HM Inspectorate of Prisons (HMI Prisons)
- Theresa Nixon, Regulation and Quality Improvement Authority (RQIA)
- David Strang, HM Inspectorate of Prisons for Scotland (HMIPS)
- Evan Humphries, Healthcare Inspectorate Wales (HIW)
- Ian Smith, Independent Custody Visiting Association (ICVA).

The steering group met four times over the year and meetings served to develop the NPM business plan and support preparations for the NPM's five-year anniversary event as well as other priorities.

The NPM's biannual business meetings are its main forum for members to share findings, best practice, experiences and lessons from monitoring different types of detention and different jurisdictions. This year, one business meeting was held, in October 2013, and the five-year anniversary event in April replaced the second business meeting of the year.

A new NPM coordinator was appointed and took up the role in September 2013.

Member-specific developments

The regular activities of NPM members that fall within their OPCAT mandate can be found in their respective annual reports. Here we draw attention to some of the specific ways in which NPM members implemented and furthered their work within the NPM, and where they developed OPCAT standards of preventive monitoring within existing practice. We also note major developments in their operating environment that affected their ability to perform their NPM functions.

Care and Social Services Inspectorate Wales (CSSIW) published a report of its routine monitoring of Hillside Secure Centre in South Wales in February 2014. CSSIW, and the Welsh education inspectorate Estyn, found that the centre provided a high standard of care for the young people living there, supporting them at a difficult time in their life. One of CSSIW's three regional teams also paid particular attention to monitoring progress in implementing the Mental Health (Wales) Measure 2010, in particular the provision in the Act that every inpatient should have access to an independent

mental health advocate if wanted, which it considers a potentially crucial tool in securing the rights of patients at risk of *de facto* detention. The findings from this work will inform the annual performance evaluations of the relevant local authorities which will be published in October 2014.

The Care Inspectorate is a recently designated member of the NPM following an institutional merger, and has a statutory responsibility for the inspection of criminal justice social work services under the Public Service Reform (Scotland) Act 2010. It is also responsible for the inspection of offender accommodation services and secure accommodation for children and young people. During the year, the Care Inspectorate took steps to develop its approach to the scrutiny of criminal justice social work, collaborating with other bodies in Scotland, with a view to better evidencing outcomes for vulnerable people within the justice system, strengthening public assurance and protection and reflecting emerging national policy changes.

The Care Quality Commission (CQC) carried out 1,292 Mental Health Act monitoring visits to 1,356 wards where they spoke with 4,517 detained patients. CQC also carried out the first of its newly designed regulatory visits to mental health services. After consulting on its 2013–16 strategy in 2012, CQC published its response which sets out plans to make sure its regulation of services and Mental Health Act monitoring work together effectively. CQC also undertook to continue its work with national organisations to better understand and fulfil its monitoring role under deprivation of liberty safeguards as case law and policy on deprivation of liberty are developed. CQC began to develop its frameworks for inspections of other secure settings and started to explore ways of using its enforcement powers to take forward its NPM mandate in the light of a consultation by the Department of Health on revisions to its registration regulations.[27]

Criminal Justice Inspectorate Northern Ireland (CJINI) published an inspection report in December 2013 on Monitoring of Progress on Implementation of the Youth Justice Review Recommendations, which included recommendations about youth custody and the practices around sending under-18-year-olds to the Young Offenders' Centre. In October 2013, inspection reports from announced inspections (conducted jointly with HMI Prisons, RQIA and the Education and Training Inspectorate) of Ash House Women's Prison and Hydebank Wood Young Offenders' Centre were published. CJINI's Chief Inspector served as an independent member of the Prison Review Team Oversight Group, and inspectors continued to monitor and report on the implementation of the group's recommendations.

Healthcare Inspectorate Wales (HIW) became responsible for collecting data relating to the numbers of detentions under Sections 135 and 136 of the Mental Health Act in Wales, relating to both health- and police-based places of safety. HIW worked with counterparts in the health and police sectors to ensure the accuracy of this data before it could comment on the use of Sections 135 and 136.

In January 2014, the Home Secretary asked HM Inspectorate of Constabulary (HMIC) to undertake a specific thematic inspection on

27 Health and Social Care Act 2008 (Regulated Activities) Regulations 2014

the welfare of vulnerable people in police custody. Led by HMIC, this thematic inspection will be conducted jointly with HMI Prisons. It was decided that the work would focus on those with mental health problems, those from black and minority ethnic backgrounds and children, and would highlight good practice, identify areas for improvement and make national recommendations. The report on this thematic inspection will be published by the end of March 2015. Also of relevance to HMIC was the publication of the Mental Health Crisis Care Concordat, which provided further support to its focus during inspections on evaluating police awareness of mental health crises and the effectiveness of multi-agency working to divert people in urgent need of mental health care away from police custody.

HM Inspectorate of Constabulary for Scotland (HMICS) carried out its first inspection of police custody since the creation of a national police service, Police Scotland, on 1 April 2013. Custody is now managed nationally, which affords opportunities to improve standards and consistency and implement good practice across Scotland. HMICS used a new custody inspection framework, through which it focused on the treatment of and conditions for detainees, as well as broader issues such as the leadership, governance, resources and partnerships of the national Custody Division. During the course of its inspection, HMICS visited 22 custody centres across Scotland, spoke to detainees, observed key processes, examined custody records and interviewed staff and stakeholders.[28]

HM Inspectorate of Prisons (HMI Prisons) continued its largely unannounced programme of inspections, and published 98 inspection reports over the year. These evidenced a sharp decline in safety-related outcomes across its inspections, with 16 of the 51 full prison inspections demonstrating safety outcomes as either not sufficiently good or poor. HMI Prisons developed new inspection criteria (known as 'Expectations') for the women's prison estate, began to revise its Expectations for police and court custody, and broadened its existing military detention Expectations to cover service custody facilities. These were put to broad consultation and reflected evolving human rights standards. HMI Prisons used evidence generated through its inspections to highlight specific issues faced by different groups in prisons, focusing on ex-service personnel and Gypsy, Romany and Traveller prisoners. Recommendations for addressing their specific needs were made in two findings papers.[29] Finally, HMI Prisons continued to work with the Bahrain Human Rights Ombudsman, supporting its efforts to develop OPCAT-compliant inspections.

HM Inspectorate of Prisons for Scotland (HMIPS) conducted a process to revise the standards it had used in the inspection of prisons in Scotland since 2006 and which it considered no longer adequately reflected the requirements of prisons inspection. Consultation was conducted with practitioners (including other NPM members), academics and others with an interest in human rights and how prisons are run. The evolving standards will be published in the

28 The final inspection report, published in the subsequent business year, can be found at http://hmics.org/sites/default/files/publications/Thematic%20Inspection%20of%20Police%20Custody%20Arrangements%20in%20Scotland.pdf

29 http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/people-in-prison-ex-service-personnel-a-findings-paper-by-hm-inspectorate-of-prisons/#.VHMyo1Pp_lc and http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/people-in-prison-gypsies-romany-and-travellers-a-findings-paper-by-hm-inspectorate-of-prisons/#.VHMzJ1Pp_lc

next business year and will have a greater emphasis on engaging prisoners in decision-making, improving evaluation of the clarity of purpose and priorities of the prison and assessing relationships both within the prison and with external agencies and communities.

An earlier review of Independent Custody Visiting Association (ICVA) commissioned by the Home Office and supported by the then Association of Police Authorities (APA) made a number of governance recommendations, including a proposal to change the status of ICVA from an incorporated organisation into a company limited by guarantee. This final change became effective from 31 July 2013. The Coroners and Justice Act 2009 extended the remit of independent custody visitors to terrorist suspects in detention. The Code of Practice on Independent Custody Visiting (issued under the Police Reform Act 2002) was amended in March 2013 to set out how this would operate in practice. The changes take account of the differences between the statutory framework of powers applicable to terrorism investigations and that applicable to non-terrorism investigations. Changes were also made to the governance of the Association, including the introduction of regional representation from the former police authority regional areas and changes to the constitution. Further work to harmonise visit report forms and national application forms for independent custody visiting is being undertaken. ICVA has raised its concern that reducing budgets and competing demands on Police and Crime Commissioners (PCCs) has resulted in custody visiting schemes not being prioritised.

Independent Monitoring Boards (IMBs) targeted night-time moves of immigration detainees through their monitoring, which led to increased efforts from the Home Office to analyse relevant data carefully and reduce the number of moves at anti-social hours.

Lay Observers, recently incorporated into the NPM, raised awareness of the need to provide prisoners with information, including 'first night leaflets', while still at court as essential preparation for their move to a prison for the first time. Lay Observers also strengthened efforts to review prisoner escort records to ensure the provision of information and leaflets had been recorded alongside any relevant conversations held before a prisoner had been moved to a prison for induction. Further awareness-raising among all court custody stakeholders was conducted around the importance of cleanliness, decoration and the provision of basic sanitary facilities in all court custody. Lay Observers also began a national recruitment drive, introduced regular member performance assessments and began work to develop their training regime.

The Mental Welfare Commission for Scotland (MWCS) undertook a series of visits to women with mental health needs in prison, and made recommendations to improve training, pathways and assessment of needs. The Commission reviewed the operation of restrictions in hospital on correspondence and telephones and the use of security measures for detained patients, and found that there were gaps in the knowledge and application of the legislative safeguards. It issued guidance on the use of the 'nurses' holding power' in mental health law, and a report reviewing deaths in mental health detention. The MWCS also published investigations into two cases of people with mental health problems and a learning disability respectively who were in the criminal justice system, when this might have been avoided with better support from the care system.

The Northern Ireland Policing Board Independent Custody Visiting Scheme (NIPBICVS) achieved an increase in the percentage of visitors aged between 16 and 29 within the scheme, from 9% in 2012–13 to 11% in 2013–14. NIPBICVS plans to further increase the representation of younger people in the custody visiting scheme and this group will be targeted in future recruitment campaigns. NIPBICVS reported that despite a reduction in the overall number of people in detention at the time of its visits, there was a slight increase from 2012–13 on the number of detainees spoken to by its custody visitors. NIPBICVS also entered into a voluntary agreement with the Northern Ireland Policing Board, the Police Service of Northern Ireland (PSNI) and the Independent Reviewer of Terrorism Legislation by which it is informed of the arrest and detention of individuals under Section 41 of the Terrorism Act. Under this agreement, visitors make announced visits to the detainee as soon as is practicable.

Ofsted continued its twice-yearly programme of unannounced inspections of Secure Children's Homes (SCHs), as well as its annual inspections of Secure Training Centres (STCs) with HMI Prisons and CQC. Emphasis was placed on considering the views and experiences of young people, through a detailed questionnaire and interview with all children in STCs, as well as contacting those who had left centres to obtain their reflections. Ofsted noted increased awareness within SCHs and STCs of the rights of young people.

In addition to its ongoing visits, the Office of the Children's Commissioner for England (OCC) intervened in the case of *L and others [2013] EWCA Crim 991*, raising the issue of criminal court judges 'deeming' the age of undocumented individuals and resulting in children being detained in adult prisons. The judgment provided useful guidance to the criminal courts to prevent this practice. The Children and Families Act 2014, which achieved Royal Assent on 13 March 2014, conferred new powers on the Children's Commissioner and requires the Commissioner to have regard to the UN Convention on the Rights of the Child in considering what constitutes the rights and interests of children.

Regulation and Quality Improvement Authority (RQIA)'s Mental Health and Learning Disability Directorate increased its inspection activity by 63%, carrying out 75 inspections of mental health and learning disability wards. Additional inspections were undertaken in response to complaints, whistleblowing and RQIA's need to review the management of patients' finance and belongings. RQIA also provided independent assessment of the completion of the health-related recommendations in the reform programme instigated as a result of the review of the Northern Ireland Prison Service by Dame Anne Owers.[30]

The Scottish Human Rights Commission (SHRC) raised concerns relating to the treatment of prisoners in Scotland before the UN Committee on the Elimination of Discrimination against women and the UN Committee against Torture during their periodic reviews of the UK in 2013.[31] Among the SHRC's recommendations were the full implementation of the conclusions of the Commission on Women Offenders; improved availability and accessibility of

30 Published October 2011.
31 http://www.scottishhumanrights.com/resources/policysubmissions/cedawnews2013 and http://www.scottishhumanrights.com/news/latestnews/article/CATreportnews2013

appropriate facilities and services for people in detention with mental health problems and/or drug or alcohol dependency; and the setup of specific targets and timelines for reducing the high levels of imprisonment and overcrowding.[32] SHRC also ensured that a range of issues relating to conditions of detention were identified under Scotland's first National Action Plan for Human Rights, published on 10 December 2013.[33] Actions to follow up on the implementation of the detention-related aspects of this plan will be pursued with relevant stakeholders during the next business year.

Joint working between NPM members

Many members have joint working arrangements in their regular inspection programmes that support their NPM functions, and these practices are further strengthened through thematic inspections and memoranda of understanding.

Scottish NPM members' joint working arrangements developed over the year, with the Care Inspectorate joining HMIPS on a review of its inspection of Polmont Young Offenders Institution and the inspection of Greenock prison. The joint inspection of Scotland's secure estate for young people conducted by the MWCS and the Care Inspectorate was concluded by April 2014. A report on this work, highlighting key themes emerging from the inspection, will be published in the next business year.

Four NPM members – HMIC, HMI Prisons, CQC and HIW – researched and published the report *A criminal use of police cells? The use of police custody as a place of safety for people with mental health needs* in June 2013. In the report they documented the frequent use of police custody as a place of safety under section 136 of the Mental Health Act, which allows for authorities to take a person believed to be suffering from a mental disorder in a public place to a 'place of safety' for assessment. A number of recommendations were made aimed at reducing the number of people with suspected mental health issues, who were often in situations of vulnerability, from being detained in police custody.

A closer working relationship between NPM members monitoring police custody in England and Wales developed over the year, with greater liaison between the inspectorate bodies (HMIC and HMI Prisons) and the Independent Custody Visitors (ICVs). This led to ICV coordinators and ICVs being invited to shadow inspectors and a presentation on the work of the joint inspectorate programme at the ICVA conference. Further collaboration is envisaged and is in the early stages of development.

