



npm

national
preventive
mechanism

EXECUTIVE SUMMARY

Scotland's progress in the prevention of ill-treatment in places of detention

An assessment of the implementation of
recommendations made by the European
Committee for the Prevention of Torture

AUGUST 2021



Scotland's progress in the prevention of ill-treatment in places of detention

Executive summary

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is an international body, set up under the Council of Europe, with a role to prevent ill-treatment through conducting visits to places of detention. The CPT's members are independent and impartial experts from a variety of backgrounds, including lawyers, medical doctors and specialists in prison or police matters.¹ The Committee's work builds on Article 3 of the European Convention on Human Rights '*No one shall be subjected to torture or to inhuman or degrading treatment or punishment*'.

The UK National Preventive Mechanism (NPM)² is composed of 21 independent bodies that monitor places of detention and deprivation of liberty in Scotland and rest of the UK. The NPM members worked closely with the CPT prior to and during their formal visits to the UK as well as in response to their recommendations and standards for places of detention.

In October 2018, a delegation from the CPT visited five prisons and five police stations in Scotland. In October 2019, the CPT carried out an ad-hoc visit to men's and women's prisons in Scotland to follow up on key issues raised from their visit in October 2018. The CPT has subsequently published their reports following these visits.^{3 4}

The Scottish Government submitted its official responses to the CPT reports of 2018 and 2019 and these were published in 2019⁵ and 2020⁶ respectively. In their responses, the Scottish Government agreed a number of actions aimed at strengthening the protections for people in detention in Scotland.

¹ See: <https://www.coe.int/en/web/cpt/home>

² See <https://www.nationalpreventivemechanism.org.uk/>.

³ Report to the Government of the United Kingdom on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 17 to 25 October 2018 [1680982a3e \(coe.int\)](https://rm.coe.int/1680982a3e) (Referenced as CPT/Inf (2019) 29)

⁴ Report to the United Kingdom Government on the visit to the United Kingdom carried out by the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) from 14 to 18 October 2019 [16809fdebc \(coe.int\)](https://rm.coe.int/16809fdebc) (Referenced as CPT/Inf (2020) 28)

⁵ Response of the Government of the United Kingdom to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the United Kingdom from 17 to 25 October 2018 <https://rm.coe.int/1680982a02> (Referenced as CPT/Inf (2019) 30)

⁶ Response of the United Kingdom Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) on its visit to the United Kingdom from 14 to 18 October 2019 [16809fdebe \(coe.int\)](https://rm.coe.int/16809fdebe) (Referenced as CPT/Inf (2020) 29)

This report is commissioned by the Scottish sub-group of the UK NPM⁷ and was undertaken by two independent researchers. It examines:

- ◆ The progress made in places of detention in Scotland to rectify the issues identified by the CPT in their 2018 and 2019 reports.
- ◆ Areas of continued concern and/or those areas where issues have not been rectified in relation to the CPT recommendations.
- ◆ New emerging concerns including in the context of COVID-19. This acknowledges that since the CPT visits, a key focus of detention authorities has been on ensuring safe operation of places of detention in the context of pandemic, as well as reducing the impact of COVID-19.

⁷ Scottish Sub-group – National Preventive Mechanism

Key findings

This executive summary sets out the key findings of the research on the implementation of recommendations by the Scottish Government following the CPT visits in 2018 and 2019. It highlights a number of positive areas where recommendations have been implemented, as well as recommendations not implemented including those outstanding over the long-term.

The research also reflects on mechanisms for implementing and reporting on recommendations, including the use of working groups and reviews and the availability of data in some instances.

Finally, the report identifies underlying systemic problems which it is argued act as a barrier to the successful implementation of many of the CPT's outstanding recommendations. The context of the COVID-19 pandemic as well as of other new, emerging issues, are also highlighted.

Recommendations implemented

Evidence points to a number of changes, made in both prison and police settings, to address the CPT recommendations.

With respect to the police for example, evidence suggests improvements in the overall notification of rights to those in police custody through the work carried out by the Government to the Letter of Rights, as well as more consistent access for medical examination being ensured through the Forensic Physicians.

