

## INTRODUCTORY REMARKS

1. The UK National Preventive Mechanism (NPM) was established in 2009 after the UK ratified the Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (OPCAT) in 2003. It comprises 21 statutory bodies that independently monitor places of detention across the UK. Article 19 of OPCAT sets out the key criteria for an NPM; that it must have the power to enter places of detention without notice, make recommendations to authorities, and comment on draft or existing legislation.
2. OPCAT establish the duty to prevent torture or cruel, inhuman or degrading treatment from occurring in places where people are deprived of their liberty. The prevention of ill treatment is forward-looking and primarily about encouraging continuous improvement to create environments where ill treatment is less likely.
3. The NPM is making this submission to the Sentencing Review to fulfil this preventive function, considering how sentencing decisions impact all people deprived of their liberty, and whether the threshold of ill-treatment or cruel, inhuman or degrading treatment or punishment could be crossed. It therefore focusses on how sentencing currently impacts on the treatment and conditions of people in prisons.
4. This submission is complementary to those of individual NPM bodies His Majesty's Inspectorate of Prisons (HMIP) and Independent Monitoring Boards (IMB). It focusses on how sentencing policy has impacted the conditions and treatment of prisoners in England and Wales. It is limited in scope to issues that engage article 3 concerns – the prohibition of torture and other cruel, inhuman or degrading treatment or punishment, and the UK's positive obligations to prevent violations occurring. Other cohorts not considered by the Independent Sentencing Review (for example IPP prisoners, remand prisoners) are also impacted by associated concerns of overcrowding, understaffing, and lack of adequate regime.
5. The UK was an early proponent of OPCAT and actively involved in the drafting process. It was one of the first states to notify the United Nations of the designation of its NPM. As well as the Convention Against Torture, which the UK signed in 1985, the UK has ratified multiple international and regional treaties which declare the absolute prohibition of torture, such as the European Convention on Human Rights (1951), and the International Covenant on Civil and Political Rights (1968).

6. To support states implementing their obligations under these treaties, various international standards and rules exist, such as the Nelson Mandela Rules (Standard Minimum Rules for the Treatment of Prisoners) and the European Prison Rules, which set out accepted minimum standards of treatment and conditions in prison.
  7. These rules set out the following principles as a basis for accepted standards:
    - a. All prisoners shall be treated with the respect due to their inherent dignity and value as human beings.
    - b. The rules shall be applied impartially without discrimination. To fulfil the principle of non-discrimination, prison administrations shall take account of the individual needs of prisoners.
    - c. Imprisonment is an effective punishment by the very fact depriving a person of their liberty and right to self-determination. The prison system shall not aggravate the suffering inherent in such a situation.
    - d. The purpose of imprisonment is primarily to protect society against crime and reduce recidivism, which can only be achieved if the period of imprisonment is used to ensure reintegration into society. Education, vocational training, and work, as well as other forms of support should be delivered in line with the individual needs of prisoners.
    - e. Prison administrations shall make all reasonable accommodation and adjustments to ensure that prisoners with physical, mental, or other disabilities have full and effective access to prison life on an equitable basis.
    - f. All accommodation provided for the use of prisoners and in particular all sleeping accommodation shall meet all requirements of health.
    - g. Prisoners should enjoy the same standards of health care that are available in the community.
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## CURRENT SENTENCING CONCERNS

8. Increasingly long sentence tariffs over the last 20 years, an increase in the number of people serving longer sentences, increased recalls and more recent measures that broaden the scope of sentences that must be served entirely in prison, have increased pressures on the prison estate. There are plans to increase prison building capacity to manage overcrowding – however the estate plan is not keeping up with the growth in population. The following sections address how overpopulation, because of current and previous sentencing policy and practice, has compromised the UK's capacity to fulfil the accepted standards and obligations the UK has agreed, to provide treatment and conditions in prison that respect the inherent dignity and the needs of prisoners and wider society. We hope the Independent Sentencing Review will consider these obligations in its recommendations.
9. Across Europe, the CPT reports decades-long trends of prison overcrowding and cites resolving overcrowding as key to the effective prevention of inhuman or degrading treatment. According to the European Court of Human Rights, violations of Art. 3 ECHR (prohibition of degrading and inhumane treatment or punishment) may arise not only by positive acts of ill-treatment by State authorities over prisoners, but also through the imposition of degrading detention conditions, or through lack of

action in the face of allegations of ill-treatment between prisoners. For example, the situation of prisoners held in overcrowded, dilapidated prison facilities, with too little living space and insufficient privacy, have been considered a violation of Art. 3, although the authorities never intended to humiliate the prisoners.