CSSIW and HIW worked in partnership to monitor, inspect and improve the operation of the deprivation of liberty safeguards in Wales. In addition to a joint annual monitoring report on the operation of the safeguards, workshops for practitioners and managers were held to identify concerns and themes. This was followed by a national review of the operation of the safeguards, involving inspections in all seven local health boards in Wales, combined with inspections in the relevant local authorities. The report

32 http://www.scotland.gov.uk/Resource/0039/00391828.pdf
33 http://www.scottishhumanrights.com/actionplan

of the national review will be launched at an event hosted by the Welsh Government in November 2014.

The first full cycle of joint inspections by Ofsted, HMI Prisons and CQC of STCs was completed and identified improvements in secure provision as the programme progressed. Further developments, including a comprehensive consultation process, will take place during the next year with a view to implementing a new and improved multi-agency inspection framework in 2015.

In addition to supporting the plans and joint activities reported on here, the NPM coordination produced two fact sheets: *Introducing the UK's National Preventive Mechanism*, and *The First Five Years of the UK NPM* (see Appendix Nine).

Ensuring full coverage of all places of detention (OPCAT Art.4.2)

The UK NPM and its members regularly review coverage of places of detention and the NPM has addressed gaps where these have been identified. Specific developments over the last year, including where the layered monitoring provided by lay and professional bodies has been strengthened, are as follows.

- In response to the setting up of temporary custody facilities for the G8 summit held in Northern Ireland in June 2013 (96 temporary cells and additional capacity for up to 160 detainees at any one time), the NIPBICVS voluntarily took on additional visits to cover all facilities over a seven day period. Fortunately the number of arrests was minimal and the scenario that had been collectively planned for did not materialise; however custody volunteers were well prepared had there been a high number of arrests.
- Revisions to police Codes of Practice issued in April 2013 placed a statutory responsibility on PCCs to ensure local arrangements for ICVs. The revisions also included the requirement that ICV's reports on their visits to suspected terrorist detainees are submitted to the Independent Reviewer of Terrorism Legislation.[34] ICVA produced specific training materials for this work, incorporating these changes in Codes of Practice and any protocol work associated with visiting of detainees under the Terrorism Act.
- The Lay Observers began monitoring the transportation of children from secure children's homes and secure training centres to court and back. These escorts are provided under a contract between the Youth Justice Board and Serco.
- HMIPS worked to clarify responsibilities in relation to the monitoring of court cells in Scotland.

The NPM coordination met with the UK's Independent Reviewer of Terrorism Legislation and the SSAFA (a national Armed Forces charity and member of ICVA) to determine possibilities for collaboration in areas of mutual interest. As a result the possibility of incorporating the Independent Reviewer of Terrorism Legislation in the NPM is being explored with the Ministry of Justice (MOJ).

On 28 March 2014 a ministerial statement to Parliament announced a decision by the Ministry of Defence that independent inspection of the UK's detention facilities in Afghanistan, one of the recommendations made in Sir William Gage's report of the Baha

34 https://terrorismlegislationreviewer.independent.gov.uk/

Mousa Inquiry, was no longer necessary. Referring to existing inspections by the Army's Provost Marshal and own Inspector, as well as visits by the International Committee of the Red Cross (ICRC), the Minister of Defence announced that the existing 'triple' inspection regime was 'already fit for purpose and does not require further amendment'. This decision is in contrast to the very positive indications received by HMI Prisons when preparatory work for such an inspection was undertaken in 2011, in response to a request by the Ministry of Defence and successive Ministers of State for the Armed Forces. HM Chief Inspector of Prisons raised concerns about this decision, which he considers to be contrary to OPCAT Article 4(1) and the need to prevent any reoccurrence of the human rights violations suffered by Baha Mousa.

Submitting proposals and observations on legislation (OPCAT Art.19c)

Across the NPM, members commented on draft legislation and policy as a means of strengthening protections for those in custody and preventing ill-treatment. Given the breadth of the UK NPM's membership, and the devolved nature of some areas of policy and legislation in the UK, NPM members often collaborate in providing responses. Where appropriate, NPM members also respond to each others' consultations, such as around new inspection standards, and this is one of the means by which the various inspectorates and monitoring bodies share good practice and promote complementary approaches.

Some of the main policy consultations and legislative processes to which NPM members have submitted proposals and observations include:

- A joint NPM response submitted to the February 2013 'Transforming Youth Custody' consultation on the government's plans to introduce secure colleges in England and Wales. The government's proposals cited the need to reduce reoffending, cut costs through competition and improve education provision to children in custody as its rationale for change. Subsequent government announcements set out that the first secure college would be opened in 2017, and would hold up to 320 girls and boys aged between 12 and 17 (see also section 2, Thematic areas (iii))
- OCC and HMI Prisons both responded to the government's proposals for legal aid reform, as well as a review of these proposals by Parliament's Joint Committee on Human Rights. The proposals regarding prison law, which are now implemented, restrict criminal legal aid in some prison law matters.
- HMIPS submitted evidence to the Justice Committee of the Scottish Parliament on alternatives to custody, including for women offenders, and also on the Public Service Reform (Prison Visiting Committees) (Scotland) order 2014.
- HMIC and HMI Prisons responded to a Home Office consultation on the treatment of 17-year-olds in police custody in September 2013, providing evidence from custody inspections to call for the provision of an 'appropriate adult' to 17-year-olds in police custody in both law and practice. Under the Police and Criminal Evidence Act 1984[35] (PACE), 17-year-olds could be treated by the police as adults and their entitlement to

the same appropriate adult as younger children was not recognised. This consultation responded to a ruling by the High Court that the PACE Code was inconsistent with human rights standards, and in October 2013 PACE Codes C and H were revised to include entitlements for detained 17-year-olds (a) to have access to appropriate adults, and (b) to have a parent/guardian informed of their arrest and where they are being detained. Other safeguards applicable to 16-year-olds were also extended to 17-year-olds.

- CSSIW made a significant contribution to the preparation and consultation of the Social Services and Wellbeing (Wales) Act, as well as a White Paper on the future of regulation and inspection of care and support in Wales. CSSIW also contributed to the Welsh Government's review of Audit, Inspection and Regulation, and gave evidence to the Commission on Public Services Governance and Delivery, as well as the Health and Social Care Committee of the National Assembly for Wales on the work of Healthcare Inspectorate Wales.
- CQC gave evidence to the committee in the House of Lords scrutinising the implementation of the Mental Capacity Act since its enactment. In response to the House of Lords report, CQC will take forward its mandate to support and encourage use of the existing provisions while they remain lawful, as a means of protecting the human rights of vulnerable people.
- HMI Prisons commented on the Draft Voting Eligibility (Prisoners) Bill, stating the importance of upholding a European Court of Human Rights ruling on the issue. In a submission to the Public Accounts Committee's review into the accountability of quangos, HM Chief Inspector of Prisons called for greater safeguards to his independent mandate. HMI Prisons submitted evidence to the Justice Committee's inquiry into policy and planning of the prison estate, and responded to government proposals for major policy changes to the management of young adults in custody. HMI Prisons also commented on a number of technical policy proposals affecting health and substance misuse services in prisons, as well as regulations guiding operations in prisons and the immigration estate (Prison Service Instructions and Detention Services Orders).
- As a member of the Implementation Group of Independent Monitoring of Prisons, SHRC contributed to efforts to progress the implementation of prison visiting committees in Scotland and made recommendations to the Scottish Government Consultation on the draft proposals for a Mental Health (Scotland) Bill; the Regulation of Investigatory Powers (Scotland) Act 2000: Revised Codes of Practice for Cover Surveillance and Covert Human Intelligence Sources; and the Criminal Justice (Scotland) Bill at the Scottish Parliament.
- MWCS responded to proposals from the Scottish Government on changes to the Mental Health (Care and Treatment) (Scotland) Act 2003.

Thematic areas

i. Restraint

During the year the NPM further developed its longstanding work to evaluate and

35 Police and Criminal Evidence Act 1984 - Code of Practice for the Detention, Treatment and Questioning of Persons by Police Officers

strengthen approaches to monitoring the use of force and restraint and share best practice. Effective monitoring of use of force and restraint is essential to preventing the ill-treatment of detainees, and to safeguarding their rights and well-being.

After concerns about repeated deaths in all forms of detention following restraint, and the findings of subsequent investigations that similar concerns had arisen in many of these cases, the Joint Ministerial Board on Deaths in Custody (for England and Wales), on which several NPM members are represented, developed and endorsed a set of 'Common principles of restraint' (see Appendix Five). These common principles were developed on the basis of broad consultation, and set out key principles for the safe management of restraint.[36] The principles were presented to the full membership of the NPM at its business meeting in November 2013 by Professor Richard Shepherd, an independent expert member of the Independent Advisory Panel to the Ministerial Board. NPM members agreed to use the principles as a basis for developing practice in their work and in discussion with inspected bodies to establish common ground on whether the shared principles could be adopted through governance, management and training mechanisms.

Restraint and use of force are key issues for all members' regular inspection and regulatory activities and examples of the work undertaken during the year are set out as follows.

Police custody

HMIC and HMI Prisons continued to report on their concerns that the use of force in police custody was not being adequately monitored nor the data collected and analysed to inform training needs and custodial practice. These concerns were shared by the Advisory Panel to the Ministerial Board on Deaths in Custody. Both bodies were also concerned to find that custody staff did not routinely complete available use of force forms when detainees were physically restrained and, in some cases, did not perceive their intervention as a use of force. As custody staff also received no feedback from their use of force forms, they generally believed that they were used exclusively for personal safety training, rather than as a safeguard that force was used as a last resort and with the minimum force necessary.

More positively, HMICS found that arresting officers and custody staff in Scotland were taking a proportionate and risk-assessed approach to use of force and restraint, and incidents were being recorded. However there was a lack of management information and trend monitoring.

Children

In its visits to the youth justice secure estate, OCC requested data on restraints and viewed CCTV footage of restraints, raising any concerns subsequently with the detaining institution and the Youth Justice Board.

A new approach to behaviour management, 'minimising and managing physical restraint' (MMPR), was in the process of being rolled out across Young offenders Institutions (YOIs) and STCs. HMI Prisons reported its concern that some young people could be hurt unintentionally because staff would not be able to apply the new techniques properly in a real-life situation, as well as concerns around

36 http://iapdeathsincustody.independent.gov.uk/news/iap%E2%80%99s-common-principles-on-the-safer-use-of-restraint-published-today/

the new system to record incidents of restraint. A full thematic review on the use of restraint in children and young people's establishments will be published in the next reporting year.

Ofsted continued to monitor incidents and CCTV footage and evaluate data for trends relating to restraint. Ofsted inspectors attended briefing sessions on new restraint and behaviour management for STCs and will be linked into the HMI Prisons thematic review.

The issue of restraint arose as a general theme through the joint work of the Care Inspectorate and the Mental Welfare Commission on the secure estate for young people in Scotland. Overall, they found that additional and consistent guidance and training was needed to ensure restraint is fully understood and appropriately applied by all staff working with this highly vulnerable group.

Immigration

OCC was an interested party in the case of *C and others v Secretary of State for the Home Department*, concerning the circumstances when force can be used against children and pregnant women in the context of immigration removals. This case, which was settled, resulted in clarification of Home Office policy that force can only be used against children and pregnant women during immigration removals when this is necessary for the prevention of harm towards themselves or others.

HMI Prisons once again reported its concern that there was still no accredited restraint training for escort staff on using force in the confined space of an aircraft. The use of light-touch compulsion by staff during some stages of removal was disproportionate. Written justification in each case for the use of restraints was not always provided, and in fact handcuffing was routinely used during escorts to some centres and for some outside appointments (such as hospitals or foreign embassies).

Restraints on the dying

Inspections by HMI Prisons during the year uncovered two cases where use of restraint gave cause for concern.

An 84-year-old Canadian who suffered from dementia was detained at Harmondsworth. Despite the recommendation of a doctor at the centre that he be released immediately, he was taken to hospital in handcuffs on two occasions. During the second visit in early 2013, his heart stopped.

In another case at Harmondsworth in November 2012, a detainee who was dying continued to be handcuffed while he was sedated and undergoing an angioplasty in hospital, although the handcuffs were removed before he died. The Home Office's professional standards unit has completed a critical investigation into this case.

HMI Prisons considered the use of handcuffs in both of these cases to be excessive, and recommended that restraint should only be applied if a risk assessment indicated a specific risk of escape or safety to the public or staff.

http://www.justiceinspectorates.gov.uk/hmiprisons/inspections/report-on-an-unannounced-inspection-of-harmondsworth-immigration-removal-centre-5-16-august-2013-by-hm-chief-inspector-of-prisons/#.VGoUN1Pp_ld

Health

Mental Health Act Commissioners raised concerns with restraint practice in hundreds of visits in England. In one example, CQC observed physical restraint being used by three members of staff against one patient. During a 15 minute period, the patient was placed in the prone position on her stomach on her bedroom floor, with her legs restrained by one of the members of staff while others held her arms. The patient protested about the pain to her legs and constantly requested staff to stop. CQC noted subsequently that the patient's observation chart recorded little detail about the incident, nor did it record the views of the patient. In addition to their response to the individual incident, CQC took action to ensure training and monitoring improved adherence to the Code of Practice.

Raising awareness

The IMBs used their annual conference to raise awareness of restraint issues, with a presentation of the findings of the Independent Advisory Panel on Non-Compliance Management and some subsequent training provided to relevant monitors.

ii. Preventing sanctions arising from NPM work

The Optional Protocol to the Convention against Torture requires that sanctions (any punishment or prejudice resulting from a person or organisation's contact with an NPM or its staff) should not be permitted or tolerated (Art. 21). As reported in the NPM's Fourth Annual report, NPM members committed to take action to address this requirement and their own responsibility to prevent any sanctions arising from their work, and address any that came to light.

In October 2013, HMI Prisons and the IMBs adopted a protocol,[37] jointly with the Prisons and Probation Ombudsman, to guide joint work to protect any prisoner/detainee from sanctions or other prejudice. The protocol provides reassurance that prisoners/detainees should be able to freely communicate with each organisation without fear of sanctions or other prejudice, and sets out specific working arrangements to ensure that the three bodies follow up appropriately on any case that arises.

