



UK National Preventive Mechanism  
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Professor Sir Simon Wessely  
Chair, Independent Review of the Mental Health Act 1983

[MHAReviewEvidence@dh.gsi.gov.uk](mailto:MHAReviewEvidence@dh.gsi.gov.uk)

Dear Professor Wessely

**RE: Independent Review of the Mental Health Act 1983**

I would like to thank you for the opportunity to submit evidence to the independent review of the Mental Health Act 1983 that you chair.

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 NPM consists of 21 existing bodies throughout the UK, which are independent, have powers to regularly inspect or monitor places of detention and share the aim of preventing ill-treatment of anyone deprived of their liberty. It is coordinated by HM Inspectorate of Prisons.

Preventing the ill treatment of people who are detained as a result of mental illness constitutes a large part of the NPM's work. To allow additional specialist discussion the NPM members who inspect, regulate and/or visit mental health detention have established a sub-group to offer a forum for additional detailed consideration of the aspects of the NPM's work that are relevant to mental health detention in the UK. The Chair of the sub-group, Colin McKay (Chief Executive of the Mental Welfare Commission for Scotland), is copied in below.

I would like to address three key issues set out in the Terms of Reference for the Independent review.

**Incomplete data about numbers of individuals detained under mental health legislation**

The Terms of Reference note a concern about "*rising rates of detention under the Act*".

To perform its functions effectively, the NPM requires information about where and how many people are detained. For this reason, the UK NPM undertakes a project to map detention population data each year. We will shortly publish our annual detention population data mapping project for 2016-17.

That exercise has re-inforced our view that there are significant gaps in the available statistics which make it difficult to know exactly how many people are being detained under mental health legislation. The best available data from NHS Digital recorded 45,864 detention events in England and Wales over a 12 month period between 1 April 2016 to 31 March 2017. This data, drawn from the first Mental Health Services Data Set, has significant gaps in data coverage and completion and is based on only 65% of hospital detention reporting. Compared to the previous data collection system (KP90 which was in operation until 2015/16), fewer organisations submitted data (128 in 2016/17 compared to 172 in 2015/16) and among those that did, many returns were incomplete. NHS Digital estimated that the actual figure is approximately 66,000 (2% above the 63,502 detention events in 2015/16). This is a significant discrepancy.

To prevent ill-treatment and make sure detainees are safe and well-cared for it is essential there is a clear picture of the numbers and needs of people who are held under mental health legislation. The NPM would welcome better recording and collation of this vital data.

### **Pathways and transitions**

The Terms of Reference for the independent review note a concern about *“the time required to take decisions and arrange transfers for patients subject to criminal proceedings”*.

NPM members have recently conducted joint work examining the pathways and transitions between different detention settings. Our work focussed on the pathways between: different mental health settings (including national, regional and local secure mental services); police custody and mental health settings; prisons and mental health settings. The research, contained in the NPM's Eighth Annual Report which will be laid before Parliament shortly, draws on the experience of our members to analyse the risks of ill-treatment involved in different pathways that relate in some way to mental health needs. The NPM makes a number of recommendations for improving the way that the current pathways operate. When our Annual Report has been published I will ensure the Independent Review team are sent a copy as several of our recommendations for future action will be relevant to your work.

### **Safeguards available to mental health patients**

Again, the Terms of Reference express concern about *“the balance of safeguards available to patients, such as tribunals, second opinions, and requirements for consent”*.

The European Committee for the Prevention of Torture (CPT) visited England between March and April 2016 and their report was published in April 2017 (I enclose a copy with this letter). The Government response is expected to be published imminently.

The CPT sets out a range of important concerns, many of which I share, about the treatment of those detained under mental health legislation (see paragraphs 105-176 of the report) stating:

*the CPT considers that there are a few areas which require serious reflection and change; notably, consent to treatment safeguards need to be reinforced during the first three months of involuntary placement in a hospital; the powers of the Mental Health Tribunal need to be reinforced and expanded to deal with appeals concerning such issues as consent to treatment, transfers to more secure hospitals, the use of means of restraint and the application of specific treatment measures. The CPT also has serious misgivings about the measures of long-term segregation as currently applied in the high secure hospitals (see paragraph 108)*

The CPT recommendations directly relevant to the Independent Review include:

- “Ensure that all patient injuries are diligently recorded, including on body maps, and that an investigation and safeguarding measures are triggered whenever injuries are noted. Further, clear policies should be in place to ensure that staff know what to do if they detect possible ill-treatment by other staff members.” (paragraph 114)
- “Every measure of seclusion be diligently recorded in the restraint register, notably: the start and end of the measure, any time offered out of seclusion to the patient, the reason for initiating seclusion and cogent reasons for continuing seclusions beyond 24 hours. The name of the persons authorising and ending seclusion should also be recorded.” (paragraph 147)
- “Documentation regarding the reasons for initiating and continuing long term segregation (LTS) be fully recorded in the patient’s file and that a clear pathway out of LTS should be drawn up and the patient fully informed about such a care plan. Further, it recommends that in each hospital a formal register of all incidents of seclusion and long term segregation be established.” (paragraph 162)
- “Introduce the right for a patient to appeal the measure of LTS to the Mental Health Tribunal and that the Mental Health Tribunal be empowered to review the measure of LTS ex officio after a defined period.” (paragraph 164)
- “Any relevant legislation should be amended so as to require an immediate external psychiatric opinion in any case where a patient does not agree with the treatment proposed by the establishment’s doctors; further, patients should be able to appeal against a compulsory treatment decision to the Mental Health Tribunal and the patients should be informed in writing of this right.” (paragraph 175)
- “Relevant legal provisions should be amended and, in the meantime, the Mental Health Tribunal institute a practice of yearly reviews for all patients placed involuntarily in hospital. Further, all patients transferred from either prison or from a less secure hospital should automatically trigger a review by the Mental Health Tribunal of the transfer measure.” (paragraph 176)

Finally, as it is also pertinent to this area of the Independent Review’s work, I draw your attention to the NPM’s joint work on isolation and solitary confinement across all places of detention in the UK. I attach copies of the findings report (published in the NPM’s Sixth Annual Report) and the NPM’s subsequent document *Guidance: Isolation in Detention* which provides a human rights-based framework for NPM members to use in monitoring these issues.

The guidance was drafted after NPM members suggested it would be useful to establish a set of common standards for monitoring isolation across all detention

settings – including mental health. It builds on the findings of the review of isolation and solitary confinement across detention that members conducted in 2014-15. This identified wide variations in the practices, procedures, safeguards against harm and experiences of detainees arising from isolation, even when applied in similar circumstances. Drawing from international standards and best practice, the guidance provides a framework for NPM members to apply when they encounter isolation in detention, and aims to improve consistency of approach, a key objective for the NPM. We would encourage the Independent Review to examine this NPM work and, where possible, to draw on and reflect it in your own.

As the work of the Independent Review progresses, I would welcome a meeting to discuss these issues further.

Yours sincerely,

A handwritten signature in black ink, appearing to read 'J. Wadham', written in a cursive style.

John Wadham  
Chair  
UK National Preventive Mechanism

cc Colin McKay

Attachments:  
CPT Report  
NPM Sixth Annual Report  
NPM Isolation Guidance