In relation to prisons, HM Inspectorate of Prisons for Scotland (HMIPS) has noted areas of 'significant' work in Cornton Vale to address the CPT recommendations, including training and examples of good practice on admission and care plans. Furthermore, there is evidence of positive impact on those, for example, who received speech and language therapy. The Scottish Government also reported that a contractor has been appointed to work on the reception centre at Barlinnie and while work had commenced on site, the demolition of the reception area is yet to start.

Recommendations not fully implemented

Many of the concerns raised by the CPT do not appear to have been addressed fully by the Scottish Government.

The Government's response with respect to documentation and investigation of injuries in police custody does not address the very specific recommendations by the CPT on how the injuries should be recorded and handled by the police. The research carried out for this report suggests that issues with recording of injuries persist. Similarly, with regard to recommendations made by the CPT concerning the police complaints handling system, the *Independent Review of Complaints Handling, Investigations and Misconduct*

Issues in Relation to Policing by Dame Elish Angiolini⁸ identified 81 recommendations for improvements in this area, with an additional 30 identified in the preliminary report of June 2019. The full Review was published in November 2020 and the work on consideration and implementation of all recommendations is in progress⁹. In addition, while improvements have been achieved in the overall notification of rights to those in police custody, evidence suggests that in some instances police still fail to inform detainees of having notified the third party of their place of detention.

With respect to recommendations on the need for purposeful activities for those on remand and for female prisoners held in male establishments, it is apparent different groups of prisoners do not enjoy the same access to various activities. Men on remand and female prisoners held in male prisons are still highlighted as suffering the most.

The CPT in 2018 found that many prisoners in segregation units had 'become institutionalised', preferring to remain in these units where it was quiet and ordered. This was found to result in these units being at full occupancy, with a 'steady number of segregated carousel prisoners who pass through each Separation and Reintegration Unit (SRU) for several months at a time before transfer to the next one'. The Committee therefore recommended that the authorities 'seek alternative solutions to break the cycle'. While HMIPS reports have focused on other aspects of segregation, this CPT recommendation has not received attention as yet with evidence from this research suggesting little improvement.

The CPT recommended that female prisoners suffering from severe mental health disorders should be transferred to an appropriate psychiatric facility within two weeks, as also highlighted by the Barron Review¹⁰. This has not been implemented. In addition, there are still significant challenges with the availability of beds in appropriately secure facilities.

At Cornton Vale, while there has been some movement in developing trauma-informed care and training, there is still evidence of women being kept in segregation for over a month. Furthermore, whilst there appears to have been attempts to increase staffing provision at Cornton Vale, as recommended by the CPT, there are clinical vacancies due to challenges in health recruitment across Scotland.

⁸ [Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing. Final Report \(November 2020\)](#). The Rt. Hon. Dame Elish Angiolini DBE QC

⁹ Complaints, investigations and misconduct in policing – implementation of recommendations: thematic progress report – June 2021 (24 June 2021). [Complaints, investigations and misconduct in policing ... implementation of recommendations: thematic progress report – June 2021 – gov.scot \(www.gov.scot\)](#)

¹⁰ Independent Review into the Delivery of Forensic Mental Health Services. What we think should happen. Final Report, February 2021. [Independent Forensic Mental Health Review: final report ... gov.scot \(www.gov.scot\)](#)

Long-standing recommendations

A number of recommendations made by the CPT in 2018 and 2019 repeat concerns that the Committee raised on its visit in 2012 and in some instances even earlier, with one recommendation dating back as far as 1994. These remain outstanding.

In police custody, it appears there has been no change in the law which still currently allows for the possibility to delay access to a lawyer in exceptional circumstances, a point first made by the CPT in 2012. In addition, systemic issues have prevented progress in addressing the issues of stays in police custody beyond 24 hours in Scotland persist, another issue highlighted by the CPT following its 2012 visit.

For prisons, a recommendation dating back to 2012 which concerns levels of overcrowding in Scottish prisons remains to be addressed. The interviews conducted for this research confirmed overcrowding as the single most pressing issue of the Scottish prison system, prior to and during the COVID-19 pandemic.

Given such long-standing concerns expressed consistently by the CPT for over a decade, the Scottish NPM subgroup calls for particularly urgent action to be taken by the Scottish government on these issues.