Since the protocol was adopted, 10 alleged cases of sanctions – or concerns that they may arise – were reported and acted upon. The majority of allegations of sanctions arose as a result of a prisoner having spoken to a member of staff from HMI Prisons.

The serious nature of a small number of some of the cases and allegations has led to relevant establishments conducting internal investigations in some instances, and the parties to the protocol have remained in contact to monitor the action taken and ensure it is appropriate.

An initial evaluation of the implementation of the protocol identified its positive influence in raising awareness among NPM staff of their responsibility to prevent and act upon sanctions, which are unlikely to be overt, as well as demonstrating that such cases can be addressed. Further efforts to ensure all incidents of reported sanctions are followed up in line with the protocol will be pursued in the next reporting year, as well as efforts to extend this work across jurisdictions and types of detention.

The NPM was able to share its experience of preventing and addressing sanctions at

37 http://www.justiceinspectorates.gov.uk/prisons/wp-content/uploads/sites/4/2014/02/hmip-imb-ppo-protocol.pdf

an expert meeting on the topic organised by the Association for the Prevention of Torture in January 2014.

iii. Children and young people

2013–14 was the second year of operation of the children and young people's sub-group of the UK NPM. The sub-group is now established as a mechanism for NPM members whose work includes visiting children in detention to exchange information and intelligence and to consider joint work on issues affecting detained children – notably this year, the UK government's plans to build secure colleges in the youth justice system in England and Wales.

The children and young people's sub-group led work on the NPM's joint response to the MOJ's consultation 'Transforming Youth Custody' in April 2013, which proposed the creation of secure colleges in England and Wales. The NPM membership set out a series of principles based on the UN Rules for the Protection of Juveniles Deprived of their Liberty (the Havana Rules) which they believed should underpin the design and management of any custodial settings for children. NPM members advocated a more homely, child-centred environment in these settings.

The sub-group's quarterly meetings included presentations on health in secure settings; the use of segregation/isolation practices on children in detention; and police and immigration detention of children. Future meetings were planned to focus on the *de facto* detention of children, discussing the differing domestic legal context in relation to children and the effects of the Supreme Court's decision in *P (OS) v Cheshire West and another* [2014] UKSC 19; and the HMIC-led thematic inspection of the treatment of vulnerable people in police detention.

An evaluation of the sub-group's first year was also carried out in 2014. It was determined that the sub-group should continue, as it had proved effective, but it should have greater delegated authority to respond on behalf of the whole NPM to emerging issues relating to the detention of children. It was also decided that the sub-group should take forward work relating to the strategic priority chosen by the NPM for each business year.

International scrutiny and collaboration

i. Meeting with the UN Subcommittee on Prevention of Torture

On 20 June 2013, representatives from HMI Prisons and MWCS, on behalf of the UK NPM, gave a presentation in Geneva to a plenary meeting of the Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), on the work of the NPM. Most NPMs are single organisations and although some NPMs have a number of members, the number involved in the UK NPM far exceeds that of anywhere else. This brings advantages in terms of resources and experience but complexity in terms of coordination. In this respect, the UK's multi-member NPM is unique. The purpose of the meeting was to provide the SPT and the UK NPM with an opportunity to consider the strengths and weaknesses of the UK model, what it could learn from or teach NPMs elsewhere and the extent to which the UK NPM is meeting its obligations under OPCAT. This was the NPM's first meeting with the plenary of the SPT since the UK body was established.

In November 2013, the SPT followed up with a letter setting out a series of observations,

conclusions and suggestions to the UK NPM. The SPT acknowledged the clear advantages of the UK model but noted the risk of mixed messages in the multi-member model, the need to deepen understanding of OPCAT within the NPM, and the potential for individual NPM members to follow up and share recommendations made by others. The SPT suggested the NPM should undertake a comprehensive stock-take of its effectiveness and efficiency, using the self-assessment tool they had developed (see Appendix Eight). The NPM welcomed the suggestion and committed to providing a full response to the SPT after it had taken stock and reflected on progress at its five-year anniversary event.

Further informal meetings and exchange between the SPT's focal point for the UK and the NPM continued throughout the year.

ii. UN Committee against Torture recommendations and the NPM response

In May 2013, the UN Committee against Torture carried out its periodic review of the UK's progress in implementing the UN Convention against Torture and the Optional Protocol. The Committee against Torture is the body responsible for overseeing States Parties' implementation of the Convention against Torture, and is made up of 10 independent, authoritative experts.

As part of its review, the UK government submitted a report setting out its own account of efforts to implement the treaty. It then answered the Committee's questions on its report during the May 2013 session. Among its many lines of questioning, the Committee asked if the NPM's independence might be at issue given that State officials working in places of deprivation of liberty were seconded to the NPM. The Committee also asked for assurances that the resources allocated to the NPM were sufficient to allow it to fulfil its role effectively. As a result of the review of documentation from a range of non-governmental sources and its formal interaction with the government during the session, the Committee reached a set of 'concluding observations' and recommendations to the UK, including the following recommendation relating to the NPM:

> 14. The Committee, fully cognizant of the State party's willingness to promote experience sharing, notes that the practice of seconding State officials working in places of deprivation of liberty to National Preventive Mechanism bodies raises concerns as to the guarantee of full independence to be expected from such bodies (art. 2).
>
> The Committee recommends that the State party end the practice of seconding individuals working in places of deprivation of liberty to National Preventive Mechanism bodies. It recommends that the State party continue to provide the bodies constituting the National Preventive Mechanism with sufficient human, material and financial resources to discharge their prevention mandate independently and effectively.[38]

During its dialogue with the Committee against Torture, the government noted that each NPM member was separately funded and that 'there were no plans to cut funding for the NPM work undertaken by those bodies'. It also expressed its view that 'the practice of interchange between State

38 CAT/C/GBR/CO/5 at: http://tbinternet.ohchr.org/Treaties/CAT/Shared%20Documents/GBR/CAT_C_GBR_CO_5_16598_E.doc

officials and NPM officials did not compromise the independence of the NPM; rather, it helped to meet the requirement for quality and expert input and raised State officials' awareness of the NPM.'[39]

On 5 March 2014, after discussion within the NPM, a response was provided to the Committee against Torture (see Appendix Six). In its response the NPM expressed its commitment to working to strengthen the actual and perceived independence of the mechanism in line with standards set by the Optional Protocol to the Convention against Torture. Members committed to work towards making a clearer distinction between the human resources they apply to NPM activities and those applied to their broader functions, and to work towards a reduction in their reliance on seconded staff allocated to NPM activities. In addition, the UK NPM agreed to develop a set of principles to reduce the possibility of conflicts of interest of seconded staff across the NPM. It welcomed the Committee's recognition of the need to ensure the NPM is adequately resourced.

iii. The European CPT reports on 2012 visits to the UK

In September and October 2012 the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) made two official visits to the UK and its reports on both visits were published this year.

The report into the September 2012 visit, published after considerable delay in March 2014, set out a number of recommendations in relation to the CPT's examination of the situation of female prisoners (Cornton Vale, Edinburgh and Greenock Prisons) and adult males on remand (Barlinnie and Kilmarnock Prisons). The CPT also looked into the treatment and conditions of detention in several police stations and visited a medium-secure psychiatric clinic, also in Scotland. In England, the Committee examined issues relating to persons held under immigration legislation and visited two immigration removal centres (IRCs), Brook House and Colnbrook.[40]

Among its recommendations, the CPT called for strengthening of the safeguards in place for people detained by the police in Scotland, and efforts to bring down overcrowding by promoting alternatives to imprisonment. It was critical of the fact that at the time of its visit, remand prisoners at Barlinnie Prison often spent up to 22 hours a day confined to their cells, and of the 63 cupboard-like cubicles in which prisoners were placed during the admission process there. In relation to the immigration removal centres it visited, the CPT expressed concerns about the indefinite nature of detention and the number of people spending longer than a year in immigration detention; the complaints it heard from detainees about the unsupportive and negative attitude of staff; and a small number of allegations of excessive use of force and verbal abuse by staff at Colnbrook IRC. The CPT recommended ending the handcuffing of detained persons during medical consultations in hospitals, and a rapid review of the appropriateness of detention in cases where a medical practitioner has submitted a report that a detained person may have been the victim of torture (Rule 35.3 of the Detention Centre Rules (2001)).

39 UN Committee against Torture, Summary record of the 1139th meeting, Consideration of reports submitted by States parties under article 19 of the Convention. CAT/C/SR.1139.
40 http://www.cpt.coe.int/documents/gbr/2014-11-inf-eng.htm

The CPT's report on its October 2012 *ad hoc* visit, which involved the presence of a CPT delegation on a chartered immigration removal flight between London and Colombo (Sri Lanka), was broadly positive about the preparation for removal process it observed and the efforts to conduct it in a humane way. The CPT made recommendations regarding the accreditation and implementation of a revised training package for escort staff, the presence of interpreters during escort flights and the need to include psychological assessments in the recruitment of escort staff.[41]

The government agreed for its responses to both reports to be published.[42] NPM members began preparing a response to the CPT, to be sent in the next business year.

iv. Council of Europe and UK NPM meeting on immigration detention

A meeting was organised by HMI Prisons with the Council of Europe (Parliamentary Assembly and Directorate General of Democracy) to support work to develop the codification of a set of Immigration Detention Rules applicable to Council of Europe members, which would be similar in approach to the European Prison Rules. The meeting, held at the Council of Europe in Strasbourg on 21 and 22 November 2013, brought together NPMs from across the Council of Europe and members of the SPT and CPT, as well as a number of international experts from academia and NGOs.

Discussions during the meeting focused on key concerns about the treatment of and conditions for immigration detainees across Europe, and sharing best practice in immigration detention monitoring. NPMs present at the meeting shared concern about the lack of consolidated rules in the area of immigration detention, and agreed that such rules would help them fulfil their mandates as detention monitoring bodies. HMI Prisons, as a member of the UK NPM, presented its proposals for some of the principles that should be included in a future set of minimum standards for immigration detention. A final declaration (see Appendix Seven) called on the Council of Europe to take forward these proposals.

v. International exchange of experience

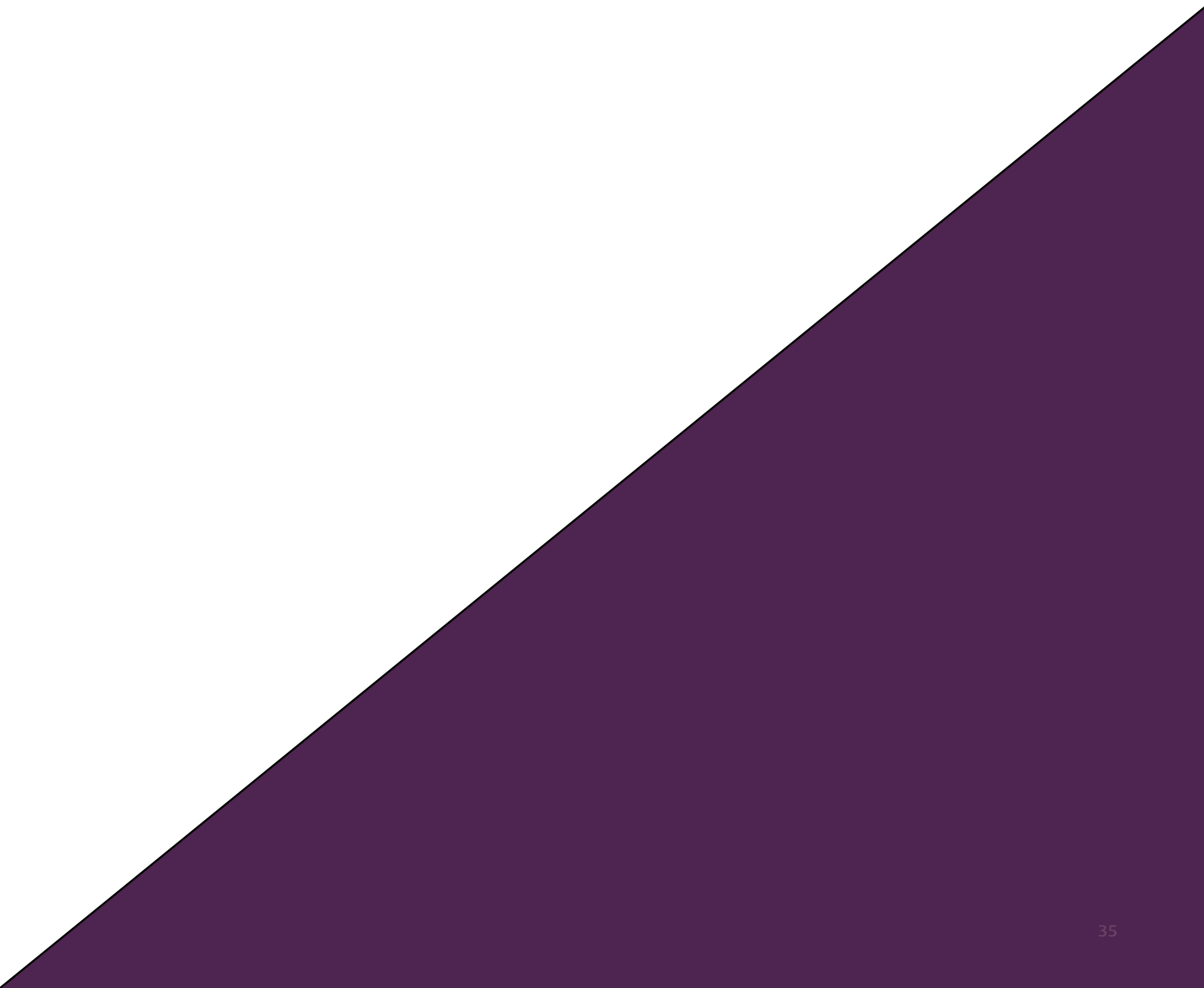
NPM members benefit from the expertise of other NPMs and the UK NPM frequently hosts external delegations with which it shares its own expertise. During the year, delegations were received from Macedonia (NIPBICVS), Netherlands (CSSIW), China (Care Inspectorate), Czechoslovakia (Care Inspectorate), Turkey (Care Inspectorate), Japan (HMI Prisons) and Libya (HMI Prisons). The NPM coordination met with delegations from Kyrgystan and Turkmenistan. The Association for the Prevention of Torture shadowed the joint HMIC/HMI Prisons inspection team during an inspection of police custody facilities in Thames Valley Police in September 2013.

