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national
preventive
mechanism

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

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Acronyms

CI	Care Inspectorate
CJSD	Criminal Justice Services Division (Police Scotland)
CPT	European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment
CTM	Clinical Team Meeting
DHC	Dihydrocodeine
ECHR	European Convention on Human Rights
EM	electronic monitoring
FMEs	Force Medical Examiners
HCP	Healthcare practitioner
HDC	Home Detention Curfew
HMICS	Her Majesty's Inspectorate of Constabulary in Scotland
HMIPS	Her Majesty's Inspectorate of Prisons for Scotland
HMP	Her Majesty's Prison
HPS	Health Protection Scotland
ICVS	Independent Custody Visiting Scotland
IMPs	Independent Prison Monitors
MDMHTMs	Multi-Disciplinary Mental Health Team meetings
MWCS	Mental Welfare Commission for Scotland
NCS	National Custody System
NHS	National Health Service
NPM	National Preventive Mechanism
OSTh	Opioid Substitution Therapy
PASS	Presumption Against Short Sentences
PIACs	Prisoner Information Action Committees
PIRC	Police Investigations and Review Commissioner
PMAG	Prisoner Management Assurance Group
PSD	Police Scotland Professional Standards Department
SHRC	Scottish Human Rights Commission
SPA	Scottish Police Authority
SPS	Scottish Prison Service
SRU	Separation and Reintegration Unit
TTM	Talk to Me
UK	United Kingdom of Great Britain and Northern Ireland
UN	United Nations
WHO	World Health Organisation
WTE	Whole Time Equivalent
YOI	Young Offender's Institution

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- ◆ HM Inspectorate of Prisons for Scotland
- ◆ The Mental Welfare Commission for Scotland
- ◆ Scottish Human Rights Commission (Chair)
- ◆ Care Inspectorate
- ◆ Independent Custody Visitors Scotland
- ◆ HM Inspectorate of Constabulary for Scotland

We would like to thank the six NPM members, as well as civil society representatives for the valuable input they provided through interviews and comments as part of the research process. We would also like to thank the Scottish Government, Police Scotland, National Health Service and Scottish Prison Service for their engagement in two roundtables undertaken as part of this research.

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, 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 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.**

Introduction

1. Background

The UK's National Preventive Mechanism (NPM) is a network of 21 independent monitoring bodies in England, Wales, Scotland and Northern Ireland whose role is to prevent ill-treatment in detention. The NPM was established in 2009 in accordance with the UK's obligations under the Optional Protocol to the Convention Against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment. Six NPM members are based in Scotland: Her Majesty's Inspectorate of Prisons for Scotland (HMIPS), Her Majesty's Inspectorate of Constabulary in Scotland (HMICS), the Mental Welfare Commission for Scotland (MWCS), Independent Custody Visiting Scotland (ICVS), the Care Inspectorate (CI), and the Scottish Human Rights Commission (SHRC).

The European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) is an international body with a role to prevent ill-treatment through conducting visits to places of detention. The UK NPM works closely with the CPT during their formal visits to the UK and 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 published their report on their 2018 visit in October 2019 and their report on their 2019 visit in October 2020.

The Scottish Government submitted its official responses to the CPT reports of 2018 and 2019 and these were published in 2019¹⁶ and 2020¹⁷ respectively. In its responses, the Scottish Government agreed a number of actions aimed at strengthening the protection for individuals in detention in Scotland. This report acknowledges that since the CPT visits, detention authorities have had to focus on the safe operation of detention facilities during the pandemic and on reducing the impact of COVID-19 in places of detention. This situation has been taken into account when considering the current context.

¹⁶ CPT/Inf (2019) 30 (see footnote 5).

¹⁷ CPT/Inf (2020) 29 (see footnote 6).

2. Focus of this report

This report examines:

- ◆ The progress made in police detention facilities and prisons 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 areas of concern that have arisen since the 2018 and 2019 visits of the CPT, including in the context of the COVID-19 pandemic.

This report notes that COVID-19 has exacerbated the issues that the CPT noted in its 2018 and 2019 reports and created emerging concerns and a new dimension to the issues in question. These will be addressed throughout the report. The outbreak of COVID-19 poses significant risks to people in detention and otherwise deprived of their liberty given that according to WHO “people in prisons and other places of detention are not only likely to be more vulnerable to infection with COVID-19, they are also especially vulnerable to human rights violations”.¹⁸ In March 2020, the CPT published its statement of principles relating to the treatment of persons deprived of their liberty in the context of the coronavirus (COVID-19) pandemic which includes that the fundamental right of detained persons must be respected during the pandemic.

Part I of this report focuses on recommendations made with respect to the police and Part II on prisons. Each section includes the following:

- ◆ **Relevant international human rights standards** at the start of each section;
- ◆ **CPT findings and recommendation(s)** outlined in their reports
- ◆ **Response of the Scottish Government:** this includes the official published response in 2019 and 2020 to each specific recommendation as well as information provided by the Scottish Government during roundtables with the researchers and in written comments on a draft of this report;
- ◆ **Evidence collected:** this presents information obtained from publicly available material and semi-structured interviews.
- ◆ **Assessment:** each section is then concluded with an assessment of the extent to which the CPT recommendations have been implemented by analysing and triangulating all the available data.

¹⁸ World Health Organisation Preparedness, prevention and control of COVID-19 in prisons and other places of detention, 15 March 2020. [WHO/Europe | Prisons and health – Preparedness, prevention and control of COVID-19 in prisons and other places of detention, 15 March 2020 \(produced by WHO/Europe\)](https://www.euro.who.int/en/health-topics/communicable-diseases/news-and-events/2020/03/who-europe-prisons-and-health-preparedness-prevention-and-control-of-covid-19-in-prisons-and-other-places-of-detention-15-march-2020); Statement of principles relating to the treatment of persons deprived of liberty in context of coronavirus disease (Covid-19) Pandemic (Referenced as CPT/Inf (2020) 13), March 2020 available at: <https://rm.coe.int/16809cfa4b>

- ◆ **Long standing recommendations:** some CPT recommendations made in its 2018 and 2019 reports repeat concerns that were raised by the committee on visits in 2012 and in some instances before, dating back to 1994. These recommendations are highlighted where appropriate.
- ◆ **New areas of concern:** in some instances, where evidence warranted, a section on new areas of concern has been included to reflect an issue not noted by the CPT but consistently highlighted by the stakeholders since the CPT's visits.

CPT recommendations are addressed to the Scottish Government. The NPM recognises that many recommendations require an integrated approach across different authorities and that specific authorities may be taking measures to comply with the recommendations within the remit of their specific mandate. However, just as the CPT does not single out specific entities in its recommendations, the assessments made about the implementation of recommendations in this report are addressed to the Scottish Government and Scottish authorities collectively.

3. Methodology

Desk-based research: A detailed examination of the relevant CPT reports from 2018 and 2019 was undertaken. Each recommendation was mapped against the official responses to each of the CPT reports submitted by the Scottish Government in 2019 and 2020, respectively, as well as any reports and documents from the Scottish NPM members and civil society.

Choice of priorities: The CPT reports identified key areas with respect to prisons (e.g. violence and lack of safety; conditions of detention and overcrowding; extensive time spent in cells; extensive time in segregation); women's prisons (e.g. admissions processes, segregation at Cornton Vale and support for mentally-ill women); and police detention (e.g. excessive use of force and safeguards such as access to lawyer; the complaints system; and conditions when individuals are held for more than 24 hours). However, the CPT recommendations are extensive and in order to ensure in-depth analysis, the report does not address every single one. Rather, it focuses on (a) those identified by stakeholders as priority areas; and (b) those which are persistent, namely where the CPT has previously made recommendations in its earlier reports, going back to 2012 and in some cases, further.

Interviews: Semi-structured interviews were held with each NPM member in Scotland, as well as civil society organisations and experts. These interviews aimed to establish the extent to which the recommendations issued by the CPT in 2018 and 2019 have been met by the relevant state authorities, as well as identifying priority areas particularly in light of the pandemic. Interviews were held remotely and remain anonymous.

Consultation on draft reports: A draft of the report was shared with the Scottish Government as well as with members of the Scottish NPM for their feedback and comments. We very much welcome and acknowledge the detailed input given, as well as further documentation provided.

Roundtables: In addition to the official replies provided by the Scottish Government to the CPT recommendations in 2019 and 2020, in the context of this research two roundtables were held with authorities identified by the Scottish Government, one on prisons and one on the police, to invite further comments and observations on the implementation of the CPT recommendations and the draft report. The Annex to this report provides a list of organisations represented at these meetings.

Assessments: The assessments are provided at the end of each section of the report. These are based on the entirety of the data available to researchers. None of the conclusions presented rely on a single source of information as all information received has been triangulated with reference to different sources.

Limitations: In some instances, the relevant detail or data was not available in publicly available documents, preventing any further assessments.

PART I: CPT RECOMMENDATIONS WITH RESPECT TO THE POLICE

A. Implementation of Safeguards During the Initial Period of Police Detention

1. Third party notification

According to the UN Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (UN Body of Principles) and the CPT standards, **persons detained by police have a trinity of rights: to have access to a lawyer, a doctor and to notify members or their family or other appropriate person of their arrest, detention, imprisonment or transfer promptly after this takes place.**¹⁹

The CPT Findings

In its 2018 visit report the CPT noted²⁰ that although the law in Scotland entitled detained persons to notify a third party of their detention, while detainees were in practice being afforded this right, several detained persons complained that they had not been informed about whether and when this notification had been effected. The CPT recommended that **detained persons should be informed when the third-party notification has been effected by custody staff and that this feedback should be traceable in the police custody records.**

The Scottish Government Response

In its response, the Government explained²¹ that Police Scotland had circulated a briefing note to custody staff reminding them of their obligations around custody intimations, as well as noting that the Criminal Justice Services Division (Police Scotland) (CJSD) management team would monitor this.

When commenting on a draft of this report, Police Scotland submitted that the national custody system currently does not allow recording of feedback to the detainee that their solicitor or reasonably named person (third party notification) has been notified, although it argued that any shortcomings in this area are likely to be exceptional cases.²²

¹⁹ Body of Principles for the Protection of All Persons under Any Form of Detention or Imprisonment (1988), Principle 24; Developments concerning CPT standards in respect of police custody. Extract from the 12th General Report of the CPT, published in 2002. [1680696a76.coe.int](#), at para 40.

²⁰ CPT/Inf (2019) 29 para 18 (see footnote 3).

