



UK National Preventive Mechanism
c/o HM Inspectorate of Prisons
Victory House
6th Floor
30-34 Kingsway
London WC2B 6EX

Tel: 020 3681 2800
E-mail: Louise.Finer@hmiprisons.gsi.gov.uk

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Dear Mr Neill,

I would like to thank you for the opportunity to give evidence to the Justice Committee's inquiry on prison reform.

Specifically, I would like to respond to the Committee's question "Are existing mechanisms for regulation and independent scrutiny of prisons fit for purpose" (question 6).

I took office as the first independent Chair of the UK's National Preventive Mechanism (NPM) in May 2016. The UK NPM was established in 2009 to deliver the UK's obligations under the Optional Protocol to the United Nations Convention against Torture (OPCAT), which requires that States Parties establish an independent national body or bodies to monitor all places of detention with a view to preventing ill treatment or torture.

The UK's NPM is an unusual model in that it is comprised of 21 independent members, designated merely by a written ministerial statement and not set out in law. I understand that this arrangement for the NPM was decided upon because there were already a number of statutory bodies that already monitored or inspected places of detention. The NPM's size brings advantages – we have an extraordinary capacity, experience and expertise and the number of people involved in monitoring in the UK far outweighs that of our counterpart NPMs in other countries – but also it has some disadvantages. The ability of 21 organisations each operating under their own statutory provisions (most of which predated their designation to the NPM) to act coherently to deliver the international obligations under OPCAT is a challenge. Currently, we rely on the goodwill and cooperation of members to achieve the NPM's overall stated purpose.

I am particularly concerned by the fact that the UK NPM itself is not provided for in legislation. This results in there being no guarantee of independence, no system of accountability, and Parliament having no role in setting out either its mandate or its objectives. This is in violation of the clear requirement of NPMs, as set out by the United Nations Subcommittee on Prevention of Torture.¹ The lack of legislation undermines our legitimacy nationally and internationally, fails to protect our independence and functions from interference and does not assist us to deliver on our day to day tasks as an NPM. I am also concerned that the absence of legislation might suggest that the NPM is not

¹ "The mandate and powers of the NPM should be clearly set out in a constitutional or legislative text", UN SPT, *Guidelines on national preventive mechanisms*, 9 December 2010 (CAT/OP/12/5); see also UN SPT, *Analytical self-assessment tool for NPMs*, 6 February 2012 (CAT/OP/1).

regarded by the government as being particularly important. I believe legislation on the NPM and its members would be an opportunity to establish a proper system of accountability to Parliament itself.

Members of the NPM also wish to see their own responsibilities under OPCAT incorporated into their own statutes. Currently, the legislation of only two of the members of the NPM refers to OPCAT (both in Scotland).² It is of course particularly relevant to your current inquiry into prison reform that the legislation under which HMIP and the IMBs currently operate does not reference their roles under OPCAT or as part of the NPM.

There is no doubt in my mind that the UK would be criticised for this lack of legislation were it to be subject to a formal visit by the UN Subcommittee on Prevention of Torture. In the Netherlands, their NPM's lack of legislation was very recently called by the Subcommittee a "striking weakness" and the adoption of legislation as a "crucial step" towards the country's compliance with OPCAT.³

I am currently in discussions with Ministry of Justice officials about these concerns, as well as the other ways in which the NPM and its independence could be strengthened. I have proposed that a legislative opportunity to establish the mandate of the UK NPM and its independence should be identified and pursued (perhaps in the proposed Prisons Bill). We would also need to establish whether separate devolved legislation would also be needed for the NPM's members in the devolved administrations.

The advantage of legislation would be to formalise the requirements of the NPM and to make sure both the NPM and its members can be held to account for delivering them. It would also be useful to include a duty to ensure that NPM members cooperate with each other and with the NPM itself. The UK should rightly be proud of having a well-embedded tradition of scrutinising places of detention, but I believe that the current situation in many prisons in England and Wales shows there is no room for complacency, and that formalising the role of the NPM in preventing ill treatment would be a useful contribution.

Yours faithfully,

A handwritten signature in black ink, appearing to read 'J. Wadham', on a light-colored background.

John Wadham
Chair
UK National Preventive Mechanism

cc. Scott McPherson, Director of Judicial, Rights, and International Policy, Ministry of Justice

² The Police and Fire Reform (Scotland) Act 2012 (<http://www.legislation.gov.uk/asp/2012/8/contents/enacted>) refers explicitly to the SPT and OPCAT (s. 93-96). The Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2015 which introduces reference to the SPT and OPCAT into the Prisons (Scotland) Act 1989 (<http://www.legislation.gov.uk/ssi/2015/39/contents/made?article-3-2-c>)

³ UN Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Visit to the Netherlands for the purpose of providing advisory assistance to the national preventive mechanism: recommendations and observations addressed to the State party. Report of the Subcommittee. (CAT/OP/NLD/1).