NPM members visited Macedonia (HMIC), Indonesia (HMI Prisons) and Russia (IMB and HMI Prisons) to support the development of independent monitoring.

Further information sharing among NPMs is conducted through a European newsletter, to which the UK NPM contributes.

Meetings were also held with the ICRC delegation in London to discuss shared areas of interest.

41 http://www.cpt.coe.int/documents/gbr/2013-14-inf-eng.htm
42 http://www.cpt.coe.int/documents/gbr/2013-15-inf-eng.pdf and http://www.cpt.coe.int/documents/gbr/2014-12-inf-eng.pdf



Section three

Five years of the UK NPM - reflecting and looking ahead

The UK NPM took the opportunity of its five-year anniversary to review its work to date, encouraging both internal reflection and external scrutiny with a view to strengthening its future practice. There were three main elements to this review process: an NPM self-assessment using the SPT's own 'Analytical self-assessment tool' (see Appendix Eight), direct feedback from the SPT and; by seeking external viewpoints during the event '*The UK's NPM: Five Years On*'. On the whole, both NPM members and external stakeholders were positive about the experience to date of the UK NPM and the knowledge and breadth of its members compared favourably with other NPMs around the world. This reflected the UK's important role in promoting OPCAT throughout its inception and earliest years. At the same time, NPM members and external allies alike identified important areas in which the UK NPM could improve its existing efforts to prevent ill-treatment in detention. An overview of the discussions and findings from this review process is presented below.

NPM self-assessment

In February 2012, the UN Subcommittee on Prevention of Torture (SPT) published its 'Analytical self-assessment tool for National Preventive Mechanisms: A preliminary guide by the Subcommittee on Prevention of Torture regarding the functioning of an NPM'.[43] Alongside its existing 'Guidelines on national preventive mechanisms', this document clarifies the expectations of the SPT regarding the establishment and operation of NPMs.

The SPT emphasises that NPMs must develop over time, reinforcing the formal aspects of their mandate and exercise of their powers, as well as incrementally improving and refining their working methods.

In 2013, the UK NPM agreed to use this self-assessment tool to evaluate its compliance with different aspects of its formal mandate, using its five-year anniversary as an opportunity to take stock of its compliance with OPCAT and identify areas for strengthening in the future.

The SPT's narrative tool was turned into a questionnaire (see Appendix Eight), converting the detailed principles and standards into 59 discrete questions. The questionnaire format enabled all members of the UK NPM to assess themselves, using a 'red, amber, green' classification, and for the results to be analysed across the NPM. Practices varied across NPM members with regards answering the self-assessment, with some discussing their answers at board level, some among small groups of colleagues, and one member submitting to external peer review. Areas of the tool that related specifically to the role of the NPM coordination and to the State were also discussed. The MOJ were keen to discuss the questionnaire, and remain committed to working closely with HMI Prisons to ensure that the UK NPM meets the criteria laid out in OPCAT. The MOJ welcomed this review of OPCAT compliance across the board and will continue to look at ways in which it can support the effective functioning of the NPM as part of its wider obligations under the UN Convention against Torture.

The process of self-assessment promoted systematic internal reflection and also raised awareness of specific requirements arising

43 http://www2.ohchr.org/english/bodies/cat/opcat/docs/AnalyticalTtoolsNPM_en.doc

from OPCAT. Members were aware that comparing results across the exercise could oversimplify what are complex issues, and could fail to capture the subjective nature of perceptions of compliance, but in general they found the first attempt at the self-assessment exercise to be worthwhile. The NPM agreed to repeat the self-assessment annually, and introduce improvements to the methodology to make the process more robust.

General findings

Nineteen out of 20 members responded to the questionnaire. Overall, members reported that they were largely compliant with OPCAT, reporting compliance with 81% of the questions, partial compliance with 13% and not currently compliant with 4.5%.

- The lay and voluntary bodies in the NPM were more positive in their self-assessments, citing 85% full compliance compared to 79% among the 'professional' bodies.
- Northern Ireland members were the most positive, reporting full compliance on 89% of the questionnaire and not currently compliant with 2%.
- Across different types of detention, NPM members who monitor police and court custody were the most positive about their OPCAT compliance, while those whose roles are focused on mental health detention and care and social care settings were the least positive.

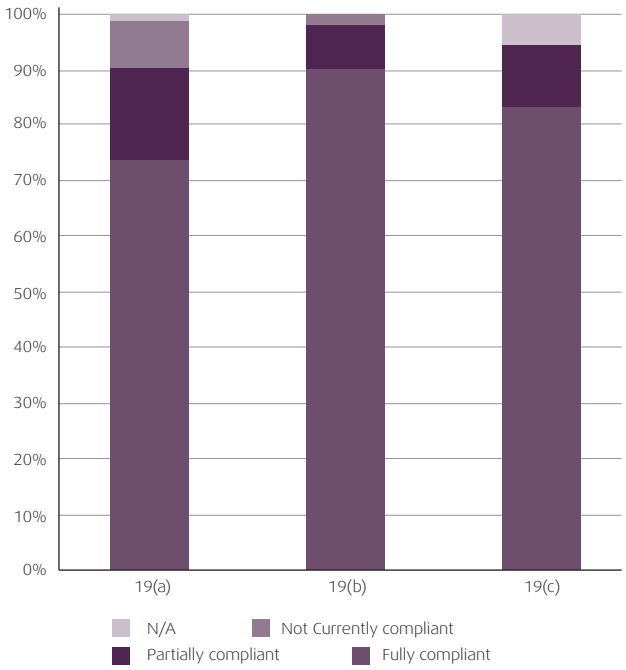
Compliance with OPCAT Article 19 – fundamental powers

The findings were analysed in line with the three fundamental NPM powers set out in OPCAT Article 19, the powers to: examine the treatment of those deprived of liberty; make recommendations with the aim of improving their treatment and conditions; submit comments on existing or draft legislation.[44]

As the figure below shows, members reported high levels of compliance overall. The highest compliance with the self-assessment questions related to their exercise of powers to make recommendations. The specifics of these questions related to their practice of making feasible recommendations with a preventive focus and engaging in dialogue with relevant authorities on the basis of these recommendations and their implementation, as well as internal procedures for categorising, filing and processing recommendations and responses to them.

44 NPMs shall be granted at a minimum the power: (a) To regularly examine the treatment of the persons deprived of their liberty in places of detention as defined in article 4, with a view to strengthening, if necessary, their protection against torture and other cruel, inhuman or degrading treatment or punishment; (b) To make recommendations to the relevant authorities with the aim of improving the treatment and the conditions of the persons deprived of their liberty and to prevent torture and other cruel, inhuman or degrading treatment or punishment, taking into consideration the relevant norms of the United Nations; (c) To submit proposals and observations concerning existing or draft legislation.

Article 19 compliance



Members identified the lowest levels of compliance with issues relating to their visiting/monitoring functions. Some of the areas where members identified greatest scope for strengthening their work were around their criteria for selecting places to visit, their own internal codes of conduct and guidelines for visiting and issues relating to preventing reprisals. The fact that one NPM member is not currently conducting visits (but is designated as it has the power to do so) also contributed to this lower overall result.

Other findings from the self-assessment

Among the other findings from the self-assessment questionnaire, the NPM identified two specific issues warranting further attention.

- Lower levels of reported compliance with the requirement that NPMs have a gender balance and adequate representation of ethnic and minority groups among visitors. Fifty per cent of members thought they complied partially, 11% did not comply and only 39% fully complied.
- Lower levels of reported compliance with the requirements set out by the SPT relating to NPMs' responsibility to prevent reprisals arising from their work. Members reported 65% compliance with the different aspects of the SPT's guidance and non-compliance with 13%. This issue had already been identified within the UK NPM and action had been taken by some members.

Other areas identified as warranting further progress included the way members report on, disseminate and publish their work, and their work in relation to individual cases. Assessment of the coordination function of the NPM identified several areas for improvement, including its external national and international partnerships, mechanisms for providing simple and accessible information to the public, awareness-raising and training.

Conclusion

The overall findings from the self-assessment exercise were presented by the NPM coordination at the five-year anniversary event, and the detailed findings were discussed internally by NPM members in a business meeting. This ensured that the self-assessment findings fed into the discussion and identification of areas for future NPM development and the 2014–15 business plan. While OPCAT sets out basic powers that each member of the UK NPM must have, and members are designated on the basis of this, it does not mean that all functions have to be undertaken by all members at all times, but rather that

full compliance with OPCAT needs to be achieved across the NPM as a whole.

As far as the UK NPM is aware, its engagement with the SPT's self-assessment tool was far more rigorous than any other NPM around the world. Given this, informal feedback on the original tool was provided to the SPT, and the NPM expressed its interest in supporting the SPT to strengthen the document for the future.

It was agreed that the self-assessment should be run annually, with peer review included in future iterations, as a means to chart progress in fulfilling the NPM's OPCAT mandate.

UK NPM and University of Bristol Human Rights Implementation Centre event '*The UK's NPM: Five Years On*'

On 8 April 2014 the UK NPM held an event in Bristol to mark five years since its designation. The event was organised and hosted in partnership with the Human Rights Implementation Centre (HRIC) at the University of Bristol.[45]

The event brought together around 70 attendees, including NPM members, representatives of inspected institutions, government bodies and NGOs from across all four jurisdictions, as well as international human rights bodies and stakeholders.[46] It set out to provide an opportunity for these different stakeholders to assess the extent to which the UK NPM is achieving its torture prevention mandate under OPCAT and identify ways of strengthening its work over the next five years.

The Rt. Hon Simon Hughes MP, Minister of State for Justice and Civil Liberties, reaffirmed his government's commitment to implementing OPCAT in his opening speech, and gave the UK NPM an opportunity to share its thoughts on what more the government could do to enhance compliance with OPCAT. Malcolm Evans, Chair of the UN Subcommittee on Prevention of Torture (SPT), reinforced the need for the UK NPM to take a preventive approach to its detention monitoring. Graham Morgan, from Action for Mental Health and a former detainee, provided an important reminder to those present that the experience of detention is understood from the perspective of the individual detainee. Deborah Coles, co-director of the charity INQUEST, called on the NPM to consider playing a greater role in promoting joined-up, cross-sector learning from deaths in custody, and Silvia Casale, a torture prevention expert, reminded attendees of the importance of NPMs around the world in identifying 'fault lines' and systemic problems across detention settings. Those present also reflected on the crucial role the UK played in drafting OPCAT, and its current focus on supporting torture prevention work overseas through its foreign policy, as an important backdrop to the work of the NPM domestically.

Reflecting on the first five years of the NPM

Almost all of the bodies that now form the UK NPM pre-date their designation as members, and this sets the UK NPM apart

45 The HRIC provides invaluable support and assistance to the NPM on an ad hoc basis. The relationship between both parties is set out in a Memorandum of Understanding and can be found at: http://www.justiceinspectorates.gov.uk/hmiprisons/about-hmi-prisons/working-with-partners/#.VGn0TlPp_Id

46 A further write-up of this event will be made available on the UK NPM and HRIC website in the next year.

from its counterparts internationally. As a general reflection on the UK's position in relation to other NPMs around the world, it was noted that the UK NPM relied on certain advantages:

- the resources established members can bring to its work;
- the existing expertise of members;
- the breadth of coverage, both geographical and thematic; and
- the layers of volunteer and statutory visits that its diverse membership allows.

Members identified a number of ways that being a part of the NPM had influenced their organisational working practices and focus. Among the examples cited were:

- ensuring greater focus on the need to prevent ill-treatment in detention;
- supporting increased focus on detention issues within organisations with broader remits, for example among bodies who cover police custody as part of their powers to inspect the wider policing landscape;
- promoting joint working among NPM members, resulting in greater sharing of best practice;
- focusing attention on key issues (for example *de facto* detention, segregation and restraint) across the NPM, allowing greater focus on these issues by individual members;
- the establishment of the sub-group on children and young people, allowing members who monitor places where children are detained to speak with a stronger, united voice; and
- strengthening specific areas of members' working methods, including the rationale for recruitment of 'specialised inspectors' to monitor particular areas of detention; ensuring that staff training is both rights-based and compassionate; and addressing possible conflicts of interest arising from the use of staff seconded from inspected bodies.

Strengthening the work of the NPM in the future

The event allowed those present to focus their attention on some specific areas of current relevance to the NPM in parallel small group discussions. The sessions provided an opportunity to discuss experiences and ideas around some challenging areas of current NPM work, and identify ways in which these could be overcome. A summary of the topics discussed and key points for future work is set out as follows.

1. The NPM in the context of diversifying models of service provision: challenges for inspection and monitoring.

Juliet Lyon (Prison Reform Trust) and Professor Andrew Coyle (expert in torture prevention) chaired and presented a discussion around the development of new models of detention and the provision of services in detention. Among the topics discussed were the powers of the NPM vis-à-vis private providers, the definition of jurisdiction, and the NPM's ability to examine the legitimacy of detention within the OPCAT framework. Recommendations from this session included:

- The need for the NPM to continually identify places of detention to ensure all are monitored;
- The importance of including overseas detention under UK control as part of the remit of the UK NPM.

2. Making recommendations: a core NPM function. What makes for a good recommendation, and how can the NPM follow up on them most effectively?

Rachel Murray (HRIC) chaired this session, in which Danielle Pearson (NPM coordination) and Mari Amos (SPT) presented their views on how the NPM could strengthen the recommendations it makes. The following were identified as areas for future improvement:

- Clarifying to those whom the NPM monitors why specific recommendations are made, what outcomes are expected, who the recommendations are directed to, who is accountable for the response, and the importance of a constructive dialogue;
- Timelines for implementation and clear follow-up procedures are desirable.