²¹ CPT/Inf (2019) 30 para 24 (see footnote 5).

²² Notes on files with authors.

The Evidence Collected

The 2020 Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing (the Angiolini Review) records issues with the practical implementation of the third-party notification. It cites focus groups carried out with the members of ICVS reporting as a 'common issue raised by those held in police custody' the inability to speak to family members to tell them that they were in custody because mobile phones are removed from persons in custody.²³ The Angiolini Review also recorded evidence from female police detainees corroborating the point raised by the ICVS regarding the very real concerns about whether or not family members had been contacted during their stay in custody and were aware of their whereabouts.²⁴ The interviews conducted for this research also suggest that while third party notification takes place in practice, failures to notify the detainees of effecting this notification are common.²⁵ The interviewees reported concerns about a lack of understanding on behalf of the police that persons in detention are entitled to certain rights which they do not need to ask for but should be provided as a matter of common practice: *"If a detainee asks, it is provided, but they shouldn't have to ask"*.²⁶

Assessment

The evidence suggests that in some cases the police still fail to inform detainees of having notified the third party of their whereabouts. Data also does not appear to be collected in relation to whether these notifications have taken place.

2. Access to a lawyer in general

According to the UN Body of Principles and the CPT standards, a **detained person in police custody is entitled to have access to a lawyer and should be informed of this right, through such means as a 'letter of rights', promptly after arrest and provided with reasonable facilities for exercising it.**²⁷

The CPT Findings

Following its 2018 visit, although noting the right of notification to a solicitor operated well in practice and was afforded to all persons interviewed in police custody, the CPT observed that some detainees have been denied the ability to directly consult their lawyers over the telephone. In this regard the CPT recalled²⁸ that access to a lawyer must

²³ See footnote 8, at para 24.8.

²⁴ Ibid, at para 24.14.

²⁵ E.g. Interview D., 8 March.

²⁶ Interview D., 8 March.

²⁷ See footnote 19, para 40; And Preventing police torture and other forms of ill-treatment – reflections on good practices and emerging approaches. Extract from the 28th General Report of the CPT, published in 2019. [16809420e3.\(coe.int\)](#) para 66.

²⁸ CPT/Inf (2019) 29 para 19 (see footnote 3).

be guaranteed from the very outset of deprivation of liberty and must include the right to talk to him/her in private. The CPT therefore recommended **that the custody staff be alert to whether a detained person wants to consult with a lawyer directly and ensure access to a lawyer from the very outset of a detained person's deprivation of liberty.**

The Scottish Government Response

In its response the Government explained²⁹ that the details regarding notifications to solicitors are incorporated into, and recorded on, Police Scotland's National Custody System (NCS) which requires detained persons to be made aware of their right to consultation with a solicitor and to have a solicitor present during interview. This is a legislative requirement under the Criminal Justice (Scotland) Act 2016 and noted in the Letter of Rights that is provided to detainees, an easy-to-read version also being available. This Letter, available in several languages, would be read to the detainees if Police Scotland believed there will be difficulties in understanding.

The Evidence Collected

In their *2019-2020 Annual Review*, ICVS recorded issues regarding the Letter of Rights given to persons in police custody³⁰ but noted that since these concerns were raised, some improvements have followed in terms of detainees receiving this and understanding it. The Angiolini Review also documented³¹ the concerns of the ICVS and that the extent to which individuals were made aware of their rights depended on whether they were settled or whether they were under the influence of alcohol or drugs. The Angiolini Review made a number of suggestions to enhance the accessibility of the Letter of Rights including on the subject of complaints.³²

In 2019, the Government undertook to consult on the Letter of Rights, with the outcome published in September 2020. It was concluded that, despite moderate approval of the Letter, there is scope for further improvement, including on where the Letter is perceived as lacking clarity, or containing conflicting information.³³ The Government undertook to establish a working group involving key stakeholders and linguistic experts to take forward reforms of the Letter of Rights, ensuring that the views expressed during the consultation process were properly captured.

²⁹ CPT/Inf (2019) 30, para 25 (see footnote 5).

³⁰ [Independent Custody Visiting Scotland. Annual Review 2019-2020](#); at p. 15.

³¹ Footnote 8, at para 24.38.

³² *Ibid*, at para 24.21.

³³ [Scottish Government. Consultation on the Letter of Rights for Scotland – Summary of Consultation Responses. \(September 2020\)](#); at p. 12.

The researchers for this report were informed that this working group has been established (with the authorities stating that the first meetings took place in April and May 2021 respectively and will meet twice further before submission of recommendations to the minister in the autumn of 2021). They also noted that practical work to improve the Letter of Rights, especially in making it more accessible, is underway.

Turning to the specific issue regarding the access to a lawyer, some stakeholders highlighted concerns similar to those expressed in the Angiolini Review as to whether the notification of the rights and the right to legal assistance is duly relayed and properly understood by the detainees.³⁴ Overall the interviewed stakeholders noted no change in practice since the CPT visit but equally did not perceive this to be an issue on the ground currently.³⁵

Assessment

The evidence suggests improvements in the overall notification of the rights through the work carried out by the Government to the Letter of Rights. However, in terms of the specific right of access to a lawyer there appears to be no change in practice since the CPT's visit in 2018.

3. Delaying access to a lawyer in exceptional circumstances

According to the CPT Standards, in order to protect the legitimate interests of the police investigation, delay of access to a lawyer to a detained person may be permitted although this should never result in the right of access to a lawyer being totally denied. In such cases, access to another independent lawyer should be arranged.³⁶

The CPT Findings

In 2018 the CPT observed³⁷ that Scottish law, in exceptional circumstances, permits the person's exercise of the right to access a lawyer to be delayed, **an issue it already highlighted in 2012**³⁸ and remaining of concern to the CPT in 2018. Although the CPT fully recognised the need in exceptional circumstances, to delay for a certain period a detained person's access to a lawyer of his/her choice, this should not result in the right of access to a lawyer being totally denied during the period in question.

³⁴ E.g. Interview C. 12 March 2021.

³⁵ Interview D. 8 March, Interview G. 22 March 2021.

³⁶ See footnote 19, para 41.

³⁷ CPT/Inf (2019) 29 at para 20 (see footnote 3).

³⁸ Report to 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 28 Sept 2012, Referenced as CPT/Inf (2014) 11 <https://www.refworld.org/docid/5333f97c4.html> see para 19.

In such cases, access to another independent lawyer who can be trusted not to jeopardise the legitimate interests of the investigation should be organised. The CPT stated it was perfectly feasible to make satisfactory arrangements in advance for this type of situation, in consultation with the local Bar Association or Law Society. **In 2012, the CPT flagged its concern that the relevant provision (Section 15A of the Criminal Procedure (Scotland) Act 1995) should be amended to reflect this principle.**³⁹ Given the recent reform of the Scottish criminal justice system and the new Criminal Justice (Scotland) Act 2016, the CPT noted its disappointment that this principle appeared not to have been reflected in the updated legislation and recommended that **Section 44 of the Criminal Justice (Scotland) Act 2016 be amended accordingly.**

The Scottish Government Response

In its response, the Government explained⁴⁰ that Section 44 of the Criminal Justice (Scotland) Act 2016 provides that a person who is in police custody has the right to have a private consultation with a solicitor at any time. It also sets out that a private consultation with a solicitor may be delayed so far as is necessary in the interests of the investigation or prevention of crime, or the apprehension of offenders. A decision to delay such a consultation may be taken only by an officer of the rank of sergeant or above who has not been involved in the investigation in connection with which the person is in custody. The Government went on to underline that decisions by Police Scotland to delay access to a solicitor are rare and must be fully justified,⁴¹ the individual can lodge a complaint using Police Scotland's established complaints process, making reference to the then ongoing Angiolini Review.

Commenting on a draft of this report, Police Scotland stated that it does not have powers to deny solicitors access. However, while the decision to delay a solicitor consultation under Section 44(2) of the Criminal Justice (Scotland) Act 2016 may be taken, it is used extremely rarely in practice, with full justification by an officer independent to the investigation and of the rank of Sergeant or above.⁴² Police Scotland submitted that the access requests on the national custody system only have the option for 'pending, granted or denied' with no rationale recorded under this section and thus, when 'denied' is selected in the event of a delay then this data will be misleading.⁴³

³⁹ See footnote 38.

⁴⁰ CPT/Inf (2019) 30, para 26 (see footnote 5).

⁴¹ Ibid, para 28.

⁴² Notes on file with authors.

⁴³ Notes on file with authors.

The Evidence Collected

The Scottish Human Rights Commission in March 2021⁴⁴ report improvements to criminal procedure and particularly to legal representation during police questioning as a result of the case of *Cadder v HM Advocate*.⁴⁵ This case challenged the Scottish criminal procedure allowing the police to detain and question people for up to 6 hours without a solicitor present. The UK Supreme Court decided that this breached the ECHR right to a fair trial and following the decision, the Criminal Procedure (Legal Assistance, Detention and Appeals) (Scotland) Act 2010 was reformed to introduce a right of access to legal advice for suspects being questioned by the police. However, this case precedes the visit of the CPT by a considerable period, suggesting that the possibility to deny access to lawyer remained in 2018, as no legislative changes in this area have followed since the CPT's visit.

The comments submitted by Police Scotland indicate a lack of clear and reliable data as to the length of time of delays in accessing a lawyer. This is due to the way the national custody system records information on access to a lawyer. Consequently, there is no evidence to ascertain the extent of any such delays and whether such delays might lead to actual denial of access to a lawyer in exceptional circumstances.

The interviewed stakeholders noted no change in practice since the CPT visit but equally did not perceive this to be an issue on the ground currently.⁴⁶

Assessment

It appears that there has been no change in the practice observed by the CPT in 2018, repeated since 2012, regarding the delay in access to a lawyer in exceptional circumstances. While the existing legislation does not allow denial of access to a lawyer, it can be exceptionally delayed as was the case during the CPT's visit in 2018 and there is a lack of clear statistical evidence on the extent of any such delays.

⁴⁴ Scottish Human Rights Commission. [Submission: Independent Review of the Human Rights Act, Call for Evidence \(March 2021\)](#); at pp. 14-15; see also Scottish Human Rights Commission. [Submission: Joint Committee on Human Rights, Call for Evidence on the Government's Independent Human Rights Act Review \(March 2021\)](#); at p. 10.

⁴⁵ *Cadder v. Her Majesty's Advocate* [2010] UKSC 43. <https://www.supremecourt.uk/cases/uksc-2010-0022.html>

⁴⁶ Interview D. 8 March, Interview G. 22 March 2021.