Working groups and reviews as a way of addressing recommendations

For some of the recommendations, the Scottish Government response notes the establishment of a working group and/or review or utilising the work of an already existing working group or review. Whilst these reviews could enable in-depth analysis of the issues, this approach appears to result in a delay in meaningful action to address the concerns of the CPT. Furthermore, these groups or reviews may not be tasked with addressing the CPT recommendation specifically.

For example, the CPT recommended that measures should be taken to ensure that the system of handling complaints made by persons deprived of their liberty are made subject to their five principles of ‘availability, accessibility, confidentiality/safety, effectiveness and traceability’. The reply provided by the Scottish Government to the CPT appears to be a ‘holding reply’ as the government stated it was awaiting the full report and conclusions of the Dame Angiolini review, which has now been completed and made public in November 2020. The Scottish Government has accepted most of the recommendations and taken initial steps to implement them. However, the Review was not commissioned to follow-up the implementation of the CPT recommendations and in fact commenced prior to the CPT visit in 2018.¹¹ Consequently, the review does not explicitly address the key element of the 2018 CPT recommendation concerning

¹¹ The Review commenced in June 2018 whilst the visit of the CPT took place in October 2018.

the need for the police complaints handling system to adhere to the CPT's five basic principles applicable to police complaints handling systems.¹² Although the issues examined by the review and the recommendations which followed, overlap with the findings of the CPT and its recommendations, they are not an exact match and therefore the response of the Scottish Government in presenting the review as addressing the concerns raised by the CPT is only a partial response. Whilst the Scottish Government has accepted most, but not all of the recommendations of the review, the work on implementation of the review is at its very inception and it remains to be seen which recommendations will be implemented.

Another example is the CPT findings noting Cornton Vale was not a suitable environment for women who were seriously mentally ill and recommended that a specialised psychiatric unit be established in Scotland to care for them. This was an issue that the Barron Review also identified. The Scottish Government's response was that a new women's facility is being built which will address the concerns of women with complex needs and that it was awaiting the findings of the Barron Review. This has been recently published, recommending the re-introduction of high security units within nine months of publication of the report in February 2021. To date, the issue remains outstanding and the response of the Scottish Government to that recommendation is awaited.

Finally, the CPT recommended tailored regime plans for individuals on disciplinary sanctions and extended segregation, and for further information on disciplinary sanctions for those who refuse to reintegrate into the mainstream prison population. This research found that while the issue has been under consideration by various working groups, these have yet to produce outcomes which result in changed practices.

Data unavailable

In some instances, it was concerning to note the lack of publicly available data from the Scottish Government, including the police and prison service as well as other stakeholders, and NPM member organisations.¹³ This prevented a full assessment of the implementation of recommendations in some instances. For example, it was not possible to find information on call bells in Barlinnie, with regards to the CPT recommendations that these be regularly tested and that response times be tracked and monitored by management. Neither was there information on whether outside shelter had been provided at Barlinnie, Grampian or other establishments.

¹² See chapter on Complaints Mechanisms in the 27th General Report of the CPT (1 Jan-31 Dec 2017), published in 2017. [16807bc1cf \(coe.int\)](https://www.coe.int/t/treaties/16807bc1cf)

¹³ SHRC Letter to Convenor of the Justice Committee, May 2020 <https://tinyurl.com/b5uh8su7>

In relation to the specific query of the CPT regarding the substitute treatment available to those with drug dependency in police custody, the Government set out the requested information in its written response in 2019. However, as there appears to be a gap in the information from stakeholders on this issue, the researchers were unable to verify whether the response provided by the Government actually addresses the concern raised by the CPT.

Finally, there was little data on purposeful activities for remand prisoners both preceding and during the pandemic. However, limited available data suggests that the CPT recommendations have not been met.

COVID-19 and new areas of concern

The report highlights new areas of concern that have arisen since the CPT visits, including in some instances because of the significant impact of the COVID-19 pandemic.