3. The NPM in its international context: how does the UK NPM make best use of its international linkages?

Mona Sadek (ICRC) and Bruce Adamson (SHRC) chaired and presented a discussion on how the UK NPM could build better relationships with the international community and feed into work on detention and torture prevention at international level. The international scope of the NPM's monitoring work was also discussed. Among the recommendations from this session were:

- The need to create a single NPM website as a way to share the work being done by the UK NPM as a whole and its individual members;
- Taking a stronger position on guarantees in place to protect against torture and ill-treatment when detainees are removed to foreign countries. Further examination of links to other NPMs and their ability to provide assurances against torture and ill-treatment could be explored.

4. Preventing torture and ill-treatment: investing in rights-based inspections.

Stephen Bowen (British Institute of Human Rights) chaired this discussion, and Theresa Nixon (RQIA) delivered a presentation. The discussion focused on how to ensure that human rights standards underpin NPM work, and what this means for members' methodology and approach. Those present discussed the need to develop a clearer idea of what form 'human rights inspection' should take, and that the overall objective of an OPCAT-compliant inspection is to observe 'to what extent human rights are respected'. Recommendations included:

- Human rights should be made explicit in, and central to, the mandates of all members;
- Providing human rights training to inspectors, service providers and their staff would play an important role in preventing torture and ill-treatment;
- NPM members should be open with inspected bodies regarding the specific standards which will be used for assessing them, which should be derived from law.

5. 'Who guards the guards?' Accountability of the NPM and its members – what does this mean in practice?

Hugh Chetwynd (CPT) and Barbara Bernath (Association for the Prevention of Torture) chaired and presented this discussion, which focused on accountability challenges for the NPM and its members. All those present agreed that formal and perceived independence and accountability of the NPM are essential. Among the recommendations arising from this session were:

- The NPM should be accountable to Parliament rather than the government, and Parliament should debate its annual report;
- More work is needed to safeguard the independence of NPM members and their staff.

6. *De facto* detention: what are the risks associated with individuals who are not formally detained by law, but still may be deprived of their liberty?

Jill Stavert (Napier University) and Donald Lyons (MWCS) led a discussion around the NPM's ongoing work on *de facto* detention. In the light of recent legal developments that take a broader approach to defining what constitutes a deprivation of liberty, the NPM can bring added value to this area by focusing further on the issues. Recommendations included:

- Ensuring the focus in mental health settings moves away from merely questioning the legality of detention, to questions of proportionality and necessity, and ethics.
- NPM members should continue to discuss how they will ensure monitoring of those who receive treatment at home/in the community.

At the end of the day, Nick Hardwick (HMI Prisons) and Rachel Murray (HRIC) summarised the themes and challenges that had emerged, and which the NPM must address to ensure it can make progress in fulfilling its OPCAT mandate. These included:

- Coherence – the challenge of achieving coherence among 20 different detention monitoring bodies. Members should strive for greater coherence and consistency across NPM work.
- NPM mandate – the need to continually review compliance with core areas of the NPM mandate, including coverage of all places of detention, and real and perceived independence in all areas of the NPM's work.
- Members' responsibilities – implementing OPCAT is both an individual responsibility for designated NPM members, and a collective responsibility, and this is a particular challenge for members whose remit extends beyond detention.
- Coordination – the coordination function of the UK NPM is small and limited in resources for a body of such complexity.
- Raising awareness – the NPM needs to do more to raise awareness for, understanding of and support for its work under OPCAT, both nationally and internationally.
- Preventive monitoring – deepening the understanding of what preventive monitoring is and requires of NPM members, and moving beyond the notion that being part of the NPM is simply a 'badge of honour'.

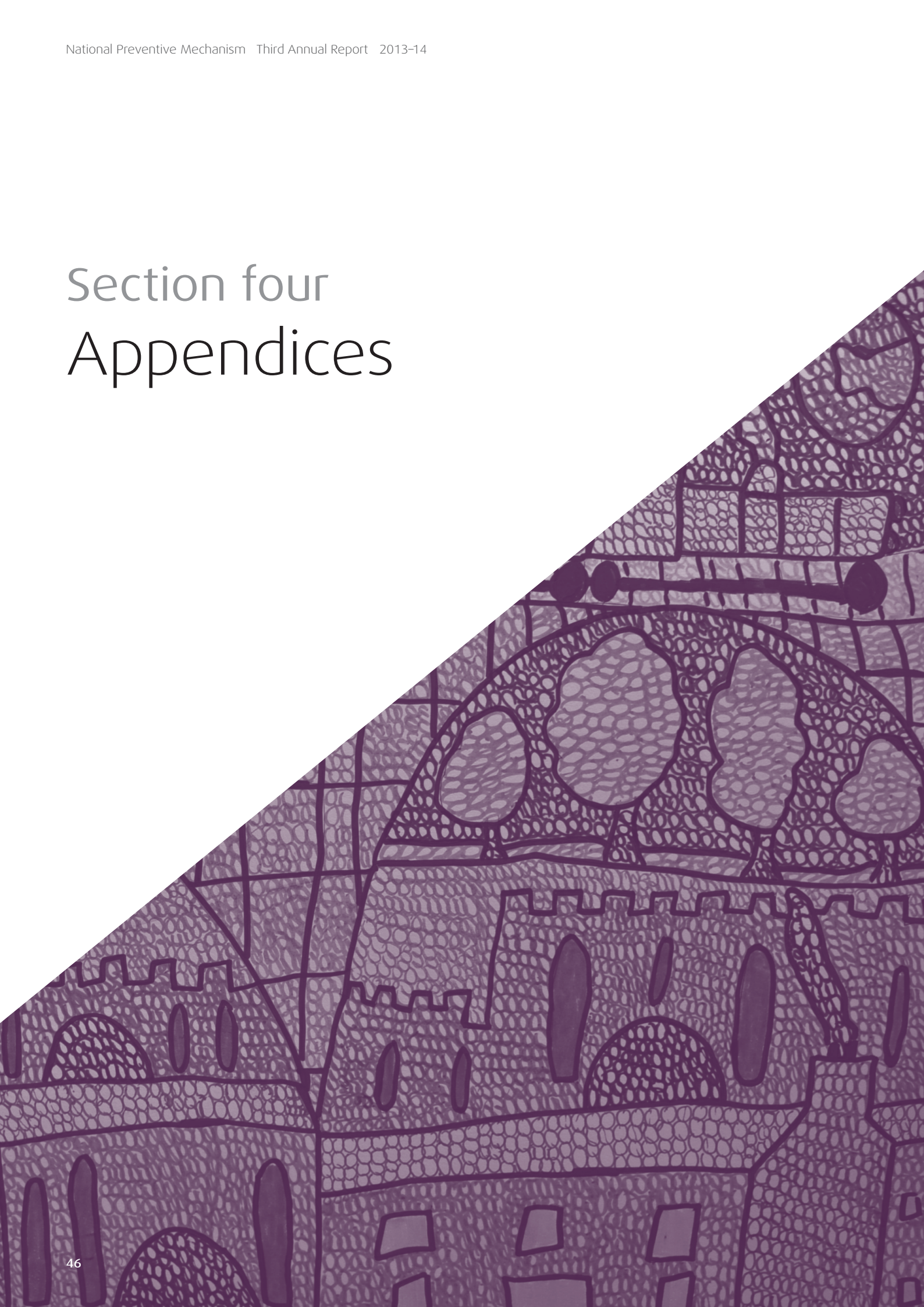
Looking ahead to year six

As this report demonstrates, the NPM's fifth year has been used to reflect, evaluate and discuss its work to date, both internally and with external stakeholders. As a result, the NPM has agreed that in its sixth year it will:

- Build further clarity in planning and reporting processes, to cover both members' individual actions in taking forward their NPM role, and joint coordinated priorities.
- Focus coordinated NPM work on a single thematic priority issue, with a view to developing a consistent approach to monitoring/inspecting the specific issue within the NPM. It will also allow the NPM to raise awareness of practice relating to the issue and relevant human rights implications, and present recommendations for strengthening policy and practice. In 2014–15, the NPM will focus on the issue of solitary confinement, segregation and separation.
- Discuss follow-up work on *de facto* detention (see Fourth Annual Report) among relevant NPM members.
- Evaluate compliance with the self-assessment tool, introducing member-member or external peer review into the process.
- Present plans to strengthen the NPM's governance and powers to the UK government.
- Continue to maintain contact with the Subcommittee on Prevention of Torture, seek training and technical assistance where needed, and respond to its letter of November 2013.
- Seek to develop an independent NPM website, and subsequently, a social media strategy to engage the NPM's wider community.

- Produce training resources and further fact sheets that support all NPM members in their internal and external work.
- Make progress in adopting sanctions policies across the NPM.
- Scottish members will meet to discuss their work in the light of the independence referendum outcome.

Section four
Appendices



Appendix One

Written Ministerial Statement – 31 March 2009[47] Optional Protocol to the Convention against Torture (OPCAT)

The Minister of State, Ministry of Justice (Mr Michael Wills):
The Optional Protocol to the Convention Against Torture (OPCAT), which the UK ratified in December 2003, requires states party to establish a 'national preventive mechanism' to carry out a system of regular visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment.

OPCAT provides that a national preventive mechanism may consist of one body or several. The government intend that the requirements of OPCAT be fulfilled in the UK by the collective action of existing inspection bodies.

I am designating the following bodies to form the UK NPM. If it is necessary in future to add new inspection bodies to the NPM, or if bodies within the NPM are restructured or renamed, I will notify Parliament accordingly.

England and Wales
- Her Majesty's Inspectorate of Prisons (HMIP)
- Independent Monitoring Boards (IMB)
- Independent Custody Visiting Association (ICVA)
- Her Majesty's Inspectorate of Constabulary (HMIC)
- Care Quality Commission (CQC)
- Healthcare Inspectorate of Wales (HIW)
- Children's Commissioner for England (CCE)
- Care and Social Services Inspectorate Wales (CSSIW)
- Office for Standards in Education (Ofsted)

Scotland
- Her Majesty's Inspectorate of Prisons for Scotland (HMIPS)
- Her Majesty's Inspectorate of Constabulary for Scotland (HMICS)
- Scottish Human Rights Commission (SHRC)
- Mental Welfare Commission for Scotland (MWCS)
- The Care Commission (CC)

Northern Ireland
- Independent Monitoring Boards (IMB)
- Criminal Justice Inspection Northern Ireland (CJINI)
- Regulation and Quality Improvement Authority (RQIA)
- Northern Ireland Policing Board Independent Custody Visiting Scheme (NIPBICVS)

47 HC Col 56WS, 31 March 2009.

Written Ministerial Statement – 3 December 2013[48] Optional Protocol to the Convention against Torture (OPCAT)

The Minister for Policing, Criminal Justice and Victims (Damian Green):
My right honourable and noble friend the Minister of State, Ministry of Justice (Lord McNally) has made the following Written Ministerial Statement.

'The Optional Protocol to the Convention Against Torture (OPCAT), which the UK ratified in December 2003, requires States Parties to establish a 'National Preventative Mechanism' (NPM) to carry out visits to places of detention in order to prevent torture and other cruel, inhuman or degrading treatment or punishment. The Government established the UK NPM in March 2009 (Hansard 31 March 2009, Vol. 490, Part No. 57, Column 56WS).

I am informing the House that the following three organisations are formally designated as additional members of the UK NPM:

- Lay Observers, in England and Wales;
- Social Care and Social Work Improvement Scotland, better known as the Care Inspectorate (instead of the Scottish Commission for the Regulation of Care, which no longer exists), in Scotland;
- Independent Custody Visitors Scotland, in Scotland.'

48 HC Col 41WS, 03 December 2013.

Appendix Two

Member overview

In the first annual report of the UK NPM, we profiled each of the NPM members, setting out detailed information on their mandate, structure and methodology. Rather than replicate that information in subsequent annual reports, we have set out below a short description of each member, as a reminder. We have also included details of any significant changes during 2013–14. Detailed information about each member can be found in our first annual report, the online database of UK NPM members, or the annual reports or websites of the individual members.[49]

Care and Social Services Inspectorate Wales
CSSIW regulates and inspects all social care services in Wales. This includes secure accommodation where children are placed either for their offending behaviour or because they pose a significant risk to themselves or others. CSSIW also monitors the deprivation of liberty safeguards during its regular inspections of adult care homes and reports annually to the Welsh Ministers on the operation of the safeguards.
www.cssiw.org.uk

Care Inspectorate
Established by the Public Services Reform (Scotland) Act 2010, the Care Inspectorate is the independent scrutiny and improvement body for social work and social care and support services for people of all ages. The Inspectorate was established in April 2011 from three previously existing scrutiny bodies: the Scottish Commission for the Regulation of Care (Care Commission) for care services; the Social Work Inspection Agency (SWIA) which carried out strategic inspections of social work services in the community, and a directorate of Her Majesty's Inspectorate of Education (HMIE) which carried out joint inspections of services to protect children. As part of its new remit, the Care Inspectorate regulates secure homes for children and young people as well as other residential services.
http://www.scswis.com/

Care Quality Commission
CQC is an independent statutory organisation responsible for monitoring, inspecting and regulating health and adult social care services in England, to make sure they meet fundamental standards of quality and safety. CQC also monitors the operation of the Mental Health Act 1983, including those who are detained under mental health law. CQC carries out inspections of health care in prisons and immigration detention alongside Her Majesty's Inspectorate of Prisons (HMI Prisons) and participates in inspections of police custody alongside HMI Prisons and Her Majesty's Inspectorate of Constabulary.
http://www.cqc.org.uk/

49 The online database of UK NPM members, compiled by the Human Rights Implementation Centre at the University of Bristol in association with the members themselves, is available at http://www.bristol.ac.uk/law/research/centres-themes/hric/hricnpmukdatabase/index.html. The website of each member of the NPM is listed in Appendix III.