B. Unsuitability of Police Stations for Detention Beyond 24 hours

The CPT Standards require police custody to be of relatively short duration with conditions of detention in police cells meeting certain basic requirements including appropriate rest and food and an opportunity to wash.⁴⁷

The CPT Findings

Following its 2018 visit, the CPT observed numerous issues concerning the conditions of detention for those spending more than 24hrs in police stations in Scotland,⁴⁸ an issue it already observed and noted as a concern during its previous visit in 2012.⁴⁹ The CPT thus recommended⁵⁰ that the Scottish authorities take steps to decrease the high numbers of persons held in police custody facilities for longer than 24 hours (i.e. between Friday and Monday mornings), through *inter alia*, the opening of some Saturday courts. Further, any newly planned police custody facilities should provide for access to sufficient natural light, ventilation and outdoor exercise facilities.

The Scottish Government Response

Recalling the presumption of liberty incorporated in the Criminal Procedure (Scotland) Act 2016, the Scottish Government in 2019 responded that this ensures persons are not detained unnecessarily and will be released based on an assessment of the threat, risk or harm.⁵¹ The Government informed the CPT that the Scottish Parliament's Justice Committee has considered seven-day custody courts, however, given the current working pattern of Scotland's courts and a requirement to manage threats, risks and harm, the practice of detaining persons in police custody over a weekend remained.⁵² Finally, the Government informed the CPT that Police Scotland has no plans to commission any new custody facilities. Should this change in the future, the principles contained in Police Scotland's Custody Estate Strategy and the CCTV Policy and Guidance Document will be reviewed and implemented.⁵³

⁴⁷ See footnote 19, at para 47.

⁴⁸ CPT/Inf (2019) 29 at para 33 (see footnote 3).

⁴⁹ CPT/Inf (2014) 11 at para 27 (see footnote 38).

⁵⁰ CPT/Inf (2019) 29 at para 33 (see footnote 3).

⁵¹ CPT/Inf (2019) 30, para 49 (see footnote 5).

⁵² *Ibid*, para 50.

⁵³ *Ibid*, para 51. The Scottish authorities informed us that this is now the 'Custody Estate Investment Plan'.

Comments by the Scottish Government on a draft of this report noted that '*Police Scotland are supportive of 6/7 day custody courts and are working with partners to achieve this. SCTS are now taking the lead on a Virtual Custody Working Group with the aim of developing a national custody model which could operate over 6/7 days.*'⁵⁴ Police Scotland also submitted that at present, criminal custody courts only operate on a Monday to Friday basis, therefore anyone arrested on a Friday who must appear before court the next lawful day from custody, has to be held in police custody until the court sits on the Monday. Until this system changes, Police Scotland note they are constrained by their operational role within Scotland's criminal justice system, which should not be misconstrued or misrepresented as Police Scotland failing in its duty to apply the presumption of liberty under the Criminal Justice (Scotland) Act.⁵⁵

Commenting on the draft report, Police Scotland reported that five quality assurance inspector posts were introduced as a 6-month pilot on 25 September 2020 which have had a positive impact. The year-end statistics from the national custody system indicated that the proportion of arrested persons held beyond 24 hours for court fell from 51.8% to 35.2% compared to the same period last year.⁵⁶ Police Scotland also submitted that the data from national custody system shows that the average time a person spends in police custody had fallen by approximately 20% nationally from over 16 hours to 13 hours, thus indicating robust implementation of the presumption of liberty.⁵⁷ Finally, according to Police Scotland, less than 20% of individuals who come into custody are held for more than 24 hours.⁵⁸ However the practice of holding individuals in police custody beyond 24 hours remains of concern and was emphasized as such during all interviews carried out for this research.⁵⁹

The Evidence Collected

The reports of stakeholders since the 2018 visit of the CPT highlight the ongoing practice of holding detainees in police cells beyond 24 hours and the challenges faced by such detainees. Thus, the 2019-2020 ICVS Annual Review highlights as an 'ongoing issue' the lack of exercise, especially for those detained over the weekend and during public holidays⁶⁰ and notes that most facilities also held detained persons for longer stays (i.e. from Friday evening until Monday morning when courts re-opened). The HM Inspectorate of Constabulary in Scotland and HM Inspectorate of Prosecution in Scotland's *Joint Inspection of Emergency Criminal Justice Provisions* of 2020 report

⁵⁴ Notes on file with authors.

⁵⁵ Ibid.

⁵⁶ Ibid.

⁵⁷ Ibid.

⁵⁸ Ibid.

⁵⁹ Interview D., 8 March; Interview E., 11 March; Interview C. 12 March; Interview G. 22 March.

⁶⁰ See footnote 30 at p. 14.

noted⁶¹ that after one weekend during the sample period around 86% of people detained for court across Scotland were subsequently released from court. This resulted in them concluding *'that many of these individuals would have been released on bail with conditions which could potentially have been imposed by way of undertaking. This raises issues regarding the basis for custody decisions in some cases, particularly those in which bail was not subsequently opposed by prosecutors, and highlights the need for increased partnership working between police and prosecutors with a view to achieving a greater understanding of which cases would be most likely to result in a period of remand to custody'*.

During the interview process it was also noted that the quality assurance processes and mechanisms to ensure continuous improvement in this area, as reported by the HM Inspectorate of Constabulary in Scotland and HM Inspectorate of Prosecution in Scotland *Joint Inspection of Emergency Criminal Justice Provisions* of 2020, are still in place and some stakeholders noted progress, albeit slow, in this area.⁶² The Custody Transformation Agenda was highlighted during the interviews⁶³ as an initiative to update the custody centres across Scotland which may also alleviate some of the issues noted by the CPT. Other interviewees,⁶⁴ however, noted that the refurbishment work carried out in some centres still would not comply with all of the CPT standards as facilities would not be *en suite*.

Assessment

The evidence indicates that the issues surrounding the stay in police custody beyond 24 hours in Scotland persist, despite this being raised by the CPT as far back as 2012. The reply of the Scottish Government suggests that this is a not a widespread phenomenon although the ICVS review indicates otherwise. The position of the Government also contrasts with the 2020 findings of HM Inspectorate of Constabulary in Scotland and HM Inspectorate of Prosecution in Scotland's joint inspection carried out during August and September 2020 which indicated that most detainees held over one weekend by the police were subsequently released by the court. There is some strategic work being carried out through the appointment of quality assurance inspectors to minimise the number of detainees spending more than 24 hours in police custody with some positive results. There are also reports of the Custody Transformation Agenda although the extent to which this considers the CPT standards for police custody was contested by the interviewees. Improvements may follow the introduction of 6/7 day courts in Scotland, but these are yet to materialise and the research was not able to identify an exact timeline for their establishment.

⁶¹ Joint inspection of emergency criminal justice provisions, 30 Sept 2020, para 163
<https://www.hmics.scot/publications/joint-inspection-emergency-criminal-justice-provisions-0>

⁶² Interview E., 11 March.

⁶³ E.g. Interview E., 11 March

⁶⁴ Interview D., 8 March

C. Provision of Healthcare in Police Custody

The UN Body of Principles require that a proper medical examination is offered to a detained person as promptly as possible after his admission to the place of detention, and thereafter medical care and treatment shall be provided whenever necessary; this care and treatment is to be free of charge.⁶⁵ Similarly, the CPT Standards require access to a doctor as part of the trinity of rights of all detainees⁶⁶ and that police officers should not seek to filter such requests.⁶⁷

1. Access to a medical doctor

The CPT Findings

Following its 2018 visit, the CPT observed⁶⁸ that, as was the case during its previous visit in 2012⁶⁹, there was no formal requirement guaranteeing the right of access to a doctor under the law, despite overall recent revisions of the Criminal Justice (Scotland) Act 2016. As a positive, it observed that some of the larger police custody facilities now had access to a pool of NHS nurses who provide 24-hour coverage. This however was not available to smaller police stations. The CPT therefore **reiterated its previous recommendation that the right of detained persons to have access to a doctor from the very outset of their deprivation of liberty be expressly provided for in law and in the administrative guidance regulating the deprivation of liberty by the police. The relevant provisions should make clear that a request by a detained person to be examined by a doctor should always be granted and it is not for police officers to filter such requests.**⁷⁰

The Scottish Government Response

In its response, the Government explained the general principle in relation to custody care to grant any reasonable request which does not interfere with operational requirements or security.⁷¹ The Government reiterated that when a person is brought into police custody, they are asked a series of vulnerability questions relating to their health, which allows the custody staff to risk-assess each person and design an individual care plan, as well as the need for any further healthcare. Responding to a draft of this report, the Scottish authorities noted that 'if the person refuses to answer the vulnerability questions then the custody staff would design the care plan through observations of the prisoners demeanour, behaviour, history and in consultation with a HCP'.⁷²

⁶⁵ See footnote 19, Principle 24.

⁶⁶ Ibid. at para 40.

⁶⁷ Ibid, at para 42.

⁶⁸ CPT/Inf (2019) 29 at para 21 (see footnote 3).

⁶⁹ See footnote 38 at para 21.

⁷⁰ CPT/Inf (2019) 29 at para 21 (see footnote 3).

⁷¹ CPT/Inf (2019) 30, at para 30 (see footnote 5).

⁷² Notes on file with authors.

The Evidence Collected

There is a gap in information from stakeholders' written reports regarding their assessment of this issue. However, the interviews conducted for this research suggest improvements in terms of access to Force Medical Examiners (FMEs).⁷³ It was observed that FMEs were present in most police custody centres, with the exception of some more remote ones in the Islands and Highlands, and FMEs carried out initial assessment of the detainees upon arrival in custody. The interviewees suggested that any follow-up requests for treatment were also acted upon.⁷⁴

Assessment

The response of the Government suggests no change to the practice since the CPT's visit, although the stakeholders noted an increased access to FMEs which are now present in nearly all police custody centres and carry out the medical assessment of the arriving detainees. This is an issue that has persisted since 2012.

