



UK National Preventive Mechanism  
c/o HM Inspectorate of Prisons  
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Mari Amos  
UN Sub-committee on Prevention of Torture  
Office of the High Commissioner for Human Rights  
Palais Wilson  
52, rue des Paquis  
CH-1201 Geneva

15 November 2017

Dear Mari,

### **Advice from the Sub-Committee on the Prevention of Torture**

I am writing on behalf of the National Preventive Mechanism of the United Kingdom to request the advice of the Sub-Committee on the important issue of compliance with the Optional Protocol to the Convention Against Torture.

As you know the members of the UK NPM were designated by the UK government in 2009, with additional designations in 2013 and 2017.<sup>1</sup> All the organisations designated to the NPM were already functioning, many of them from before OPCAT was agreed by the UN, and the government decided that they were already carrying out the functions necessary for OPCAT. At the time of the initial designations, the Chief Inspector of Prisons (England and Wales) was asked to take on a co-ordination role for the NPM.<sup>2</sup>

Currently, only two of the 21 members of the NPM have any reference to their OPCAT mandate written into the legislation that created them and which defines their role. The Police and Fire Reform (Scotland) Act 2012 and the Public Services Reform (Inspection and Monitoring of Prisons) (Scotland) Order 2014 set out that the purpose of independent custody visiting and the functions of HM Chief Inspector of Prisons for Scotland respectively are "pursuant to the objective of OPCAT".

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<sup>1</sup> Optional Protocol to the Convention Against Torture (OPCAT), Written Statement - 490 c56WS, 31 March 2009; Convention Against Torture, Written Statement - 571 c41WS, 3 December 2013; Optional Protocol to the Convention Against Torture (OPCAT), Written statement - HLWS412, 12 January 2017.

<sup>2</sup> HMIP's coordination role is set out in *Protocol between The Ministry of Justice as the Department and HM Chief Inspector of Prisons* (27 February 2017) at paragraph 3.3.

The NPM itself is not recognised more generally in any legislation and has no separate legal identity. In 2015 the members of the NPM themselves decided to create a distinct role for the Chair of the NPM, independent of the other members of the NPM and, I am pleased to report, selected and appointed me without any involvement from the UK Government. However, the Chair, like the NPM itself, is also not recognised in legislation (nor given any of the required powers, immunities or status). You will note in our letter to the government (attached, 13 January) we have set out in detail why we believe this matters.

This year the Government introduced legislation, the Prisons and Courts Bill, which would have strengthened the legislative basis of HM Chief Inspector of Prisons and referred specifically to the OPCAT role (clause 2, proposed amendment to the Prison Act 1952, extract attached) but the legislation fell when the Government called an election and the Government has stated that it does not intend to bring that before Parliament again in the near future. We suggested to the Government and Bill Committee that they could use that legislation to recognise the UK's NPM<sup>3</sup> and we drafted a short amendment to that Bill (attached) but unfortunately the Government did not take up that suggestion. It was, however, promoted by the Opposition in Parliament.

We have also raised the need for NPM legislation with the Parliamentary Joint Committee on Human Rights and Justice Committee,<sup>4</sup> who supported this proposal.<sup>5</sup>

Separately you may remember that there was a complaint to the Subcommittee that one of our members (the Independent Monitoring Boards, IMB) was subject to unjustified interference by the UK Government (by "sacking" the local chair) and we wrote to you about this. This coincided with a review of the governance arrangements for the IMB and we wrote to the Minister concerned to raise the need for greater separation between the IMB secretariat and the Ministry of Justice (letter of 24 January 2017 attached) and met with him to discuss the issues. Although we never received a substantive written reply to our specific concerns, at our meeting the Minister indicated that he did not accept our criticism of the arrangements and the changes suggested in the review were implemented without taking our concerns on board (see attached letter of 13 February 2017).

The nature of the devolved constitutional arrangements in the United Kingdom means that many of our members are created by, and subject to, separate legislation and amending that legislation is outside the competence of the Westminster Parliament. However, as far as we are aware, there has been no discussion with the devolved governments or parliaments about the changes that we have suggested.

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<sup>3</sup> Public Bill Committee, *Written evidence submitted by John Wadham, Chair of the UK National Preventive Mechanism* (PCB 08) at

<https://publications.parliament.uk/pa/cm201617/cmpublic/PrisonsCourts/memo/PCB08.htm>

<sup>4</sup> Oral evidence to the Justice Committee,

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/prison-reform/oral/46581.html>; Written evidence from the UK NPM to the Justice Committee,

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/justice-committee/prison-reform/written/45906.html>, January 2017; Written evidence from the UK NPM to the JCHR

<http://data.parliament.uk/writtenevidence/committeeevidence.svc/evidencedocument/human-rights-committee/mental-health-and-deaths-in-prison/written/48220.html>, March 2017

<sup>5</sup> Justice Committee's *14<sup>th</sup> Report – Prison Reform: Part 1 of the Prisons and Courts Bill*, HC 1150, 28 April 2017; Topical Questions, 25 April 2017, Hansard Volume 624.

It is worth noting that we are continuing to discuss with Government officials what else could be achieved to recognise the NPM in the absence of any legislation. However, we believe that the absence of legislation setting out the OPCAT mandate and responsibilities of each of the designated organisations, specifically protecting their independence, is wrong in principle and does not comply with OPCAT itself or the SPT's own guidelines. It is our view that in addition to recognising the specific NPM role of its members in their own originating legislation, the NPM as a co-ordinating entity led by an independent Chair needs to be recognised separately in statute. This is important for our role nationally and our reputation internationally.

As you can see from the attached correspondence (our letter of 13 January 2017 and the reply 13 June 2017), the Government considers the arrangements for the UK NPM are already compliant with OPCAT. We understand that the SPT raised the need for a legislative basis for the UK NPM prior to its designation, and would welcome your specific advice on what, if anything, would be needed for the UK NPM to comply with OPCAT. The Government is aware that we are approaching you for advice and we have copied Ministry of Justice and Foreign and Commonwealth Office ministers and officials as well as representatives of devolved governments.

Yours sincerely,

A handwritten signature in black ink on a light-colored background. The signature is cursive and appears to read 'J. Wadham'.

John Wadham  
Chair of the UK NPM

cc Dr Phillip Lee MP, Parliamentary Under Secretary of State for Youth Justice, Victims, Female Offenders and Offender Health

Lord Ahmad of Wimbledon, Minister of State for the Commonwealth and the UN, Foreign & Commonwealth Office

Dominic Lake, Deputy Director of the Human Rights and Intergovernmental Relations, Ministry of Justice

Matthew Deith, Team Leader, Security and Justice, Foreign and Commonwealth Office

Professor Sir Malcolm Evans, Chairperson, UN SPT

Neil Rennick, Director of Justice, Scottish Government

Brian Grzymek, Criminal Justice Policy & Legislation Division, Department of Justice, Northern Ireland Executive

Andrew Felton, Head of Justice Policy, First Minister and Cabinet Office, Welsh Government

David Jones, Conventions Manager, Education and Public Service, Welsh Government

Attached: Letter from John Wadham to Scott McPherson, 13 January 2017  
Response to John Wadham from Scott McPherson, 13 June 2017  
Letter from John Wadham to Sam Gyimah MP, 2 January 2017  
Response to John Wadham from Sam Gyimah MP, 13 February 2017  
Excerpt from the Prisons and Courts Bill (as introduced to Parliament) and proposed amendments re OPCAT  
Proposed NPM amendment to Prisons and Courts Bill to recognise NPM