Criminal Justice Inspection Northern Ireland
CJINI is a statutory body with responsibility for inspecting all aspects of the criminal justice system. CJINI's mandate is broad and it may inspect a range of places of detention, including prisons, a juvenile justice centre, police custody and court custody.
http://www.cjini.org/

Healthcare Inspectorate Wales
HIW regulates and inspects all health care in Wales. Part of this role involves monitoring compliance with mental health legislation and ensuring that health care organisations observe the deprivation of liberty safeguards under the Mental Health Capacity Act 2005. In doing so, HIW works closely with CSSIW, which monitors the use of deprivation of liberty safeguards in social care settings. HIW also participates in HMI Prisons-led inspections of prisons in Wales, assessing the health care provided to prisoners and ensuring that it is equivalent to that provided in the community.
http://www.hiw.org.uk/

Her Majesty's Inspectorate of Constabulary
HMIC has a statutory duty to inspect and report on the efficiency and effectiveness of policing. Following the ratification of OPCAT, HMIC's role has included carrying out inspections of police custody facilities in England and Wales in partnership with HMI Prisons. By March 2014, the first rolling programme of inspections had been completed, with all police forces in England and Wales having been inspected at least once. A new programme of inspections commenced in April 2014.
http://www.hmic.gov.uk/

Her Majesty's Inspectorate of Constabulary for Scotland
The role of HM Inspectorate of Constabulary for Scotland is to independently monitor the state, efficiency and effectiveness of the Police Service of Scotland and the Scottish Police Authority. This role is set out in the Police and Fire Reform (Scotland) Act 2012. As part of its broader role in reviewing and improving policing across Scotland, HMICS carries out inspections of police custody facilities, monitoring the treatment of and conditions for detainees.
http://hmics.org/

Her Majesty's Inspectorate of Prisons
HMI Prisons is an independent statutory organisation that carries out regular inspections of places of detention to assess the treatment of and conditions for detainees. HMI Prisons's inspection remit is broad and includes: all prisons in England and Wales, including young offender institutions (YOIs); all immigration removal centres (IRCs), short-term holding facilities and escort arrangements for immigration detainees; all police custody facilities in association with HMIC; court custody facilities; secure training centres in partnership with Ofsted; and customs custody facilities with HMIC. By invitation, HMI Prisons also participates in inspections of prisons in Northern Ireland (in partnership with CJINI) and inspects some military detention facilities.
http://www.justiceinspectorates.gov.uk/hmiprisons/

Her Majesty's Inspectorate of Prisons for Scotland

HMIPS inspects prisons, including YOIs, paying particular attention to the treatment of and conditions for prisoners. It also inspects prisoner escort arrangements – including the conditions in which prisoners are transported from one place to another – as well as court custody facilities or other places where prisoners are held temporarily outside a prison.
http://www.scotland.gov.uk/about/public-bodies/hmip

Independent Custody Visiting Association

Independent Custody Visitors are volunteers from the community who visit all police stations where detainees are held to check on their welfare. Custody visiting is statutory and visitors have the power to access police stations, examine records relating to detention, meet detainees for the purpose of discussing their treatment and conditions, and inspect facilities, including cells, washing and toilet facilities, and facilities for the provision of food. One of ICVA's key roles is to look at the skills base of independent custody visitors and to ensure that they are confident and able to conduct visits to the majority of people in custody and make those visits as effective as possible.

Following an earlier review of ICVA commissioned by the Home Office, ICVA changed from an unincorporated organisation to a company limited by guarantee on 31 July 2013.
http://icva.org.uk/

Independent Custody Visitors (Scotland)

Independent Custody Visitors in Scotland carry out regular, unannounced visits to police stations to monitor the treatment of and conditions for detainees. Custody Visitors in Scotland were officially designated as a member of the UK NPM in December 2013. By virtue of the Police and Fire Reform (Scotland) Act 2012, custody visiting in Scotland is now a statutory scheme.

The statutory scheme is now administered by the Scottish Police Authority. The main focus since 1 April 2013 has been to bring together the previous eight local schemes and introduce standardisation in visiting, reporting mechanisms and recording. In addition, in pursuit of the OPCAT mandate, arrangements were put in place to ensure that all custody centres, which had not previously been subject to custody visiting, were included within the scheme.
http://www.spa.police.uk/icv/

Independent Monitoring Boards

Independent Monitoring Boards (IMBs) have a statutory duty to satisfy themselves about the state of the prisons or immigration detention facilities they visit, their administration and the treatment of prisoners or detainees. The Boards are made up of unpaid members of the community and fulfil their duties by carrying out regular and frequent visits to establishments. There is a Board for every prison in England and Wales and every IRC in England, Wales and Scotland, as well as for some short-term holding facilities for immigration detainees. IMBs also monitor some charter flights. Board members are appointed by the Secretary of State.
http://www.justice.gov.uk/about/imb

Independent Monitoring Boards (Northern Ireland)

IMBs in Northern Ireland are statutory bodies whose role is to monitor the treatment of prisoners and the conditions of their imprisonment. The boards are made up of unpaid members of the community and fulfil their duties by carrying out regular visits to establishments. There are three boards in Northern Ireland, one for each prison. Board members are appointed by the Northern Ireland Justice Minister.
http://www.imb-ni.org.uk/

Lay Observers

Lay Observers are independent volunteers who check that prisoners escorted by private companies in England and Wales are treated decently. Lay Observers inspect court custody areas and the cellular vehicles used by contractors to transport detainees to and from court. They also visit police stations to observe the handover of prisoners from the police to the contractors and visit prisons to observe the handover of prisoners from the prison to the contractors and vice versa. Lay Observers play a vital role in ensuring that standards of decency are maintained.
http://www.layobservers.org.uk/

Mental Welfare Commission for Scotland

MWCS is an independent statutory organisation working to safeguard the rights and welfare of everyone with a mental illness, learning disability or related condition. The mandate of MWCS is broad and its activities include monitoring the care and treatment of people detained under mental health law, visiting them, and undertaking investigations into cases of improper detention or deficiency in care and treatment.
http://www.mwcscot.org.uk/

Northern Ireland Policing Board Independent Custody Visiting Scheme

As in the rest of the UK, police custody suites in Northern Ireland receive regular, unannounced visits from custody visitors, who are volunteers from the local community. Custody visitors monitor the rights, health and well-being and conditions of detention of those detained in police custody, reporting their findings to the Northern Ireland Policing Board's Performance Committee.
www.nipolicingboard.org.uk/index/publications/custody-visitors.htm

Office for Standards in Education, Children's Services and Skills

Ofsted is a regulatory and inspection body that seeks to promote excellence in the care of children and young people, and in education and skills for learners of all ages. In the context of detention, Ofsted inspects the care and educational provision for children in secure accommodation, and assesses the provision of education and training in prisons, YOIs and IRCs as part of HMI Prisons-led inspections.
http://www.ofsted.gov.uk/

Office of the Children's Commissioner

The primary function of the Children's Commissioner for England is to promote and protect the rights of children in England, including promoting awareness of their views and interests, with particular regard to the UN Convention on the Rights of the Child. The Commissioner may also provide advice, assistance and representation to children living away from home or receiving social care services. In addition, the Office of the Children's Commissioner for England (OCC) has the power to enter any setting where a child ('children' includes certain young adults within OCC's remit) is accommodated or cared for, other than a private dwelling,

in order to observe the standards of care, to interview any person working on the premises and (with the child's consent) to interview the child in private. OCC has used this power to visit the youth justice secure estate, immigration settings and medium secure mental health facilities.
http://www.childrenscommissioner.gov.uk/

Regulation and Quality Improvement Authority
RQIA is empowered to monitor the availability and accessibility of health and social care services in Northern Ireland and promote improvement in the quality of these services. A key element of its role is to inspect the provision of health and social care in places of detention, including prisons, secure accommodation for children or places where people are detained under mental health law. In October 2011, the final report of a review of the Northern Ireland Prison Service was published.[50] The report made 40 recommendations, 10 of which related specifically to the provision of health care in prisons. RQIA was asked to provide an independent assessment to the Oversight Committee on the implementation of the 10 recommendations relating to health care. In March 2014 RQIA reported back to the Oversight Committee on a number of the relevant health care recommendations, which were successfully signed off by the Committee.
http://www.rqia.org.uk/home/index.cfm

Scottish Human Rights Commission
The SHRC is an independent statutory body with the power to enter places of detention and report on the rights of detainees. The Commission's general duty is to promote awareness, understanding and respect for human rights and, in particular, to encourage best practice in relation to them.
http://scottishhumanrights.com/

50 Review of the Northern Ireland Prison Service: Conditions, Management and oversight of all prisons: Prison Review Team Final Report, October 2011

Appendix Three

Terms of reference for the NPM Steering Group

Background
At a meeting of the NPM members in Edinburgh on 9 May 2011, a proposal was put forward regarding the operational structure of the NPM. It was suggested that the members consider establishing an executive committee or steering group for the NPM to facilitate decision making and take forward joint work. There was considerable initial interest in the proposal and it was agreed that HMI Prisons would prepare a more detailed proposal for consideration by the members. Your comments are sought on the proposal outlined below.

Proposal
To establish a Steering Group for the UK NPM.

Purpose
The NPM is currently made up of 20 bodies with HMI Prisons performing a coordinating role. So far, we have operated on a consensus basis but, inevitably with such a large and diverse membership, it can prove challenging and time consuming to secure agreement among the members and to progress issues quickly, if at all. These challenges have increased since the government expanded the NPM membership from 18 to 20. From the Coordinator's point of view, there is a need for a mechanism to progress joint activities in the periods between meetings of the whole NPM or to be able to take decisions quickly, without always requiring all 20 members to be consulted. If we wish to do more collectively under the banner of the NPM – and several members have expressed a wish to do so – then a mechanism such as a steering group can facilitate this. Moreover, the level of engagement with the NPM varies between members: it is hoped the Steering Group can assist in promoting engagement among all members.

The suggested role of the Steering Group will be to:

- facilitate decision-making relating to the NPM
- set the strategic direction for coordinated/joint NPM activity
- assist in planning future joint activities, e.g. thematic workshops, annual reports
- advise and support HMI Prisons and the NPM Coordinator in their roles
- monitor and assess the value of joint activities
- promote engagement of all members in joint NPM activity
- act on behalf of the NPM
- represent all members of the NPM as best it can, taking into account the different roles of the members and the contexts in which they operate.

The existence of a Steering Group is not intended to detract from the input of the 20 individual members of the NPM. HMI Prisons, the Coordinator and/or the Steering Group will continue to seek the input of all members regarding particularly significant or potentially contentious issues. The Steering Group will try to represent the interests of the NPM as a whole but its decisions are not binding on individual members.

The role of the Steering Group and its structure may be developed in the future in light of our experience.

Membership

To be effective, the Steering Group should be small but we should also ensure the Group represents the wider NPM as much as possible. The selection of Steering Group members should take into account the different types of detention visited and the different jurisdictions in which the members operate as well as the nature of the bodies themselves (i.e. lay and professional bodies). It will be impossible for the Steering Group members to represent all places of detention visited, but diversity will be sought. Given HMI Prisons' role in coordinating the NPM, HM Chief Inspector of Prisons will necessarily be a standing member of the Steering Group. Consideration should also be given to whether HMI Prisons or another member should chair the Group.

It is proposed that volunteers to serve on the Steering Group are sought and that four people will be selected by the NPM Coordinator on the basis of ensuring an equitable spread among types of detention visited and lay/professional bodies. There will be one member each for England, Wales, Scotland and Northern Ireland. Membership of the steering group should be limited to two, two-year terms and that such terms are staggered.

Where a representative of a lay body is a member of the Steering Group, reasonable expenses associated with that membership (likely to be travel costs only) may be borne by HMI Prisons. All other Steering Group members will be expected to bear their own costs.

Working methods

It is expected that Steering Group members will be in regular contact with the NPM Coordinator and that as much work as possible will be conducted via email and telephone contact. Meetings of the Steering Group will also take place twice a year. The work of the Group will be transparent and it shall report back to all NPM members on their discussions and decisions. A secretariat function for the Steering Group will be performed by the NPM Coordinator.

Appendix Four

Terms of reference for the Children and Young People's sub-group

Introduction

Since its establishment in 2009 the bodies that make up the UK NPM have monitored whether the UK government meets its UN Treaty obligations regarding the treatment of anyone held in any form of custody.

Children and young people are considered a part of NPM's work alongside the treatment of adults and the NPM's regular business meetings have included child-centred discussions. However, business meetings provide limited capacity to have regular specialist discussion.

As a result the NPM membership agreed in 2013 to establish a specialist sub-group to focus on children and young people. This group would provide the capacity for those with expertise and experience of working with children and young people to support the wider NPM with specialist advice, information and recommendations.

Background

Children and young people under 18 represent a tiny minority of people in detention in the UK. They are vulnerable both because of their age and capacity, and because they are detained. Many will also have faced difficult experiences in their lives before detention.

Children in detention also have additional rights and protections, set out in the UN Convention on the Rights of the Child and other international instruments, as well as in domestic law.

Children are detained in a variety of settings across the different jurisdictions of the UK. This can make it hard for NPM members to identify common challenges, share good practice and make recommendations.

By focusing on the specific needs of children and young people in detention, this sub-group will support the NPM to fulfil its preventive role[51] through sharing good practice on visits and inspections, a holistic and system-wide analysis of the situations where children are at risk of ill-treatment, and making recommendations designed to improve policy and practice for children in detention.

Chairing, reporting and membership

The NPM sub-group will be chaired by the Deputy Children's Commissioner for England, with support from the OCC.

It will report to the NPM steering group, and meet three times a year. These meetings will be coordinated with the steering group meetings.

The sub-group will be open to NPM members with an interest in the rights of children and young people in detention, across a range of settings.

51 See guidance in Optional Protocol to the UN Convention against Torture: Implementation Manual, Chapter V - Operational Functioning of NPMs.

Objectives

The objective of the sub-group would be to enhance the overall effectiveness of the NPM's work on the rights of children and young people in detention.

The group would do this by:

- sharing practice, experience and intelligence on issues relating to children and young people in custody among NPM members
- identifying key issues and concerns relating to children and young people that are then communicated to NPM business meetings via the Steering Group
- making recommendations on behalf of the NPM to government and stakeholders on ways to ensure protection of the rights of children and young people in detention
- contributing to the NPM's annual report and providing oversight and comment on sections relating to children and young people.

Term and review procedures

The sub-group will propose an annual list of topics that it will examine. This list will be sent to the NPM steering group for approval.

The steering group will review the effectiveness of the sub-group's work at the end of the year, based on a report and self-assessment.