10. In our first annual report covering the year from April 2009 to March 2010, the NPM expressed concerns about the rising prison population and the overcrowding of prisons. It warned that prisons may find themselves increasingly unable to deal with problems caused by overcrowding because of decreasing resources. By September 2023, 66% of establishments reported overcrowding in England and Wales. The same report published in 2010 expressed concern at the number of prisoners with mental health issues held in segregation units, often for prolonged periods, often awaiting transfers to a more appropriate environment. The report noted:

“There is a fear that the progress that has been made in recent years in the treatment and conditions for all detainees may not only stall, but that standards may actually begin to fall. In prisons, for example, inadequate funding will impact all aspects of detention. It will adversely affect the standard of accommodation, the prisoner’s time out of cell and the provision of education and rehabilitative programmes.

11. Responding to the CPT’s recommendation to reduce overcrowding in the prison estate, including through changes in sentencing policies and practices, following a periodic visit in 2021,<sup>1</sup> the UK stated:

“We are investing £3.8 billion to deliver 20,000 additional, modern prison places including 2,000 temporary prison places across England and Wales by the mid-2020s. This includes creating four new prisons and expanding another four prisons.”

“The multi-site expansion of the Women’s Estate to provide up to 500 additional prison places creates an opportunity for significant investment in the women’s estate, which will deliver improved, gender-specific accommodation.”

12. The NPM notes that looking at the issue of overcrowding only from the perspective of space (i.e. not taking into account the Committee’s recommendation on sentencing policy and practice) will not solve the problem. It is not only the number of people in a space that affects crowding; the physical quality of that space, the capacity of staff to support them and a preparedness for the increasingly complex needs of individuals deprived of their liberty are all essential to ensure the fulfilment of the right not only to be free of ill treatment, but all the component rights such as rights to privacy, to an adequate standard of health and the inherent dignity of the human being.

- 13. We encourage the Independent Sentencing Review to include consideration of these conditions in the fulfilment of the rehabilitative function of prisons in its recommendations.**

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<sup>1</sup> [1680a72b87](#)

14. The physical condition of the prison estate and its suitability for purpose has been widely criticised. These problems were particularly acute in Victorian prisons (which make up a third of the current prison estate), but they were also reported in prisons built as recently as the 1990s. Significant issues with ventilation, intolerably hot or cold temperatures, unusable showers, flooding and frequent sightings of rats and cockroaches have all been reported. In addition, the population pressures mean that cells could often not be taken out of use for routine maintenance, such as window or plumbing repairs, as there was nowhere to move the occupant.

15. NPM bodies have found that crucial repairs, or the decommissioning of unsuitable sites, is not carried out at the pace required precisely because of population problems. In its 2021 response to the CPT, the UK government acknowledged:

“Population projections in the estate have meant that all current prisons, other than those already earmarked for closure, are required. Our ambition is that this additional space will support us as we modernise our prison estate in the future.”

Public figures on overpopulation are artificially low because they do not take account of establishments that are not fit for purpose and should be closed. If these were decommissioned, as international standards on dignified treatment might require, the figures would be much higher.

**16. A reduced prison population would allow for rotational closing of facilities to repair and renovate, enabling the UK to ensure a dignified standard of living for prisoners and to provide a functioning rehabilitative service.**

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## MENTAL HEALTH

17. Mental health issues are prevalent in prisons across the UK and exacerbated by overcrowding, obstacles to progression, excessive time locked in cell, restricted regime and/or widespread drug use found at their prisons. Poor mental health is a particularly prominent issue in the women’s estate, where self-harm is considerably higher than in the men’s estate.

18. It is difficult for prison staff to meet the level of mental health need, as mental healthcare teams are particularly understaffed. Prison rules and international standards require the safeguarding of all prisoners in their care, and prisoners must have access to the health services available in the country without discrimination on the grounds of their legal situation. Across the prison estate (for men and women) low staffing levels and limited regimes contribute to poor mental health, increasing risk of self-harm.

19. NPM bodies have found concerning treatment of women in prison with extreme mental health difficulties, for whom prison was not the appropriate facility, and who were subject to excessively long transfer times to hospital.

