



HAUT-COMMISSARIAT AUX DROITS DE L'HOMME • OFFICE OF THE HIGH COMMISSIONER FOR HUMAN RIGHTS
PALAIS DES NATIONS • 1211 GENEVA 10, SWITZERLAND
www.ohchr.org • TEL: +41 22 917 9000 • FAX: +41 22 917 9008 • E-MAIL: registry@ohchr.org

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Geneva, 29 January 2018

Dear Mr. Wadham,

I have the honour to write to you on behalf of the United Nations Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT), established in accordance with the Optional Protocol to the Convention against Torture and other Cruel, Inhuman and Degrading Treatment or Punishment (OPCAT), in my capacity as Head of the European Regional Team and SPT country rapporteur for the United Kingdom of Great Britain and Northern Ireland.

I would like to thank you for your letter dated 15 November 2017 in which you set out a number of developments concerning the question of the legal basis of the UK NPM. As I am sure you are aware, the lack of a clear legislative basis for the NPM has long been a matter of concern to the SPT. We are aware that some take the view that this is not legally necessary under the OPCAT. The SPT disagrees with this position, and should the SPT visit the UK on an official basis it is incontrovertible that this failing would feature in its report and recommendations – as it has in all other countries where there are similar shortcomings.

The experience of the SPT is that the situation of an NPM remains precarious without its being underpinned by a clear legislative basis. We have seen, unfortunately, too many examples of cases in which states have put pressure on NPMs, directly or indirectly, which they have not been able to challenge for the want of a clear basis on which to do so. Practical effectiveness is dependent on functional independence, and the independence is threatened when the NPM is vulnerable to political pressure or political exigencies. The role of the SPT in relation to NPMs includes ensuring that they are protected from such pressures. Hence, our unequivocal view that the OPCAT requires, as a matter of practice, that the NPM has a clear legislative underpinning.

Whilst a welcome development, it has to be said that the wording previously proposed for inclusion in the Prisons and Court Bill fell far short of what we would expect, amounting to little more than a legislative acknowledgement of the NPM. On the information available to us, it seems to offer no substantive safeguards for the day-to-day execution of the OPCAT mandate by the UK NPM.

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Mr. John Wadham
Chair of the UK NPM

The SPT is conscious that it has not yet undertaken a formal visit to the UK under its OPCAT Article 11(a) mandate. This has, perhaps, denied it the opportunity to formally and officially make its views known to the UK Government. We are, however, in no doubt that the views of the SPT on this matter are in fact known by the UK Government. We would welcome any opportunity to clarify our position directly with the Government, formally or informally, that might be made available and believe it would be beneficial were this to be at the earliest opportunity.

Yours sincerely,

Mari Amos



Head of the European Regional Team
Subcommittee on Prevention of Torture