Appendix Five

Independent Advisory Panel on Deaths in Custody: Common principles of safer restraint[52]

General

a. Physical restraint is the lawful use of force using approved physical touching and holding techniques which results in the restriction of movement of one person by another.

b. Staff working in custodial establishments or dealing with members of the public have a primary responsibility to safeguard all those with whom they have professional contact.

c. Staff must work to establish and foster a culture of non-violence where possible.

d. The use of any form of restraint must be the last resort and must be limited to those situations where de-escalation and other non-physical diversion techniques have failed to resolve the situation.

e. Every episode of restraint must be necessary, justifiable and proportionate to the perceived threat.

f. Whenever physical restraint is used it can have significant psychological and emotional effects upon everyone involved, everyone who witnesses the events and also upon the wider establishment.

g. Physical restraint can occasionally result in the death of the individual being restrained.

Training

h. Only techniques that have been approved and taught may be used to apply physical restraint.

i. Only trained and authorised staff may apply restraint.

j. Staff must understand the non-physical and the physical techniques that they will use.

k. They must have been trained in the safe application of those techniques.

l. Their skills in both de-escalation and all of the approved techniques must be maintained through regular training.

Management

m. If three[53] or more staff are actively involved in a restraint then one of those staff must be in control of the restraint (Controller) and it must be clear at all times, to all those involved in the restraint who the Controller is.

n. At the start of an episode of restraint the staff member responsible for protecting the detainee's head, neck and breathing will assume the role of Controller regardless of rank.

o. The Controller will be confirming their role to colleagues as soon as possible after the

52 http://iapdeathsincustody.independent.gov.uk/work-of-the-iap/working-groups/use-of-restraint/
53 Complications of restraint are exceedingly rare if only one or two officers are involved; complications appear to be increasingly common as more officers are actively involved.

start of the restraint using a designated phrase. (e.g. 'I now have control of this incident').

p. If a suitably trained member of staff not involved in the actual restraint process is present they should become the Controller of the restraint as soon as practical.

q. Control of the restraint will pass between Controllers only when offered and positively accepted using designated phrases (e.g. 'I now have control of this incident' / 'You have control').

r. During a period of restraint the techniques being applied must be frequently reviewed with the aim to safely remove all forms of physical restraint in the shortest time practical.

s. The Controller must have the authority to order the alteration or release of any of the restraint hold(s).

Medical

t. In some environments the specific health risks of detainees may be known, in other environments they will not be known. All approved restraint techniques must take into account the possibility that underlying disease(s) may render an individual more susceptible to adverse effects and possibly death.

u. The vital signs (Airways, Breathing, Circulation) of the restrained individual must be assessed as soon as possible after the commencement of restraint by a member of the team nominated to do so by the Controller.

v. These assessments of vital signs must be repeated frequently throughout the period of restraint and the results made known to the Controller. Medical advice must be obtained if any concerns are expressed.

w. If the restraint is a planned intervention in an institution with trained health care staff then they must be present throughout the period of restraint.

Governance

x. All episodes of restraint should be video recorded if at all possible.

y. Detailed and accurate records of all incidents of restraint must be maintained and analysed locally and centrally. These data should be used to review techniques and practices and to inform staff appraisals, training and development.

z. Debriefing procedures must be established and followed for all those involved (including if possible the detainee). If three or more officers are involved in any single episode of restraint there must be a formal face to face debriefing procedure by a trained member of staff.

Appendix Six

NPM response to the UN Committee against Torture

HM Chief Inspector of Prisons
NICK HARDWICK CBE

Date: 5 March 2014

Claudio Grossman
Chairperson of the UN Committee against Torture
Office of the UN High Commissioner for Human Rights
Palais des Nations
1211 Geneva 10
Switzerland

Dear Mr Grossman

Response of the UK National Preventive Mechanism to the CAT Committee Concluding Observations on the fifth periodic report of the United Kingdom

The UK National Preventive Mechanism (NPM) has discussed the concluding observation issued by the CAT Committee relating to concerns about the practice of seconding State officials working in places of deprivation of liberty to NPM bodies and the recommendation to end this practice (paragraph 14).

The UK National Preventive Mechanism agrees with the Committee against Torture about the need to safeguard its independence, and welcomes the focus on this issue during the review of the UK's implementation of the Convention against Torture. Members of the UK's NPM are committed to working to strengthen the actual and perceived independence of the mechanism in line with standards set by the Optional Protocol to the Convention against Torture.

Unlike most NPMs, the UK NPM is a multi-body mechanism, made up of 20 existing bodies with mandates and powers that are compatible with the functions of an NPM as established by OPCAT. The decision to designate these bodies as the UK's NPM acknowledged the UK's existing practice of independent monitoring of places of detention.

While the scope of work of some of the UK NPM members falls entirely, or almost entirely within that of OPCAT (such as Her Majesty's Inspectorate of Prisons, the Independent Monitoring Boards, the Independent Custody Visiting Association, Northern Ireland Policing Board Independent Custody Visiting Scheme), other NPM members (for example the Care Quality Commission, Ofsted, the Regulation and Quality Improvement Authority, and the

Scottish Human Rights Commission) operate across a range of settings or with powers that are much wider in scope than those under OPCAT.

Given this, UK NPM members will work towards making a clearer distinction between the human resources they apply to NPM activities and those applied to their broader functions. UK NPM members agree to work towards a reduction in their reliance on seconded staff allocated to NPM activities. Members have been encouraged to make more specific commitments in this regard if they feel this is appropriate.

In addition, the UK NPM will develop a set of principles to reduce the possibility of conflicts of interest of seconded staff across the NPM. This set of principles will be applied while members take action to reduce their reliance on seconded staff, and in the instances where NPM members find it impossible to find staff with the capabilities and professional knowledge necessary (Art.18.2 OPCAT) to fulfil their inspection mandate from outside the organisations that may be subject to inspection. This is of particular relevance to the inspection of health settings, which requires current clinical expertise usually gained only through working as health service providers themselves. In these specific instances, NPM members will account for the efforts they have made to source non-seconded staff, and to ensure adherence to the set of principles.

The UK NPM welcomes the Committee against Torture's recognition of the need to ensure that the NPM is adequately resourced, and considers that this recommendation should apply to the resourcing made available for each of the NPM members as well as the NPM as a whole.

Yours sincerely,

Nick Hardwick
HM Chief Inspector of Prisons, on behalf of the UK's National Preventive Mechanism

Appendix Seven

Declaration by European Preventive Mechanisms on the need for Council of Europe rules on immigration detention

Conference on Immigration Detention in Europe, 21–22 November 2013, Strasbourg

Building on Resolution 1707 (2010) of the Parliamentary Assembly on detention of asylum seekers and irregular migrants, and the work and recommendations of the Committee for the Prevention of Torture of the Council of Europe on immigration detention.

Taking into account the fundamental distinction between criminal and administrative detention.

1. The European National Preventive Mechanisms[54] (NPMs) gathered in Strasbourg support work to develop the codification of a set of *Immigration Detention Rules* applicable to Council of Europe member States, which are based on the precedent of the European Prison Rules. The NPMs are ready to participate in the development of this codification.

2. The support of the existing European NPMs reflects the absence of consolidated rules in the area of immigration detention, the development of which is agreed to be both necessary and feasible.

3. Such rules will help NPMs fulfil their mandates as detention monitoring bodies, in order to prevent torture and ill-treatment.

4. Such rules will also provide clear guidance to detention authorities and persons working with immigration detainees.

5. The *Immigration Detention Rules* should:
   - codify existing international and regional human rights standards applicable to all forms of deprivation of liberty on the grounds of immigration status;
   - be of equivalent status to the European Prison Rules;
   - cover, among others, the following areas: conditions of detention and treatment of detainees; health care; information about rights; access to legal representation and procedures; exercise of the right of asylum; communication with the outside world; appropriate measures for safety and order; effective complaints mechanisms; access to interpreters; due consideration for diversity of personal situations and origins, with special attention to women and especially vulnerable groups; purposeful activities for detainees; procedures and preparation for release and removal.

6. We consider that the Council of Europe is the organization that is best placed to realize this endeavour, which should take into account existing European Union legislation in this area.

54 National Preventive Mechanisms are independent bodies that have been established by States in line with the Optional Protocol to the UN Convention against Torture, as a means to prevent torture and ill-treatment in all places of detention.

Appendix Eight

UK NPM Self-Assessment Questionnaire

SPT SELF ASSESSMENT TOOL				
For NPM members				
OUR REF	SPT REF	NPM SELF ASSESSMENT STATEMENT	RAG STATUS	ADDITIONAL COMMENTS
INTRODUCTION				
1.1	I.1	The NPM member conducts regular visits to places of detention in order to prevent torture and ill-treatment, and to strengthen the protection of persons deprived of their liberty		
1.2	I.1	The NPM member makes recommendations to the relevant authorities with the aim of improving the treatment and conditions of persons deprived of their liberty and to prevent torture and ill-treatment		
1.3	I.1	The NPM member makes proposals and observations concerning existing and draft legislation		
1.4	I.2	The NPM member's functional independence is guaranteed		
1.5	I.2	The NPM member has the necessary resources to carry out its functions in accordance with the requirements of OPCAT		
1.6	I.2	Relevant authorities examine the NPM members' recommendations and enter into dialogue about their implementation		
1.7	(G) II.B.30	The NPM member carries out all aspects of its work in a manner which avoids actual or perceived conflicts of interest		
1.8	(G) II.B.30	- this includes ensuring NPM members do not hold or acquire positions which raise questions of conflicts of interest		
DEVELOPMENT STRATEGY OF THE NPM				
1.9	II.4	The NPM member organises its human and financial resources to ensure all aspects of its NPM role are fulfilled		
1.10	II.5	The NPM member monitors and analyses its activities and outcomes as a means to learn lessons and develop practices		
1.11	II.7	Staff receive appropriate training in order to carry out their role within the NPM effectively		
INTERNAL ORGANISATION				
1.12	III.8	The NPM member has appropriate internal policies and procedures to fulfil its mandate (these may address the following: employment and dismissal of staff; decision making; organisation of the office; its work and budgets; visits to places of detention and report-drafting)		

IMPLEMENTATION OF ACTIVITIES		
		For the purposes of planning its activities, the NPM member:
1.13	IV.A.9	- has an inventory for all places of detention within its remit
1.14	IV.A.9	- has an archive of all relevant and available information about places of detention within its remit and the treatment of persons held there
1.15	IV.A.10	- has criteria for the selection of places to be visited that ensure all places of detention are visited regularly, taking into account the type and size of institutions and the level of the known human rights problem
1.16	IV.A.11	- the composition of its visiting team brings the necessary knowledge, experience and skills
1.17	IV.A.11	- gender-balance and adequate representation of ethnic and minority groups in the visiting team
1.18	IV.A.11	- the visiting team has the necessary human resources and time needed to carry out its tasks
1.19	IV.A.12	- has a strategy for prioritising legislation to be commented on
		The NPM member's visit methodology:
1.20	IV.B.13	- includes guidelines for visits to places of detention, to include: conducting private interviews, dealing with vulnerable groups, ensuring information from all available sources is collected
1.21	IV.B.14	- ensures all facilities within an institution are visited
1.22	IV.B.14	- assesses registers, case records, activities and services
1.23	IV.B.15	- ensures cross-checking and assessment of observations
1.24	IV.B.15	- ensures systematisation of data reflecting serious and generic problems
1.25	IV.B.16	- includes an immediate debriefing is held with authorities at the end of the visit
1.26	IV.B.18	- includes clear guidelines for reporting individual cases of deliberate ill-treatment (to include requesting inquiries, maintaining the confidentiality of the victim, and protecting such persons from reprisals)
1.27	IV.B.17	The NPM member considers developing a code of conduct for its visiting teams (to include addressing detainees and staff, how and when to conduct individual or group interviews, handling security issues, ensuring confidentiality, managing internal debriefings)
		The NPM member's visit reports:
1.28	IV.C.19	- focus on the most important issues
1.29	IV.C.19	- note, file and analyse good practice
1.30	IV.C.19	- analyse cases of deliberate ill-treatment to identify gaps in the protection of persons deprived of their liberty

1.31	IV.C.20	- contain recommendations that are well-founded, have a preventive focus and are feasible in practice
1.32	IV.C.21	The NPM member has a strategy for submission, publication and dissemination of visit reports
		To follow up on recommendations for changes, the NPM member:
1.33	IV.D.22	- maintains dialogue with government authorities and inspected institutions regarding the implementation of recommendations, including written and oral exchanges
1.34	IV.D.22	- publishes annual reports, which include the outcome of dialogue with authorities
1.35	IV.D.24	- verifies the implementation of recommendations regularly through follow-up visits to non-performing institutions
		To prevent reprisals, the NPM member:
1.36	IV.E.25	- has developed a strategy for the prevention of reprisals or threats against people interviewed during visits and people who provide information during visits
1.37	IV.E.25	- has a policy setting out the types of information that can be collected in group interviews and the types of information that should only be collected in private interviews
1.38	IV.E.25	- follows up and monitors cases of particular concern
1.39	IV.E.25	- seeks and facilitates the intervention of others as part of the strategy
1.40	IV.E.25	- acts upon information which gives rise to concerns about possible reprisals received from others
1.41	IV.E.25	- with the consent of the detainees concerned, brings cases of particular individuals at risk of reprisals to relevant authorities
1.42	IV.E.25	- seeks to ensure that a disciplinary or criminal investigation is initiated in cases of alleged reprisals

CROSSCUTTING ISSUES		
		The NPM member has established:
1.43	V.A.30	- lines of communication with relevant ministries and those responsible for the administration and management of the places of detention within its remit
1.44	V.A.31	- a mechanism for communicating and cooperating with relevant authorities on the implementation of recommendations
1.45	V.A.31	- this mechanism includes urgent action procedures
1.46	V.A.31	- a means for addressing and resolving any operational difficulties encountered during the exercise of its visits
1.47	V.A.31	- a policy for publishing reports and findings

1.48	V.A.31	- a policy regarding the production and publication of thematic reports
1.49	V.A.32	- a strategy for cooperation with other national actors on torture prevention
1.50	V.A.32	- this strategy includes cooperation on follow-up of cases of suspected or documented torture or ill-treatment
1.51	V.A.33	The NPM member has a strategy for making its work and mandate known
1.52	V.A.33	The NPM member has established a simple and accessible procedure to provide information to the general public