New Area of Concern

The interviews conducted for this research all recorded a concern about the level at which individuals in situations of vulnerability and especially those with mental health distress find themselves in police detention in Scotland.⁷⁵ This was also an issue highlighted in stakeholders' written reports since the CPT's visit in 2018, one of which notes that *'Some of the most vulnerable people in our society are those who experience mental ill-health, and they are at their most vulnerable when they are in crisis. Police can be called on to act in a criminal justice or healthcare capacity, or a combination of the two. This is complex, time-consuming work, which can put a considerable strain on individual officers'*⁷⁶ There appears to be a strong consensus among the stakeholders interviewed that it is not the role of the police to assist persons in such situations as the police are not medical professionals and neither are police stations appropriate places for such individuals. However, owing to a lack of facilities appropriate to accommodate individuals in such situations, the police are often called to assist and they are unable to refuse such requests.

⁷³ Interview D, 8 March and Interview E., 11 March.

⁷⁴ Interview E., 11 March interview.

⁷⁵ Interview C, 12 March; Interview D., 8 March; Interview E., 11 March and Interview G, 22 March.

⁷⁶ See, HMICFRS, Policing and Mental Health, Picking up the Pieces, November 2018; and [HMICS Local Policing+ Inspection Programme \(March 2019\) Inspection of Greater Glasgow Division](#); at paras 45-48; see also footnote 8, at paras 24.63- 24.64 and 24.70- 24.77.

2. Privacy of the medical examination

The CPT Standards require all medical examinations of persons in police custody to be conducted out of the hearing of law enforcement officials and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.⁷⁷

The CPT Findings

Following its 2018 visit, the CPT recorded⁷⁸ its concern over the close proximity of police officers during medical examinations of detained persons, with the resulting concern being that such action could discourage a detained person who has been ill-treated from saying so. **The CPT recommended that all medical examinations should be conducted out of the hearing and – unless the doctor or nurse concerned expressly requests otherwise in a given case – out of the sight of police staff.**

The Scottish Government Response

In its response, the Government underscored its obligation to ensure the safety and wellbeing of police staff and NHS staff⁷⁹ and that therefore the existing practice of two members of staff in attendance whenever any person in custody is taken out of a police cell, including for medical examination, would remain.

The Government however also noted⁸⁰ that *'where at all possible, the person in custody will be left in a room alone with NHS staff and the door closed. If this is not possible, they will be left alone in a room with the NHS staff with the door open and police staff outside the room to allow them to respond quickly if required. If this is not possible, then either police staff need to be in the room with the NHS staff or, alternatively, the NHS staff must visit the person in custody in their cell. If the NHS staff have any concern in relation to confidentiality, this is discussed fully with the custody officer'*.

The Evidence Collected

There is a gap of information from stakeholders' written reports in their assessment of this issue. However, the interviews conducted in the remits of this research recorded no concern with respect to privacy during medical examinations given that the decision of whether any police officers needed to be present was made by medical personnel and not the police.⁸¹ The interviewees therefore opined that the requisite degree of independence over the decision is ensured.

⁷⁷ See footnote 19, para 42.

⁷⁸ CPT/Inf (2019) 29 at para 22 (see footnote 3).

⁷⁹ CPT/Inf (2019) 30, para 32 (see footnote 5).

⁸⁰ Ibid, para 34.

⁸¹ Interview D., 8 March

Assessment

Although the response of the Government suggests no change to the practice since the CPT's visit, the stakeholders noted that with the FMEs present in most custody suites, the decision of whether an officer(s) should be present during the medical examination rests with the examining medical personnel and not the police.

3. The standard of healthcare in police custody

The CPT Standards make it clear that that all prisoners are entitled to the same level of medical care as persons living in the community at large.⁸²

The CPT Findings

Having observed people suffering from drug withdrawal in many of the police stations it visited and noting that the methadone maintenance treatment was not continued during their time in police custody, **the CPT recommended that the Scottish authorities ensure that Police Scotland and the NHS take measures to standardise the approach to methadone maintenance and detoxification treatment in police custody, as well as requested details on the type of detoxification offered.**⁸³ The CPT noted that, generally, persons in police custody should have access to the same treatment as they had had in the community.⁸⁴

The Scottish Government Response

In its response, the Government highlighted⁸⁵ that the healthcare services in custody are provided by NHS Scotland, based on the principle that healthcare provision in custody should be equivalent to that available to the public. Turning to the specific treatment, the Government explained⁸⁶ that the NHS Boards have developed and agreed the Police Care Network's guidance on *Alcohol, Drugs and Tobacco Services in Police Custody*. The commitment to using this guidance was affirmed in the Government alcohol and drug treatment strategy, *Rights respect and recovery*. The guidance advises that it is best practice to continue Opioid Substitution Therapy (OSTh) in police custody if a person is receiving it in the community, and also covers detoxification in police custody if they are not. The Police Care Network's service mapping, undertaken in 2015, found that OSTh is provided routinely in police custody in all but one NHS Board in Scotland. Very few people in the Health Board area are prescribed methadone to be taken under direct supervision, making it difficult to ensure that the detainee concerned is taking

⁸² Health care services in prisons. Extract from the 3rd General Report of the CPT, published in 1993, CPT/Inf(93)12; at para 31. <https://rm.coe.int/16806ce943>

⁸³ CPT/Inf (2019) 29 at para 23 (see footnote 3).

⁸⁴ Ibid, at para 23.

⁸⁵ CPT/Inf (2019) 30, para 36 (see footnote 5).

⁸⁶ Ibid, para 37.

the prescribed dose. This presents an overdose risk if, for example, methadone is given to a person who is less opioid tolerant than expected. Furthermore, healthcare professionals are not always present in the custody suite to provide medical support if an overdose were to occur. The Government went on to explain⁸⁷ that in general, the NHS Healthcare and Forensic Medical Service offers people in police custody the choice between short-acting Dihydrocodeine (DHC) and long-acting DHC, along with an assessment of the risks and benefits of each. There may be specific circumstances where individuals are prescribed one rather than the other.

Commenting on a draft of this report, the Scottish authorities provided an update that '13 out of 14 NHS Boards have a standardised approach to methadone maintenance in police custody. The NHS Board which doesn't is currently looking at ways in which to facilitate this. There are different approaches to the use of DHC with some NHS Boards using long acting DHC (60MR) and others using short acting DHC in line with local Standard Operating Procedures'.⁸⁸

The Evidence Collected

In relation to the overall standard of healthcare, the Angiolini Review highlighted that since the responsibility for custody healthcare transferred from the police to the NHS in 2013, due to differences in geography, NHS resources, service provision, funding and health board structures, as well as varying levels of custody throughput in each area, each of the 14 health board areas provides a slightly different model of care.⁸⁹ The Angiolini Review records evidence from the ICVS that in terms of health provision, individuals were in the main looked after well; NHS provision was consistent but basic.⁹⁰

The interviews conducted in the remits of the present research, confirmed the differences, sometimes significant, prevalent among the various custody suites in terms of the healthcare provision, as a result of the varying approaches of different NHS boards⁹¹ and the absence of independent scrutiny of the quality of healthcare provision in police custody.⁹² This latter point was also highlighted by HMICS who report being involved since 2016 in discussions with Healthcare Improvement Scotland over joint inspections.⁹³ Commenting on a draft of this report, the Scottish authorities noted that 'HMICS and HIS are collaborating to develop a methodology and framework for the joint inspection of healthcare services to people in police custody settings, with the aim of externally quality assuring and driving improvements in healthcare delivery through consistent

⁸⁷ CPT/Inf (2019) 30 (see footnote 5).

⁸⁸ Notes on file with authors.

⁸⁹ Footnote 8, at para 24.28.

⁹⁰ Ibid, at para 24.31.

⁹¹ Interview D. 8 March; Interview E., 11 March; and Interview C. 12 March; Interview G. 22 March.

⁹² Interview E., 11 March.

⁹³ HM Inspectorate of Constabulary in Scotland. Annual Report 2019-2020 (October 2020), at p. 4.

quality assurance and inspection activities.⁹⁴ They stated that the initial meeting on this took place on 26 April 2021.⁹⁵

No stakeholders have been able to provide an update in relation to the specific question of the CPT about the approach to detoxification.

Assessment

In relation to the recommendation on the overall standard of care, it appears that police detainees in Scotland generally receive care equivalent to what is available in the community. However, the HMICS report highlights that the level of care provided has not been subject to independent scrutiny since NHS Scotland took over provision of the service in 2013. There is ongoing work between HMICS and HIS.

In relation to the specific query of the CPT regarding the substitute treatment available to those with drug dependency in police custody, the Government appears to be setting out the requested information but there is a gap in the information from stakeholders on the issue.

⁹⁴ Notes on file with authors.

⁹⁵ Ibid.

D. Complaints handling

According to the CPT, the proper handling of complaints made by any detainee, including police detainees, requires the observance of five basic principles: availability, accessibility, confidentiality/ safety, effectiveness and traceability.⁹⁶

1. Police complaints handling system

The CPT Findings

Following its 2018 visit, the CPT noted the change in the role of the Police Investigations and Review Commissioner (PIRC) since its previous visit which now undertakes most of the independent investigations into the most serious incidents involving police. However, the CPT noted that PIRC investigations can take an excessively long time.⁹⁷ It also acknowledged the internal complaints procedure led by the Scottish Police Authority (SPA) but noted changes to this mechanism is undergoing, following criticism over transparency, governance, accountability and the obscure decision-making.⁹⁸ The CPT recommended⁹⁹ undertaking measures to ensure that the system of handling complaints made by persons deprived of their liberty, irrespective of the place or situation in which they are held and the legal framework applicable to their deprivation of liberty, observes the five basic principles: availability, accessibility, confidentiality/safety, effectiveness and traceability. The CPT also requested to be updated on the measures proposed to ensure the police complaints procedure in Scotland complies with these basic principles.

The Scottish Government Response

In its response, the Government reaffirmed its welcoming of the initial findings in the Angiolini Review as well as further recommendations following the completion of the Angiolini Review, affirming its commitment to carefully consider recommendations in discussion with partners and stakeholders.¹⁰⁰ However, in the meantime, the Government assured the CPT that the process for making complaints about Police Scotland remains the same for all members of the public and is designed to be fair, open and transparent.

Commenting on the draft report, the Scottish Government reaffirmed that the recommendations of the Angiolini Review are taken extremely seriously and work is underway to implement the majority of the recommendations made.¹⁰¹

⁹⁶ See footnote 12, para 75.

⁹⁷ CPT/Inf (2019) 29 at para 27 (see footnote 3).

⁹⁸ Ibid, at para 28.

⁹⁹ Ibid, at para 30.

¹⁰⁰ CPT/Inf (2019) 30, para 43 (see footnote 5).

¹⁰¹ Notes on file with authors.