The measures introduced in prisons across Scotland in response to the pandemic have brought some positive findings in relation to purposeful activities as more distance-learning, online provision and other in-cell activities have become available. In addition, the adoption of the Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 in April 2020¹⁴ allowed 348 short-term prisoners nearing the end of their time in custody to be released early. However, warnings were also raised over the social isolation that is perceived to be unfolding across Scottish prisons. As more purposeful activities are being provided in-cell, the opportunities for all prisoners to associate with others have shrunk considerably, leading to serious concerns over social isolation. In addition, compounded by staff shortages, overcrowding has had a significant negative effect not only on 'out of cell' activity time and the variety of activities available during the pandemic, but also on key activities that prisoners are required to complete as a part of their individual release plans.

A new emerging issue recorded by the researchers was repeated concerns over the level at which individuals in situations of vulnerability and especially those with mental health distress find themselves in police detention in Scotland. This is an area of concern to the Scottish NPM subgroup.

¹⁴ [The Release of Prisoners \(Coronavirus\) \(Scotland\) Regulations 2020 \(legislation.gov.uk\)](https://www.legislation.gov.uk)

Underlying systemic concerns

This research points to deep-seated, underlying issues concerning both police detention and prisons. Of particular note is the effective implementation in practice of the principle of the presumption of liberty, which lies at the heart of numerous recommendations made by the CPT.

The presumption of liberty¹⁵ requires authorities to resort to deprivation of liberty (either through an arrest or as a punishment of imprisonment) only as a measure of last resort, thus obliging authorities to seek alternatives to detention. In both the prison and police custody contexts, the Scottish government has pursued a number of initiatives to implement this principle, but it would appear with only limited success.

In the context of police detention, the Criminal Justice (Scotland) Act 2016 has been praised for progressively incorporating the presumption of liberty, through numerous provisions, including by setting a 12-hour limit as a general rule for the permissible length of detention in police custody. However, the practice of holding people beyond 24 hours persists. This is despite the CPT highlighting this as highly problematic in both 2012 and 2018. The lack of full implementation of the presumption of liberty also lies at the heart of other CPT recommendations concerning police detention, and has an impact on the extent to which a person detained is informed that a friend or family member has been notified or providing prompt access to a lawyer in all circumstances. Therefore, due implementation of the presumption of liberty could contribute significantly towards the implementation of other CPT recommendations.

In the context of prisons, the Scottish Government continues to pursue various initiatives to implement the presumption of liberty to stem the high prison population, including by diverting offenders from short prisons sentences and increasing the use of community sentencing. Despite this, the prison population has not decreased, and overcrowding in Scottish prisons has continued with the CPT stressing the issue in 2012, 2018 and 2019. During the interviews, the question was raised as to whether the presumption of liberty is being properly implemented in the prison context and whether a custodial sentence is imposed only as a measure of last resort, when no alternatives to detention are possible.

¹⁵ As incorporated in Article 5 of the European Convention on Human Rights.
https://www.echr.coe.int/documents/convention_eng.pdf

Conclusion

The final part of the report presents overall observations and conclusions from the research.

(i) Procedural observations

The NPM welcomes evidence pointing to a number of changes, made in both prison and police settings, to address CPT recommendations. However, a significant proportion remain unaddressed, some of which have been outstanding since 2012. The research identifies the lack of a strategic approach by the Scottish Government to the implementation of CPT recommendations nor a mechanism set up to monitor the progress of such implementation. A lack of systematically collected data was also of concern in helping to determine if recommendations have been met.

(ii) Thematic observations

Findings note shortcomings in implementation of the principle of the presumption of liberty in the contexts of both police custody and prisons. The research carried out strongly suggests that the proper implementation of the presumption of liberty would contribute significantly to addressing long-standing CPT's recommendations which, in turn, would have a positive impact upon the implementation of other CPT recommendations.

As a result of these findings, the Scottish NPM subgroup calls on the Scottish government to:

- ◆ **implement all CPT recommendations and regularly monitor progress on this implementation now and in the future. The Scottish NPM members are available to assist with this and welcome close cooperation on this matter.**
- ◆ **undertake concerted and coordinated action between the executive, police, prosecution services and the courts to give full effect to the presumption of liberty. This will go some way to addressing the systemic issues at the heart of many CPT recommendations.**