		The NPM member has appropriate systems in place:
1.53	V.B.34	- to categorise, file and process information gathered from its visits to places of detention
1.54	V.B.34	- to categorise, file and process its recommendations and responses to them
1.55	V.B.34	- that use information gathered during visits to support ongoing work planning and strategy development
1.56	(G) III.B.37	The NPM member ensures that any confidential information acquired in the course of its work is fully protected
1.57	V.C.35	The NPM member advocates for the provision of resources necessary to exercise its mandate effectively
1.58	V.C.36	The prioritisation of resources to the most important problem issues and institutions does not lead to any particular form of institution or geographical area being disregarded from the NPM member's work
1.59	V.D.37	The NPM member has a strategy for ongoing training and development of its working methods

SPT SELF ASSESSMENT TOOL

For the NPM Coordination

OUR REF	SPT REF	NPM SELF ASSESSMENT STATEMENT	RAG STATUS	ADDITIONAL COMMENTS
INTRODUCTION				
3.1	I.3	The NPM refines and improves its working methods incrementally		
3.2	I.3	The NPM is in direct contact with the SPT		
3.3	II.4	The NPM forms partnerships with national and international organisations to raise awareness of OPCAT		
3.4	II.4	The NPM has a strategy to achieve maximum impact through its work		
3.5	II.5	The NPM monitors and analyses its activities and outcomes as a means to learn lessons and develop practices		
3.6	IV.F.27	The NPM has considered monitoring and analysing proceedings against suspected perpetrators of torture and ill treatment		
3.7	IV.F.27	The NPM has considered advocating or facilitating the establishment of a national register of allegations of torture, as well as investigations, criminal proceedings and outcomes		
3.8	IV.F.28	The NPM advocates for necessary legislative changes and their implementation where its mandate does not give powers to assess draft and existing legislation against the State's international obligations and other international standards		
3.9	IV.D.23	The NPM maintains dialogue with other relevant national and international actors, including civil society, and considers all relevant information received from them		
3.10	V.A.30	The NPM has established lines of communication with relevant national and international actors in the field of torture prevention		
3.11	V.A.31	The NPM has established a strategy for cooperation with international actors, including the SPT, on prevention of torture		
3.12	V.A.32	- this strategy includes cooperation on follow-up of cases of suspected or documented torture or ill-treatment		
3.13	V.A33	The NPM has a strategy for making its work and mandate known		
3.14	V.A.33	The NPM has established a simple and accessible procedure to provide information to the general public		
3.15	V.D.37	The NPM has a strategy for ongoing training and the development of its working methods		
3.16	V.E.38	The NPM has an annual report (this may include accounts of current challenges, plans and priorities, analysis of findings, recommendations and responses, thematic issues and follow-up on issues, accounts of cooperation)		

Rag Status Key:

Not currently compliant	
Partially compliant	
Fully compliant	

All SPT references are to the self-assessment tool (http://www2.ohchr.org/english/bodies/cat/opcat/docs/AnalyticalTtoolsNPM_en.doc) unless preceded by 'G' to indicate reference to the SPT Guidelines for NPMs (http://www2.ohchr.org/english/bodies/cat/opcat/docs/SPT_Guidelines_NPM_en.doc).

Appendix Nine

NPM fact sheets

Fact sheet 1: Introducing the UK's National Preventive Mechanism

What is a National Preventive Mechanism (NPM)?

An NPM is one or more designated bodies that visit places of detention to monitor the treatment and conditions of detainees. The aim of an NPM is to prevent torture and other cruel, inhuman or degrading treatment or punishment from taking place.

The mandate for an NPM comes from the Optional Protocol to the United Nations Convention against Torture (OPCAT), a human rights treaty drafted and agreed by States who wanted to ensure stronger protections for detainees. The fundamental idea behind OPCAT is that a system of regular, independent visits to places of detention can serve as an important safeguard abuses, preventing torture and ill-treatment in places that by their very nature fall outside the public gaze.

States that ratify OPCAT must establish an NPM. There are now 55 NPMs formally in existence around the world.

Specific requirements of an NPM
To comply with OPCAT, NPMs must have certain powers. These include the power to:
- inspect all places of detention
- access all information relating to detainees
- interview detainees in private
- choose where to visit and who to speak to
- make recommendations based on human rights norms to relevant authorities
- make proposals and observations on existing or draft legislation.

What does the UK's NPM look like and what does it do?

The UK signed up to OPCAT in 2003, expressing its commitment to prevent torture and ill-treatment in detention across the country.

The UK's National Preventive Mechanism was formally designated in 2009 and is now made up of 20 organisations whose official functions include monitoring and inspecting places of detention. Across the UK, different detention settings are visited or inspected by different NPM members as follows:

DETENTION SETTING	Jurisdiction			
	England	Wales	Scotland	Northern Ireland
Prisons	HM Inspectorate of Prisons (HMI Prisons) with Care Quality Commission (CQC) and Ofsted	HMI Prisons with Healthcare Inspectorate wales (HIW)	HM Iinspectorate of Prisons for Scotland (HMIPS) with Care Inspectorate (CI)	Criminal Justice Inspectorate Northern Ireland (CJINI) and HMI Prisons with Regulation and Quality Improvement Authority (RQIA)
	Independent Monitoring Boards (IMB)	IMB		IMB Northern Ireland
Police custody	HM Inspectorate of Constabulary (HMIC) and HMI Prisons		HM Inspectorate of Constabulary for Scotland	CJINI with RQIA
	ICVA	ICVA	ICVS	NIPBICVS
Court custody	HMI Prisons & Lay Observers		HMIPS	CJINI
Children in secure accommodation	Ofsted (jointly with HMI Prisons in relation to secure training centres)	Care and social services Inspectorate Wales (CSSIW)	CI	RQIA
				CJINI
Children (all settings)	OCC			
Detention under mental health law	CQC	HIW	Mental Welfare Commission for Scotland (MWCS)	RQIA
Deprivation of liberty and other safeguards in health and social care	CQC	HIW	CI and MWCS	RQIA
		CSSIW		
Immigration detention	HMI Prisons			
	IMB			
Military detention	HMI Prisons and ICVA			
Customs custody facilities	HMIC and HMI Prisons and HMICS			

The UK NPM is coordinated by HM Inspectorate of Prisons and a Steering Group made up of representatives from the four nations guides decision-making.

What difference does being part of the NPM make?

Being part of the NPM brings both recognition and responsibilities. NPM members' powers to inspect, monitor and visit places of detention are formally recognised as part of the UK's efforts to prevent torture. At the same time, NPM members have the responsibility to ensure that their working practices are consistent with standards for preventive monitoring established by OPCAT.

What is preventive monitoring?
For monitoring and inspecting places of detention to perform a preventive function, it is widely understood that visits should be proactive and regular. Similarly, they should analyse the place of detention as a system, and assess all aspects related to the deprivation of liberty. This will enable them to identify problems which would lead to torture or ill-treatment. Finally, prevention requires ongoing and constructive dialogue with relevant authorities, with visiting bodies providing recommendations aimed at improving the detention system in the long term [APT definition].

In addition to individual members' preventive monitoring, the UK NPM also focuses attention on crucial detention-related issues, promoting coherent analysis and responses to them. The NPM produces an annual report of its activities. It is scrutinised by official UN human rights bodies and NGOs to ensure that it is fulfilling its OPCAT mandate.

For more information please contact:
Louise Finer, NPM Coordinator
louise.finer@hmiprisons.gsi.gov.uk

Fact sheet 2: The first five years of the UK NPM

What is a National Preventive Mechanism (NPM)?

The UK set up its National Preventive Mechanism (NPM) in March 2009. The NPM aims to prevent torture and ill-treatment in all places of detention, in line with the Optional Protocol to the UN Convention against Torture.

Establishing the NPM

In its first five years, the UK NPM has focused efforts on establishing an effective governance structure and raising awareness among its members and key stakeholders. Progress has been made to:

- Ensure all places of detention within the UK are subject to independent monitoring
  NPM members' monitoring has expanded to cover court cells, escorts and deportations, medium secure units for children and young people, and 'non-designated' police cells.

- Establish a common set of Expectations to guide members' efforts under their NPM mandate
  The powers and practices expected of NPM members in performing their monitoring function were set out and agreed by the full NPM membership.

- Strengthening governance
  The coordination function, performed by Her Majesty's Inspectorate of Prisons, and the establishment of a steering group to facilitate decision making and set the strategic direction, has strengthened the effectiveness of the NPM, now made up of 20 institutional members.

- Address the specific issues faced by children and young people in detention
  A thematic subgroup now meets regularly to share information and join up efforts towards preventing ill-treatment of children and young people in detention.

- Build awareness of the UK NPM nationally and internationally
  Training on preventing torture and ill-treatment through monitoring has been delivered by NPM members to numerous lay visiting bodies, professional inspectorates and other stakeholders. Important linkages for sharing information and expertise have been established with non-governmental organisations and many others. The UK NPM has been called on to share its expertise around the world with new NPMs and countries in the process of ratifying OPCAT.

Focusing on detention-related concerns

Bringing together its different skills, expertise and approaches, the UK NPM has sought to focus attention on shared areas of concern. This work has allowed NPM members to share expertise, develop new understanding of human rights issues, strengthen their own methodologies, and issue recommendations for further action. It includes:

- The human rights implications of detention-related practices
  NPM-wide discussions have strengthened understanding of the human rights issues around use of force and restraint, deaths in custody, segregation and mental health.

- Shining a light on *de facto* detention
  Monitoring bodies' ability to understand and tackle *de facto* detention has been refreshed by analysis of existing practices and approaches.

- Ensuring detainees are not subject to sanctions
  A protocol has been agreed among two NPM members to ensure that no prisoners or detainees are subject to reprisals or sanctions arising from their contact with monitors or visitors, and that actions are taken when such practices are reported.

- Strengthening recommendations made to authorities
  An analysis of how recommendations are made and followed-up has been conducted across the NPM and will contribute to future work.

Commenting on legislation and policy

Many individual NPM members are active in implementing their powers to comment on legislation and policy. Being part of the NPM has encouraged members to submit joint proposals on areas of shared concern or interest, applying human rights norms to their analysis. These have included comments on:

- A decision by the Home Office to provide 17-year-olds, detained in police custody, with an appropriate adult to assist them, and that a person responsible for their welfare is informed.
- The Scottish Government's decision to abolish prison visiting committees because they were not OPCAT-compliant and proposing that their monitoring role be taken up by the Scottish prison inspectorate.
- The UK government's proposals to transform the youth estate.
- The Scottish Government's proposals to reform policing, by successfully calling on the government to use this reform as an opportunity to strengthen custody visiting arrangements.
- A range of parliamentary inquiries and bills on topics that include: female offenders; youth justice; the way in which deaths following police contact are investigated; and local authority responsibilities towards children looked after following remand.

Looking ahead: the next five years of the NPM

The UK NPM is using its fifth anniversary to take stock of its work and approaches to date. It will make public the results of its own assessment of the extent to which it is fulfilling its torture prevention mandate and identify ways of strengthening its work over the next five years in April 2014.

Appendix Ten

List of abbreviations

ACPO	Association of Chief Police Officers
CAT	Convention against Torture
CI	Care Inspectorate
CJINI	Criminal Justice Inspection Northern Ireland
CPT	Committee for the Prevention of Torture
CQC	Care Quality Commission
CSSIW	Care and Social Services Inspectorate Wales
HIW	Healthcare Inspectorate Wales
HMIC	Her Majesty's Inspectorate of Constabulary
HMICS	Her Majesty's Inspectorate of Constabulary for Scotland
HMI Prisons	Her Majesty's Inspectorate of Prisons
HMIPS	Her Majesty's Inspectorate of Prisons for Scotland
HMP	Her Majesty's Prison
HRIC	Human Rights Implementation Centre
ICRC	International Committee of the Red Cross
ICVA	Independent Custody Visiting Association
ICVS	Independent Custody Visitors Scotland
IMB	Independent Monitoring Board
IMBNI	Independent Monitoring Boards (Northern Ireland)
IRC	Immigration Removal Centre
LO	Lay Observers
MMPR	Minimising and managing physical restraint
MWCS	Mental Welfare Commission for Scotland
NIPBICVS	Northern Ireland Policing Board Independent Custody Visiting Scheme
NGO	Non-governmental organisation
NOMS	National Offender Management Service
NPM	National Preventive Mechanism
OCC	Office of the Children's Commissioner for England
Ofsted	Office for Standards in Education, Children's Services and Skills
OPCAT	Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment
PCC	Police and Crime Commissioner
RQIA	Regulation and Quality Improvement Authority
SHRC	Scottish Human Rights Commission
SPT	Subcommittee on Prevention of Torture
SCH	Secure Children's Home
STC	Secure Training College
YOI	Young Offender Institution

Appendix Eleven

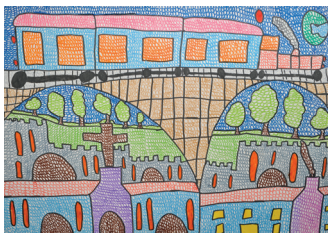
Further information about the UK NPM

If you would like further information about the UK NPM, please contact the NPM coordinator. For further information about a particular member, you may wish to contact them directly.

Louise Finer
National Preventive Mechanism Coordinator

Her Majesty's Inspectorate of Prisons
Victory House
6th Floor
30–34 Kingsway
London WC2B 6EX

Tel: 020 3681 2800
Fax: 020 7035 2141
Email: louise.finer@hmiprisons.gsi.gov.uk
Website: http://www.justiceinspectorates.gov.uk/hmiprisons/national-preventive-mechanism/



The image used in this report is a detail from *The Victorian Train*, by a patient at Camlet Lodge, Chase Farm Hospital, which won a Gold Award for Drawing at the 2014 Koestler Awards. The Koestler trust is a prison arts charity, inspiring offenders, secure patients and detainees to take part in the arts, work for achievement and transform their lives. For more information visit: www.koestlertrust.org.uk

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