The Evidence Collected

The key development since the CPT's recommendations of 2018 in this area has been the publication of the final report of the Angiolini Review.¹⁰² The Angiolini Review records testimonies about the existing complaints procedure as cumbersome, very time consuming and long, bureaucratic and defensive, with the authorities employing provocative language to discourage the complainant.¹⁰³ During the interviews conducted in the remits of this research, the opinions were divided among the stakeholders over whether this description was used by Dame Angiolini in the context of just one case study¹⁰⁴ or whether it was used to describe the whole system.¹⁰⁵ However a number of interviewees noted the problem of independence of the current police complaints mechanism, stating that 'police should not be part of the process investigating complaints against itself' as that 'straight away gives an impression that complaining is pointless'.¹⁰⁶

The Angiolini Review also examined the complaints handling by PIRC, noting shortcomings in the lack of enforcement powers.¹⁰⁷ Recommendations were made, including the statutory preliminary assessment function being transferred from the SPA to the PIRC to enhance independent scrutiny of allegations, remove any perception of familiarity, avoid any duplication of functions or associated delay, and give greater clarity around the process.¹⁰⁸ Numerous recommendations concerning the restructuring of the PIRC, including changes to its founding legalisation¹⁰⁹ and reforms in the complaints handling system by the SPA¹¹⁰ were also made. The Angiolini Review has been welcomed and praised by the stakeholders, especially the recommendations concerning the strengthening of independence of the complaints system.¹¹¹

¹⁰² See footnote 78.

¹⁰³ Ibid, paras 24.23- 24.27.

¹⁰⁴ Interview E., 11 March.

¹⁰⁵ Interview C. 12 March, Interview G, 22 March.

¹⁰⁶ E.g. Interview D., 8 March

¹⁰⁷ See footnote 8 at para 14.55.

¹⁰⁸ Ibid, Recommendation No. 25.

¹⁰⁹ Ibid, Recommendations 34-45.

¹¹⁰ Ibid, Recommendations 25-32.

¹¹¹ E.g. SHRC, Submission: Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing, (January, 2021).

The Government has expressed its willingness to accept the majority of the recommendations made by the Angiolini Review.¹¹² It was reported that the three-tier process for considering and implementing the recommendations has been set up with the top level being ministerial, followed by a strategic level and practitioner working group.¹¹³ Although stakeholders noted that this indicates a step in the right direction, it was also acknowledged that the implementation process is still progressing¹¹⁴, with the practitioner working group holding its very first meeting in mid-March 2021.¹¹⁵

There is some positive evidence from the PIRC which, in direct response to the Angiolini Review, in its 2019-20 Annual Report notes¹¹⁶ learning and improvement being placed at the heart of the complaint handling reviews and investigations. The PIRC report that this cultural change has resulted in a marked improvement in Police Scotland's handling of complaints from the public with 62% of complaints found to be reasonably handled; the highest since the inception of the single force seven years ago.

Notably, however, some of the interviewees who were interviewed still noted that PIRC was lacking the requisite degree of independence from the police to handle the complaints.¹¹⁷

Assessment

The reply provided by the Government following the CPT's 2018 visit appears to be a 'holding reply' as it was awaiting the full report and conclusions of the Angiolini Review. That Review has now been completed, with the full report and recommendations made public in November 2020. The Scottish Government has stated its willingness to accept the majority of the Review's recommendations but not all. The work on implementation has commenced and it remains to be seen which recommendations will be implemented, and how. Moreover, it is to be recalled that the Angiolini Review was not commissioned to follow-up the recommendations by the CPT. In fact, the Review was initiated in June 2018 whilst the visit of the CPT took place in October 2018. Consequently, the Review does not explicitly address the key element of the 2018 CPT recommendation concerning the need for the police complaints handling system to adhere to the CPT's five basic principles in this area.¹¹⁸

¹¹² Response from the Scottish government and crown office to the independent review of complaints handling, investigations and misconduct issues in relation to policing in Scotland, February 2021 https://archive2021.parliament.scot/S5_JusticeCommittee/Inquiries/20210205_SG_COPFS_Response.pdf

¹¹³ Interview E., 11 March.

¹¹⁴ See footnote 9.

¹¹⁵ Interview E. 11 March.

¹¹⁶ [PIRC. Annual Report and Accounts. 2019-2020.](#) at p. 12.

¹¹⁷ Interview D., 8 March.

¹¹⁸ See footnote 12, Complaints mechanisms. para 75.

Although these five basic principles (availability, accessibility, confidentiality/safety, effectiveness and traceability¹¹⁹) appear implicit in what the Angiolini Review recommends, they are not explicitly examined. Therefore, the response of the Scottish Government in presenting the Review as addressing the concerns raised by the CPT is limited, especially noting that the Government has not accepted all recommendations of the Review and that the work on those accepted is ongoing.

2. Documentation and investigation of injuries in police custody

The CPT Standards require that a police officer who had not been part of the arrest, such as a custody officer, is responsible for checking the psychological or physical integrity of the apprehended person, including whether they need to see a health-care professional, and for offering them the possibility to inform a third party of their choice of their situation and to contact a lawyer.¹²⁰

The CPT Findings

Having observed a number of detained persons at the custody facilities with recent injuries, the CPT noted that the process of identification and recording of injuries upon admission to the police station was in need of improvement. Thus, following its 2018 visit, the CPT made eight recommendations concerning the recording and investigation of injuries in police custody:¹²¹

- (i) All injuries are immediately and properly recorded;
- (ii) The injured detainee is examined by the NHS health-care staff;
- (iii) Recording of the injuries in cases of traumatic injuries is made on a special form;
- (iv) Special trauma register is kept;
- (v) If recorded injuries are consistent with allegations of ill-treatment made by the concerned detainee (or which, even in the absence of an allegation, are clearly indicative of ill-treatment), the record is systematically brought to the attention of the competent prosecuting authorities, regardless of the wishes of the person concerned;
- (vi) The concerned person should be told of the reporting obligation by the doctor;

¹¹⁹ See footnote 12, complaints mechanisms, para. 75.

¹²⁰ See footnote 27, para 85.

¹²¹ CPT/Inf (2019) 29 at para 24.

(vii) The concerned person should be reminded that he/she can also initiate a complaint, if they so wished;

(viii) The results of the examination should also be made available to the detained person concerned and his or her lawyer.

In order to achieve these, if necessary, the Scottish Standard Operating Procedure should be amended to reflect these principles.

The Scottish Government Response

In response to the recommendation, the Government explained that the procedures for the investigation of complaints is detailed in the *Complaints about the Police SOP*.¹²² In particular, Section 6 details the six-stage process around the investigation of allegations. The matter would be assessed under the terms of the Police Service of Scotland (Conduct) Regulations 2014 to consider whether the officer's actions amounted to misconduct or gross misconduct.¹²³

The Government proceeded to explain¹²⁴ that there is no nationally consistent documentation of injuries, although all information is recorded and stored on the NHS Clinical IT system. During the time a person is present at the charge-bar, custody staff have an opportunity to observe and interact with them, noting their state of alertness, attitude towards their arrest and general demeanour. Custody staff will refer individuals to the NHS Healthcare and Forensic Medical Service (either the custody-based healthcare professional or the on-call FME, now 'Forensic Physicians') or arrange for them to be taken to hospital if required. Additional information provided by the Scottish authorities on a draft of this report note that '*NHS Boards use Adastra as the clinical system to document patient care, this includes the documentation of injuries if appropriate*', and that the National Police Care Network '*will look to refresh existing training materials*' and '*will also work with healthcare professionals working in police custody to ensure that they are aware of processes for the examination of victims of torture and ill treatment*'.¹²⁵

The Government concluded in its response to the CPT in 2019¹²⁶ by highlighting the then ongoing Angiolini Review of all aspects of police complaints handling, investigations and misconduct. It noted that as the outcomes of that Review would be examined and recommendations carefully considered, in the interim, Police Scotland's CJSD has reviewed its existing practices. Any injuries visible or declared by a person in custody are noted and detailed firstly on the NCS, which provides a basis for record and audit.

¹²² CPT/Inf (2019) 30, para 14 (see footnote 5).

¹²³ The Scottish government also noted the Police Service of Scotland (Performance) Regulations 2014.

¹²⁴ CPT/Inf (2019) 30, para 39 (see footnote 5).

¹²⁵ Notes on file with authors.

¹²⁶ CPT/Inf (2019) 30, para 41 (see footnote 5).

Where an allegation is made or the circumstances suggest ill-treatment, CJSD has processes in place to ensure appropriate examination is undertaken. Depending on the circumstances, this takes the form of a documented episode report on the NCS, instigation of a full procedural review, or a referral in a briefing report to the Police Scotland Professional Standards Department (PSD) for assessment and consideration. Scrutiny is applied on an ongoing basis to custody records and circumstances through governance practices, oversight by a Force Custody Inspector, the availability of on-call senior management, daily review of custody cases/position at management meetings, and by regular, detailed audits of records. Commenting on a draft of this report, the Scottish Government also noted that PIRC needed to be notified of any serious injury in custody under the Police and Fire Reform Act 2012 and the Police Investigations and Review Commissioner (Investigations Procedure, Serious Incidents and Specified Weapons) Regulations 2013.¹²⁷

The Evidence Collected

There is lack of evidence of the implementation or otherwise of this recommendation as most attention has been focused on police complaints overall as opposed to recording, and investigation of injuries and allegations of ill-treatment. The 2019-2020 annual review of the ICVS highlights discrepancies in detainee records¹²⁸ and notes that not all details are being recorded accurately and in the correct areas within the national custody system. Furthermore, ICVS highlight that manual cell sheets are in use for recording information which is not always being duplicated onto the system. Similar observations were noted during the interview process carried out for this research as interviewees noted inconsistencies in the way injuries are recorded both in terms of the way they are described and whether they are recorded in the electronic system or on paper custody sheets.¹²⁹

Assessment

Overall, the Government's response does not address the very specific recommendations by the CPT on how the injuries should be recorded and handled by the police. The research for this project suggests that issues with recording of injuries persist.

¹²⁷ Notes on file with authors.

¹²⁸ See footnote 30 p. 13.

¹²⁹ E.g. Interview D., 8 March.

