



UK National Preventive Mechanism
c/o SHRC
Bridgeside House
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Edinburgh

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2 April 2020

Dear Humza Yousaf MSP,

We are writing on behalf of the Scottish members of the National Preventive Mechanism (NPM) about the vital importance of efforts to uphold the rights of people in detention and deprived of their liberty during the COVID-19 outbreak. We are aware from your recent announcements that you are actively considering the best measures to take to protect them.

As you may be aware, we recently wrote to Secretary of State for Justice, Robert Buckland QC MP, on these issues¹.

This letter provides a number of principles and recommendations that are directly applicable in the current emergency situation. While some of the issues raised in this letter are at the forefront of the operational planning that is currently being undertaken by the Scottish government and other public authorities, we would like to emphasise some of the steps that the government and detention authorities can take to mitigate the existing risks.

First of all, we would like to acknowledge the dedication and commitment that staff working in detention settings are demonstrating at such worrying times. We would also like to thank your officials for their efforts to support the NPM in exercising its role at this time.

Principles

1. As you may be aware, a number of international human rights and health bodies have provided guidance on States' responsibilities to uphold human rights in the context of COVID-19 and much of this relates specifically to detention and detention monitoring'. It is our view that the following principles should be applied by all relevant authorities responsible for persons deprived of their liberty:

- The Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, issued by the CPT of the Council of Europe;²
- The WHO Europe, Preparedness, prevention and control of COVID-19 in prisons and other places of detention;³
- The Subcommittee for Prevention of Torture, Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic;⁴ and
- The UN Standard Minimum Rules for the Treatment of Prisoners ("Mandela Rules")

¹ Letter from NPM Chair John Wadham to Secretary of State for Justice Robert Buckland QC MP on the COVID-19 outbreak, 30 March 2020 <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2020/03/NPM-letter-to-Robert-Buckland-re-COVID19-300320.docx-WEB-2.pdf>

² Council of Europe, Statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus disease (COVID-19) pandemic, 20 March 2020 <https://rm.coe.int/16809cfa4b>

³ WHO, interim guidance, 15 March 2020, available at: http://www.euro.who.int/_data/assets/pdf_file/0019/434026/Preparedness-prevention-and-control-of-COVID-19-in-prisons.pdf

⁴ Subcommittee for Prevention of Torture, Advice of the Subcommittee on Prevention of Torture to States Parties and NPM relating to the Coronavirus Pandemic, 25 March 2020, available at: <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

2. People in prisons and other places of detention are both likely to be more vulnerable to infection with COVID-19 and to be more vulnerable to human rights violations. There are practical difficulties that put detainees and staff at risk, including the impossibility of social distance, particularly in overcrowded places of detention, staff and monitoring decrease and the nature of the restrictive measures imposed to stop the spread of the outbreak.

As you are aware the NPM is primarily concerned with the prevention of ill-treatment of all people deprived of their liberty, but also with the importance of supporting staff. There are specific and intense challenges for staff working in various places of deprivation of liberty, including prevention equipment and staffing levels that could lead to increase in the use of restraint, segregation and seclusion which may compromise people's human rights.

Accordingly, we would like to recommend the following steps:

- A concerted effort should be made to reduce the detained populations to mitigate the inherent risk of maintaining people in close confinement. This is particularly important for detainees with underlying health conditions, remanded population, children, and those in other vulnerable categories as well as in areas of the detention estate that are already overcrowded. This should be facilitated where risk assessment and the impact on other services in the community deems it feasible and by expanding the use of existing instruments or executive release under emergency legislation.
- Staff availability should be supported and staff should receive all professional support, health and safety protection as well as training necessary in order to be able to continue to fulfil their tasks in places of deprivation of liberty. This includes support to monitoring bodies and the NPM as an essential safeguard against ill-treatment.
- Maintain the principles of equivalence of care in relation to both physical and mental healthcare to those in detention. At a time when all health services are under significant strain, the government must ensure that those deprived of their liberty are not disadvantaged in accessing the health services that they need. This is particularly important given the extent to which detainees are likely to be held in conditions that amount to solitary confinement. In addition, the NPM are concerned that extended solitary confinement in spaces designed for one but holding two will be detrimental to both physical and mental health.
- Reassess the need to continue involuntary placement of psychiatric patients; discharge or release to community care, wherever appropriate. This is particularly important for residents of social care homes where the provision of care and imposed isolation to manage infection spread for an individual may give rise to a new or changed deprivation of liberty.
- Ensure alternative measures to facilitate contact between detainees and their families, and contact with other professionals such as advocates. Where physical visits have had to be restricted, and given the many ways in which family contact plays a crucial role for those in detention, how will the government ensure skype, adapted mobiles and any other forms of contact are available.
- Provide periodic reports to the Scottish Parliament and wider public on the human rights of this population and your progress in protecting those in detention.
- Provide clarity in relation to the timescale and process of the regular review of the Coronavirus (Scotland) Bill.

Given the rapidly changing picture across different detention settings and the severity of the measures that are being imposed, from restriction of family visits and long periods of isolation to limitations on exercise and association, the NPM members are looking into new ways of fulfilling our scrutiny functions to ensure our preventive role is maintained in these challenging times.

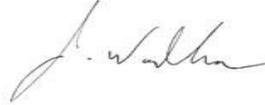
As was discussed in our recent conversation, we will be in contact to arrange a meeting with Scottish NPM members and yourself.

Lastly, due to the importance of providing reassurance to the public during these troubling times, and in particular to those who are concerned about the situation of their family members and friends in detention, the NPM will publish this letter on our website.

Yours sincerely,



Judith Robertson,
Chair of UK NPM Scottish Subgroup



John Wadham
Chair of UK NPM

On behalf of:

Care Inspectorate
Her Majesty's Inspectorate of Constabulary in Scotland
Her Majesty's Inspectorate of Prisons for Scotland
Independent Custody Visitors Scotland
Mental Welfare Commission for Scotland
Scottish Human Rights Commission