20. Women being sent to prison solely on mental health grounds, under remand for “own protection” under the Bail Act 1976, or to prison as a “place of safety” under the Mental Health Act 1983. Prisons are not an appropriate or therapeutic environment for people who should be receiving proper medical treatment for mental health. There is an urgent need for joint action with the Department of Health so that prison is not the default setting for women whose primary problem is a mental health condition. The Mental Health Bill currently going through the House of Lords proposes removing prison as a place of safety and ending remand for own protection solely for mental health reasons under the Bail Act. We welcome this provision which will improve the protections for women with severe mental health difficulties, and ease demands on the prison service.
21. All prison inspectorates and monitoring bodies recorded deep concern for mentally unwell prisoners (both men and women) waiting unacceptably long times to transfer to specialist mental health inpatient facilities for treatment under Mental Health Acts. Often, these people in mental health crisis were held in segregation or prison inpatient units, which were detrimental to their health.
22. In its 2021 response to the CPT, The UK government has put forward a 28-day timeframe to complete transfers from prisons to hospital for prisoners with severe mental health need warranting detention under the Mental Health Act.  
“In April 2021 the NHS introduced a new process for collecting and monitoring data on transfers. This data is being analysed monthly to identify trends and areas where further improvement is needed to meet the 28-day timeframe”.
23. However, bespoke research by NPM bodies found that this 28-day timeframe is too-often missed, and poorly recorded across the country.
- 24. In approaching sustainable reduction of the prison population, we encourage the Independent Sentencing Review to consider cohorts who require a therapeutic setting to facilitate their rehabilitation, for some of whom prison will never be the appropriate setting.**

### **Segregation**

25. Poor conditions and limited regime, despite good relationships between prisoners and staff, were reported in segregation units in prisons across the UK last year. While basic requirements were met – most prisoners in segregation were allowed a shower, 30 minutes of exercise and one telephone call a day – this is below the minimum of what the NPM would expect.
26. Some segregation units were “bleak”, with little access to meaningful regime or therapeutic support. Social isolation, lack of meaningful activity, and continuous segregation amounting to solitary confinement contribute to inhuman and degrading treatment or punishment. The high level of non-disciplinary segregation was an acute and national issue.
27. In its response to the UN Subcommittee for the Prevention of Torture, which visited the UK in 2019, the UK Government summarised expectations for prisoners removed

from association, specifically that any isolation should be “for the shortest time necessary and the prisoner must be returned to normal location as soon as practicable or safe...the regime for segregated prisoners...should be as full as possible and only those activities that involve associating with mainstream prisoners should be curtailed.”

**28. A reduced population allows staff more time to engage with complex prisoners which will allow the UK to better fulfil the standard of individualised support.**

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**REGIME**

29. Prison rules are clear that conditions and treatment within prison are not to exacerbate the penal nature of imprisonment. A core element of rehabilitation is a functioning regime that provides opportunity to develop interests, skills, and education. Excessive time locked in cell, lack of purposeful activity and interventions, and a poor regime were reported by prisoners to contribute to frustration and anxiety, and limited the quality of staff-prisoner relations, all contributing to higher risk of self-harm.

30. Currently only 7% prisoners report being unlocked for more than 10 hours a day (the HMIP expectation). Restrictions are worse at weekends, with 37% of men and women not having more than two hours out of their cell.<sup>2</sup>

31. In its 2021 response to the CPT visit report, the UK cited its commitment to the Future Regime Design project to create a regime model that identifies the needs, risks, and strengths of individuals, recognising the importance of purposeful activity and stating:

“This will enable prisons to provide a fuller regime in a more resource effective, innovative way by recognising everyday opportunities...To decrease frustration, increase wellbeing and reduce violence FRD aims to prevent long periods of inactivity.”

However, current sentencing practices and lengths mean there are not enough qualified staff to deliver this individualised and purposeful regime for prisoners. Moreover, the sentencing of many prisoners who would be more effectively rehabilitated in other settings means that there are many prisoners that most prison officers are inadequately trained to support.

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**32. We encourage the Independent Sentencing Review to consider bold options to what is a longstanding issue of overpopulation, caused at least in part by sentencing policy and practice. Overpopulation affects every part of an effective prison system, and currently undermines officer and healthcare staff striving to provide a dignified and rehabilitative service. We are happy to**

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<sup>2</sup> Research undertaken in 2023-2024 conducted on 4,882 responses from the adult men's and women's estates; the responses of prisoners from open prisons were excluded.

**support the review with further evidence and hope to see recommendations that enhance the UK's compliance with its agreed international obligations.**



Sherry Ralph, NPM Chair



Sam Gluckstein, Head of UK NPM

January 2025

**Ends.**