PART II: CPT RECOMMENDATIONS WITH RESPECT TO PRISONS

A. Overcrowding and double occupancy cells

European, CPT and international standards require the national law to provide for a mechanism to ensure that the rights of prisoners are not breached by **overcrowding**.¹³⁰ The CPT has made it clear that it considers that the question of minimum living space per inmate is intrinsically linked to the commitment of every Council of Europe member state to respect the dignity of persons sent to prison.¹³¹

The CPT Findings

Following its 2018 visit, the CPT observed¹³² the number of remand prisoners in Scotland's prisons to fluctuate between 18% and 20%. Noting the ongoing debate in Scotland over the use of remand, the CPT requested the Government to provide **(i) an analysis of the other reasons for overcrowding in Scottish prisons, such as the increase in numbers of longer sentences; (ii) the measures envisaged to tackle overcrowding and Scotland's comparatively high incarceration rate; (iii) an update on the measures envisaged to be taken, within which timeframes, in response to the Justice Committee's recommendations in its Inquiry into the use of remand in Scotland.**

The CPT also noted that 'even with an occupancy level of 95% of the total design capacity of a prison estate, it becomes nigh impossible for a prison service to deliver what is required of it, and more particularly, to ensure respect for the safety and human dignity of inmates and staff'. **The CPT reiterated its recommendation expressed in 2012¹³³ that the Scottish authorities pursue efforts to reduce the prison population, taking due account of the relevant recommendations of the Committee of Ministers of the Council of Europe in this area.¹³⁴ Finally, the CPT requested an 'update from the Scottish authorities when the extension of the presumption to sentences of less than 12 months has taken effect'.**

Following its return visit in 2019, the CPT acknowledged the various short- and medium-term measures pursued by the Government to try to cope with the increasing prison population.¹³⁵ However, it also highlighted that the 'frank response' received from the Government to its 2018 recommendation on overcrowding levels and on how to deal with the increase of the prison population in the medium-term was merely to 'cope by overcrowding'. The CPT considered this not viable and requested a multi-pronged

¹³⁰ European Prison Rules Rule 18.4; Imprisonment CPT/Inf(92)3-part2 [sinanoglu \(coe.int\)](#) at para 46; The Nelson Mandela Rules Rule 12. [The United Nations Standard Minimum Rules for the Treatment of Prisoners \(unodc.org\)](#)

¹³¹ Living space per prisoner in prison establishments: CPT standards CPT/Inf (2015) 44 at para 5. [16806cc449 \(coe.int\)](#)

¹³² CPT/Inf (2019) 29 at para 37 (see footnote 3).

¹³³ See footnote 38 para 32.

¹³⁴ CPT/Inf (2019) 29 at para 38 (see footnote 3).

¹³⁵ CPT/Inf (2020) 28 at para 7 (see footnote 4).

approach, promoting, inter alia, the use of alternatives to imprisonment, which for sentences of less than 12 months have proven to be more effective, and reducing the recourse to remand imprisonment. Further, the CPT recommended an approach to imprisonment that is not purely punitive but rather focuses on rehabilitation and reintegration into the community. **The CPT consequently recommended that urgent measures be taken to tackle the overcrowding in prisons and more investment made in countering the different factors playing into the steady increase in the prison population.**

The Scottish Government Response

In its response to 2018 recommendations, the Government notes¹³⁶ that the decisions concerning bail are matters for the judiciary but affirms its commitment to the National Guidance on Bail Supervision published in January 2019. In the Government's view, this fulfils a Scottish Government Programme for commitment and supports recommendations made by the Justice Committee inquiry on remand. The Government undertakes to double capacity for bail supervision services from 2019-20, and the 2019-20 budget is said to include an additional £550,000 (£1.65 million over the following three years) to make available additional community-based alternatives to the use of remand. The Government also notes the research options being explored to support a better understanding of remand and the remand population.

The Government further notes¹³⁷ a complex range of factors across the Scottish justice system that impacts on the prison population, including changes in the number and nature of offences being prosecuted, sentencing decisions, decisions made by the Parole Board, releases on Home Detention Curfew (HDC), and changes to early release rules. However, they noted that the SPS and Scottish Government officials are taking forward, as a matter of urgency, a set of immediate actions in response to the growing prison population. Thus, a Prisons Resilience Leadership Group of senior officials from a range of justice agencies and the NHS, under the Scottish Government's Justice Board, has been established to ensure cross-agency engagement and oversight. The group meets frequently and provides support to the SPS in its planning for, and responses to, a rising prison population. We were informed by the Scottish Government when commenting on a draft of the present report that while this Group no longer meets, the Recover, Renew, Transform Programme includes a workstream dedicated to progressing work on achieving a sustainable prison population. In addition, regarding further work on HDCs, researchers were told, this includes a 'more detailed risk assessment process to each HDC application' and that '*SPS have continued to work over the last six months to refine and enhance HDC operations, including the development of new data collection and analysis processes, the development of a central hub to support HDC activity across the estate; new staff training; and increased communications with prisoners*'.¹³⁸

¹³⁶ CPT/Inf (2019) 30, at para 52 (see footnote 5).

¹³⁷ Ibid, at para 53.

¹³⁸ Notes on file with authors.

The Government in its response to the CPT in 2019 also noted the SPS robust contingency measures in place to ensure that the safety and security of staff and those in its care are maintained. It also notes that to ease immediate pressure, the SPS had purchased 96 additional places at HMP Kilmarnock and a further 96 places at HMP Addiewell.

Further the Government set out in its response to the CPT¹³⁹ the well-established arrangements for providing prisoners in Scotland with opportunities for temporary release from prison and early release from custody (in the form of parole), subject to a risk assessment. The Government noted the use of HDC¹⁴⁰ for those returning from custody and reaffirmed a commitment to working with stakeholders on the expansion of electronic monitoring. In this regard the Management of Offenders (Scotland) Bill 2019, passed on 25 June 2019, amending section 3AA of the Prisoners and Criminal Proceedings (Scotland) Act 1993, is noted as providing greater flexibility in how HDC can be configured. The direct impact of the change was minimal in terms of altering the current eligibility for HDC, but the Government argues that in the context of a historically high prison population the purpose of the change was to allow ministers to have sufficient powers to configure HDC differently in the future if they need to do so.

The Government also highlighted¹⁴¹ its Programme for Government 2018-19, *Delivering for today, investing for tomorrow*, committed to extending the current presumption against short sentences from 3 months to 12 months, once additional safeguards for victims in the Domestic Abuse (Scotland) Act 2018 were in force. The 2018 Act came into force on 1 April 2019 and an affirmative order to extend the presumption against short sentences received parliamentary approval in June. The 12-month presumption took effect in relation to all offences committed on or after 4 July 2019. This is a presumption, not a ban, and sentencing in each case remains a matter for the court to decide based on the facts and circumstances of the case. The Government argued¹⁴² that the *'greatest anticipated impact of extending the presumption in respect of prisons is in relation to the "churn" and the number of receptions and discharges dealt with by the SPS and other agencies, rather than on the size of the prison population'*.

Following the 2019 CPT's visit and the repeated recommendation concerning the measures to reduce overcrowding, the Government in its 2020 response reaffirmed¹⁴³ its long-standing commitment to ensuring responses to offending are proportionate, just, effective and promote rehabilitation which are set out in its Justice Vision and Priorities and includes a specific priority that *'we will use prison only where necessary to address offending or to protect public safety, focusing on recovery and reintegration'*.

¹³⁹ CPT/Inf (2019) 30, at para 55 (see footnote 5) and Annex I.

¹⁴⁰ Ibid, at para 56.

¹⁴¹ Ibid, at para 57.

¹⁴² Ibid, at para 58.

¹⁴³ CPT/Inf (2020) 29 at para 1 (see footnote 6).

It highlighted its then most recent Programme for Government which included a commitment to work with justice agencies, local government, the third sector and others to consider the whole system changes needed to address Scotland's internationally high rate of imprisonment. The Government went on to acknowledge¹⁴⁴ that this work will be informed by public health responses to issues such as the misuse of drugs and the impact of adversity, trauma and multiple disadvantage, setting out a long-term vision for the justice system.

Turning to the implications caused by the pandemic, the Government in 2020 noted¹⁴⁵ the revised Home Detention Curfew Guidance and Assessment Framework in place since December 2019, providing for a robust review of the risk and supportive factors in making a decision to release an individual on HDC. According to the Government¹⁴⁶ this Guidance and Assessment Framework strengthened the process through the introduction of a more sophisticated and robust system of risk assessment. This is because significantly more detail is available to guide the HDC decision-maker and the changes have been made to: (i) remove the 'presumptions against release' since these issues are now covered in several domains within the risk assessment process; and (ii) ensure that only individuals on high supervision level will not be eligible for HDC release. The Government concluded¹⁴⁷ by noting the set-up of a HDC Hub at SPS HQ to support prisons in managing these changes.

Commenting on a draft of this report, the Scottish Government noted that '*Scottish Government officials continue to work with SPS and other stakeholders on improvements to Home Detention Curfew (HDC) – with SPS leading on operational matters, and SG on more strategic issues. To ensure this work is appropriately coordinated, the HDC Partnership Improvement Group (with a membership comprised of relevant stakeholders) has been reconvened (meeting most recently in March 2021) to consider future improvements to the operation of HDC. The number of people out on HDC has doubled since 2019 but further improvements can and will still be made. The Management of Offenders (Scotland) Act 2019 deals with expanding the technology and policy uses of electronic monitoring, including use with electronically monitored bail. It is anticipated that an expanded use of electronic monitoring will offer an additional capability for Scottish Prison Service in the management of the prison population. It will provide an enhanced range of options for community disposals and for the first time since previously piloted it will allow for electronically monitored bail. The initial legislative stages of the work of commencement of the Act were brought before Parliament at the end of 2020 and in parallel, work is being expedited on operational readiness. A final set of regulations will give effect to these new powers once justice partners confirm they are operationally ready for this to commence*'.¹⁴⁸

¹⁴⁴ CPT/Inf (2020) 29 (see footnote 6).

¹⁴⁵ Ibid, at para 4.

¹⁴⁶ Ibid, at para 5.

¹⁴⁷ Ibid, at para 6.

¹⁴⁸ Notes on file with authors.

In addition, it informed us that *‘The Scottish Government has taken specific action to address the rising prison population, although we acknowledge that further action is required and this remains a priority. To support this, there will be development of a new Community Justice Strategy and exploration of legislative options to support the sustainable reduction in the prison population’*.¹⁴⁹ Further, researchers were told that this includes a further £550,000 for supervised and supported bail, that they were *‘working with justice partners to ensure operational readiness for the implementation of electronically monitored bail across Scotland, due to commence later in the year’*. In addition, there would be the extension of the Presumption Against Short Sentences (PASS) to reduce sentences of 12 months or less (from 3 months or less) and investments of £117m in community justice services for the year 2021/22, and £11.8m for justice social work services.¹⁵⁰

The Evidence Collected

The official statistics from the Government confirm that following several years of sustained decrease, the prison population in Scotland has risen sharply since 2017-2018 to an annual average of around 8,200 in 2019-2020; this rise has been amongst the population of adult men only.¹⁵¹ According to the Auditor General audit released on 8 March 2021, ‘SPS has a current daily operating capacity of 7,669 prisoners and during the year 2019/20, the average number of prisoners was 8,198. The population surpassed 8,000 in February 2019, reaching a high of 8,274 in November 2019’.¹⁵² These numbers clearly indicate overcrowding across the prisons in Scotland.

Reports from stakeholders since the CPT’s visits in 2018 and 2019 also confirm overcrowding not only in individual prisons¹⁵³ but also across Scotland¹⁵⁴ and it is being noted as a key area for monitoring¹⁵⁵ with the levels of overcrowding being described as ‘worrying’¹⁵⁶ and joint stakeholders’ calls for urgent reduction in prison population¹⁵⁷. The issue of overcrowding has been raised in the Scottish Parliament¹⁵⁸ while the Auditor General in 2019 noted that ‘a number of public sector prisons routinely operating beyond both

¹⁴⁹ Notes on file with authors.

¹⁵⁰ Notes on file with authors.

¹⁵¹ Cabinet Secretary for Justice. Scottish Prison Population Statistics 2019-20; at p. 5.

¹⁵² Scottish Prison Service: 2019/20 Annual Audit Report to the Accountable Officer and the Auditor General for Scotland (March 2021); at para 145.

¹⁵³ HMIPS 2019-2020 Annual Report highlights overcrowding in Barlinnie as ‘significant’ (at p. 13); see also HMIPS Full Inspection Report on HMP Edinburgh (2019); at p. 31.

¹⁵⁴ HMIPS 2019-2020 Annual Report; at p. 20; HMIPS Full Inspection Report on HMP YOI Glenochil Full Inspection – 29 April-10 May 2019; at p. 6.

¹⁵⁵ HMIPS 2019-2020 Annual Report; at p. 66.

¹⁵⁶ SHRC, HMIPS and IPMAG. Briefing for Scottish Cabinet Secretary for Justice. Update on Prisons and the Prisons and Young Offenders Institutions (Scotland) Amendment Rules 2020 (21 April 2020); at p. 2.

¹⁵⁷ Ibid.

¹⁵⁸ See e.g. question by James Kelly, Meeting of the Parliament 20 February 2020. https://www.theyworkforyou.com/sp/?id=2020-02-20_21.0

their design capacity'.¹⁵⁹ The Auditor General proceeded to describe the challenges faced by the SPS with particular regard to the rising prison population as 'significant', impacting upon its ability to deliver against key operational performance indicators.¹⁶⁰

The levels of overcrowding in turn have led to the following issues being reported:

- (i) reduced capacity for consistent contact between prisoners;¹⁶¹
- (ii) reduced capacity for consistent contact between prisoners and Personal Officers;¹⁶²
- (iii) single cells holding two prisoners;¹⁶³
- (iv) lack of required number of accessible cells;¹⁶⁴
- (v) negative impact on out of cell activities;¹⁶⁵
- (vi) leading to effective solitary confinement;¹⁶⁶
- (vii) lack of provision for rehabilitation provision.¹⁶⁷

The impact of the pandemic is also emphasized: *'In a 21st century justice system, Victorian prisons are costly to run and maintain and are no longer fit-for-purpose. The pandemic places an even greater emphasis on the need for single cells being used for sole occupancy. The conditions of detention in the prisons are adversely impacted by overcrowding and with our concerns about the resumption of court activity Scotland risks returning to a situation where cells designed for one hold two people.'*¹⁶⁸ This is confirmed by the Auditor General who reports the prison population remaining over 8,000 until March 2020 when the impact of COVID-19 resulted in fewer people being

¹⁵⁹ See footnote 152; at para 143.

¹⁶⁰ Ibid, at para 128.

¹⁶¹ [HMIPS 2019-2020 Annual Report](#); at p.26; [HMIPS Full Inspection Report on HMP Edinburgh \(2019\)](#); at pp. 33-34.

¹⁶² [HMIPS 2019-2020 Annual Report](#); at p. 26.

¹⁶³ Ibid; at p. 20. See also National Preventive Mechanism, Eleventh Annual Report, 2019-2020, [UK National Preventive Mechanism annual report: 2019 to 2020 – GOV.UK \(www.gov.uk\)](#) p.43. Question in Scottish Parliament, S5W-36076: Liam McArthur, on 'how many prisoners are being held in (a) individual cells and (b) cells holding more than one person, and how many prisoners are sharing an individual cell intended for one person with someone else', to which the response of the government was that the current cell occupancy rate across the estate was 71%, although the average occupancy rate for Barlinnie, for example, was 134%, Humza Yousaf 24 March 2021.

¹⁶⁴ [HMIPS 2019-2020 Annual Report](#); at p. 20; [HMIPS inspection on Barlinnie \(Sept 2019\)](#); at p. 41.

¹⁶⁵ [HMIPS Full Inspection Report on HMP Edinburgh \(2019\)](#); at p. 31.

¹⁶⁶ Ibid; at pp. 33-34.

¹⁶⁷ [HMIPS inspection on Barlinnie \(Sept 2019\)](#); at p. 41.

¹⁶⁸ [HMIPS 2019-2020 Annual Report](#); at p. 35. See also [Letter](#) to Justice Committee, footnote 13.

sent to custody due to the suspension of court business.¹⁶⁹ In this context, the adoption of the Release of Prisoners (Coronavirus) (Scotland) Regulations 2020 in April 2020 must also be highlighted. This Regulation allowed 348 short-term prisoners nearing the end of their time in custody to be released early.¹⁷⁰ This is in contrast to just 262 in England.¹⁷¹

However, according to the Auditor General, upon the resumption of court business, it is anticipated that the declining trend will reverse and the numbers of people in custody will increase significantly, bringing with it the added complication of delivering service whilst adhering to physical distancing requirements.¹⁷²

The interviews conducted for this research confirmed overcrowding as the single most pressing issue of the Scottish prison system.¹⁷³ The high percentage of remand prisoners was noted as a particular concern;¹⁷⁴ and the interviewees also highlighted the role of the judiciary in reducing the prison population¹⁷⁵ This also raises the question 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. This is particularly so in the context of the pandemic.¹⁷⁶

Assessment

The recommendations of the CPT in 2018 and 2019 are specific in requesting the Government to update the CPT on the existing overcrowding situation and the measures that will be adopted to tackle it. The response of the Government lists some measures although arguably lacks the degree of detail which the CPT sought by requiring ‘an analysis’ to be provided.

¹⁶⁹ Scottish Prison Service: 2019/20 Annual Audit Report to the Accountable Officer and the Auditor General for Scotland (March 2021); at para 146. See also <https://www.gov.scot/publications/criminal-proceedings-scotland-2019-20/>.

¹⁷⁰ Scottish Prison Service, COVID Information Hub: <https://www.sps.gov.uk/Corporate/Information/covid19/covid-19-information-hub.aspx>

¹⁷¹ COVID-19 Transmission in Prison Settings March 2021, SAGE https://assets.publishing.service.gov.uk/government/uploads/system/uploads/attachment_data/file/979807/S1166_EMG_transmission_in_prisons.pdf, p.34; Table 3, Ministry of Justice (2020) HMPPS COVID-19 statistics—September 2020, <https://www.gov.uk/government/news/pause-to-prisoner-early-release-scheme>.

¹⁷² Ibid; at para 147.

¹⁷³ Interview A., 11 March; Interview C., 12 March; and Interview F., 15 March.

¹⁷⁴ Interview A., 11 March. See also section C below.

¹⁷⁵ Interview C. 12 March.

¹⁷⁶ Advice of the Subcommittee on Prevention of Torture to States Parties and National Preventive Mechanisms relating to the Coronavirus Pandemic (adopted on 25th March 2020) <https://www.ohchr.org/Documents/HRBodies/OPCAT/AdviceStatePartiesCoronavirusPandemic2020.pdf>

The response to the CPT's request regarding remand is provided although, again, arguably, lacks the degree of detail expected by the CPT. The recommendation to consider various Council of Europe recommendations on alternatives to detention has not been explicitly addressed. The requested update on the extension of the presumption to sentences of less than 12 months has been provided.

Turning to the 2019 recommendation, the CPT itself noted the lack of a strategic plan to reduce overcrowding on behalf of the Government as per its recommendation following the 2018 visit: *'However, in the consultations with the CPT's delegation, the SPS's frank response on how to deal with the increase of the prison population in the medium-term was merely to "cope by overcrowding". The CPT considers that this is not a viable strategy.'*¹⁷⁷

Overall, from the reports of stakeholders and the interviews conducted, it is apparent that overcrowding in Scottish prisons has persisted and there is little evidence of strategic planning to reduce it. Compounded by staff shortages, overcrowding has had significant negative effects not only on 'out of cell' activity time, the variety of activities, but also on key activities which form part of the release plan for individual prisoners. It has also had a negative impact upon living conditions as well as made it difficult for the prison service to meet its obligations towards individual prisoners in situations of vulnerability as reasonable adjustments have been difficult or even impossible to make. The context of pandemic has exacerbated all of these issues and whilst there was some reduction in prison population in response to the pandemic, evidence suggests that these were not lasting measures and overcrowding in Scottish prisons persists.

¹⁷⁷ CPT/Inf (2020) 28 at para 7 (see footnote 4).

B. Purposeful activities for remand prisoners

CPT Standards and the European Prison Rules provide that it is ‘not acceptable to lock up remand prisoners in their cells for up to 23 hours per day and to leave them to their own devices for months or even years on end’ and calls on prison authorities to develop ‘a comprehensive regime of out-of-cell activities’ so that they spend ‘a reasonable part of the day (i.e. eight hours or more) outside their cells, engaged in purposeful activity of a varied nature (work, preferably with vocational value, education, sport, recreation/association). The longer the period of remand detention, the more varied the regime should be’. All prisoners should have at least an hour of outdoor exercise once a day.¹⁷⁸ The Mandela Rules recommend that remand prisoners ‘shall always be offered the opportunity to work, but shall not be required to work’.¹⁷⁹

The CPT Findings

The CPT’s recommendations with respect to purposeful activities for remand prisoners date back to 2012 when it recommended, in relation to Barlinnie specifically:

*‘... that action be taken ... to develop the number of purposeful activities on offer to prisoners, with special emphasis on increasing the number of sentenced prisoners with work and improving the daily programme for remand prisoners; the objective should be to ensure that all prisoners spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association)’.*¹⁸⁰

In 2018 it further noted that:

*‘In three of the five the prisons visited, the regime was restricted primarily due to overcrowding and staff shortages, which resulted in many prisoners being locked-up in their cell for extended periods of the day. The regime was particularly restrictive for remand prisoners, and had deteriorated since the CPT’s 2012 visit. The CPT recommends that the number of purposeful activities on offer to remand prisoners be developed and the daily programme for these inmates be improved.’*¹⁸¹

¹⁷⁸ CPT Standards, Remand Detention, CPT/Inf(2017)5-part, para 58; European Prison Rules, s.25; Mandela Rules, Rule 116.

¹⁷⁹ Mandela Rules, Rule 116.

¹⁸⁰ CPT/Inf (2014) 11, para 41 (see footnote 38).

¹⁸¹ CPT/Inf (2019) 29, p.6.

Specifically, it recommended that:

*'the Scottish authorities take action at Barlinnie, Edinburgh and Grampian Prisons to develop the number of purposeful activities on offer to remand prisoners and to improve the daily programme for these inmates; the objective should be to ensure that all prisoners spend a reasonable part of the day (8 hours or more) outside of their cells, engaged in purposeful activities of a varied nature (work, preferably with vocational value; education; sport; recreation/association).'*¹⁸²

The Scottish Government Response

Responding to the CPT report, the Government pointed out that the Prison Rules requires that convicted prisoners are given the opportunity for work, education or other activities and are in fact required to work, if appropriate. In contrast, *'[u]nder the Prison Rules, untried prisoners are not required to work, although they may do so where appropriate and it should not be at the expense of work being available for all other prisoners'*.¹⁸³

In addition, the Government in its response to the 2018 report noted that given the high numbers of inmates in Barlinnie and the design of the building, the 'regime needs to be more structured', with the SPS *'working to enhance timetabling in order to utilise space as effectively as possible'*.¹⁸⁴ However, the Government acknowledged in January 2021 that *'there are far too many people on remand as a percentage of our prison population in Scotland'*.¹⁸⁵

We were informed by the Scottish Government that the *Recover, Renew, Transform Programme* aims to provide longer term solutions to these issues through bringing together stakeholders from across the criminal and community justice sectors. This process is designed to discuss support for victims and witnesses, prevent recidivism and community interventions,¹⁸⁶ recognising that *'continued high levels of Scotland's prison population, both sentenced and remand prisoners, are driven by complex societal and systemic factors which require whole system change'*.¹⁸⁷ Projects include *'reviewing the use of remand – both during the recovery and transform phases – and developing approaches to improve support for those released on bail; developing a suite of information on community interventions available across Scotland which can be provided to Sheriffs to inform their decision making; reviewing the state of readiness*

¹⁸² CPT/Inf (2019) 29, para 57 (see footnote 3).

¹⁸³ CPT/Inf (2019) 30, para 78 (see footnote 5).

¹⁸⁴ Ibid, para 81.

¹⁸⁵ Cabinet Secretary for Justice, Scottish Parliament, Meeting of the Parliament (Virtual) 26 January 2021. <https://www.parliament.scot/chamber-and-committees/what-was-said-and-official-reports/what-was-said-in-parliament/meeting-of-parliament-26-01-2021?meeting=13077&iob=118358>

¹⁸⁶ Protecting Scotland, Renewing Scotland: The Government's Programme for Scotland 2020-2021, 1 September 2020, [Protecting Scotland, Renewing Scotland: The Government's Programme for Scotland 2020-2021 – gov.scot \(www.gov.scot\)](https://www.gov.scot/publications/protecting-scotland-renewing-scotland-the-government-s-programme-for-scotland-2020-2021-1-september-2020/pages/10.aspx)

¹⁸⁷ Notes on file with authors.

across justice partner organisations to implement electronic monitoring (EM) as part of a community order and EM bail; working with the Care Inspectorate to undertake a thematic review into breach of licence and use of recall.¹⁸⁸

The Evidence Collected

Reports from stakeholders as well as interviews conducted for this research confirmed the lack of purposeful activity for remand prisoners as a concern.¹⁸⁹ It was also suggested that the specification in the Prison Rules that remand prisoners are not required to work is being used as a rationale, erroneously, not to provide purposeful activities to remand prisoners.¹⁹⁰ It was highlighted that such an approach has led to a paradoxical situation whereby the provision for remand prisoners is of a much poorer standard than that for the sentenced prisoners.

(a) 'Reasonable part of the day' (i.e. eight hours or more) outside their cells

The CPT recommended that prisoners on remand spend at least eight hours a day outside their cells. There is evidence from HMIPS pre-pandemic that this requirement may not have been met at least in one prison, although the comment is not specific to remand prisoners. For example, reporting on a visit to Barlinnie in December 2019, Independent Prison Monitors (IMPs) noted with respect to time out of cell their concerns about the *'low numbers of prisoners at Education during visits this quarter'*.¹⁹¹

However, during the pandemic all categories of prisoners have been confined to their cells for 22 or more hours every day,¹⁹² with Scottish Human Rights Commission (SHRC) noting even *'people being confined to their cell for 24 hours a day, for extended periods of time, with no access to shower facilities or time out of cell, including access to outdoor exercise'*.¹⁹³ HMIPS noted in November 2020 that *'[t]oo many prisoners were spending too long in their cells'*, with a further concern that *'record keeping was not accurate'*.¹⁹⁴ The researchers could not find whether the regime differed with respect to remand and convicted prisoners and, as is noted in the assessment section below, the SHRC has identified a lack of data on the time out of cell for every prisoner.

¹⁸⁸ Notes on file with authors.

¹⁸⁹ HMIPS Annual Report 2019-2020, at p. 13; [HMIPS Annual Report 2019-20 – News Release.pdf \(prisonsinspectoratescotland.gov.uk\)](#); [HMIPS Full Inspection Report on HMP Edinburgh \(2019\)](#). Interview A., 11 March 2021; Interview C., 12 March 2021.

¹⁹⁰ Interview A. 11 March 2021; Interview C. 12 March 2021.

¹⁹¹ HMIPS, Independent Prison Monitoring Bulletin, HMP Barlinnie, October – December 2019 [Barlinnie report.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

¹⁹² E.g. 45 minutes per day outside, HMIPS, COVID-19 Pandemic Emergency Liaison Visits – Prisons And Court Custody Units, Report On A Liaison Visit To HMP Barlinnie, Wednesday, 15 July– Thursday, 16 July 2020. [HMIPS – Report of Liaison Visit to HMP Barlinnie – 15-16 July 2020.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

¹⁹³ See footnote 13.

¹⁹⁴ HM Chief Inspector's Annual Report 2019-2020, November 2020, SG/2020/223, p.65. [HM Chief Inspector of Prisons annual report: 2019 to 2020 – GOV.UK \(www.gov.uk\)](#)

(b) Purposeful activities

Challenges in delivery of purposeful activities to all prisoners were noted even pre-pandemic.¹⁹⁵ Information on time out of cell, work and educational opportunities as well as other purposeful activities, is captured in HMIPS and IPM reports but it is not clear the extent to which this applies to remand specifically. So, for example, in its Annual Report in November 2020, HMIPS noted that

*'Despite concerns about time out of cell, lots of good work took place at Barlinnie. The Gym provision was noted as having good and accessible activity. The Recovery Café was seen as an example of excellent work taking place in the prison. Generally, the Education Centre appeared to be relatively busy. Work sheds were noted to be functioning well, with prisoners engaged and a good allocation of tasks.'*¹⁹⁶

The Government has cited difficulties in scheduling out of cell activities because of the design of the buildings and particularly when numbers of prisoners are high, acknowledging the impact of overcrowding.¹⁹⁷ Asked in the Scottish Parliament about the 'average number of hours per week that prisoners were engaged in purposeful activity has been in each of the last 12 months, broken down by institution', the Government provided statistics which indicated between 4 and 29 hours a week within each establishment.¹⁹⁸

(i) Work

Even before the pandemic, HMIPS rated, in 2019, a 'poor performance' for purposeful activity at HMP Edinburgh:

*'At the time of the inspection, there were insufficient employment opportunities for all prisoners, across all prison populations, and in particular for the female and untried prisoner populations. More than half of workshop activities were not available to prisoners due to staffing shortages.'*¹⁹⁹

It recommended that 'HMP Edinburgh should ensure all eligible prisoners and all prison populations have an opportunity to attend an appropriate range of employment and training opportunities'.²⁰⁰ Similarly, IPMs, although being 'encouraged by the range and quality of work sheds available' in December 2019, raised with the Governor 'the difficulty some of the prisoner groups have accessing all of them'.²⁰¹

¹⁹⁵ See footnote 191

¹⁹⁶ See footnote 194

¹⁹⁷ CPT/Inf (2019) 30, para 81 (see footnote 5).

¹⁹⁸ S5W-36075: Liam McArthur (Orkney Islands), 11 March 2021, answered by Humza Yousaf 24 March 2021. [Written question and answer: S5W-36075 | Scottish Parliament Website](#)

¹⁹⁹ HMIPS Full Inspection Report on HMP Edinburgh (2019), p.91. [Full Inspection Report on HMP Edinburgh: Full Inspection – 28 October – 8 November 2019 \(prisonsinspectoratescotland.gov.uk\)](#)

²⁰⁰ Ibid. p.92.

²⁰¹ Independent Prison Monitoring Bulletin HMP Edinburgh October-December 2019. [Edinburgh report.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

During the pandemic, inevitably work had reduced significantly,²⁰² although again the reports do not necessarily distinguish between remand and convicted prisoners.²⁰³ In Barlinnie in September 2020, whilst work sheds have started to reopen, HMIPS noted that *'concerns remain about the number of prisoners who do not have access to meaningful activity'*.²⁰⁴ Relatedly, as noted in the HMIPS Annual Report: *'due to staffing problems the work sheds were not as fully utilised as they could be, and too often sheds were empty or shut to release staff to cover absences in residential areas'*.²⁰⁵

As noted above, the Government's interpretation of the Prison Rules in Scotland is that *'untried prisoners are not required to work, although they may do so where appropriate and it should not be at the expense of work being available for all other prisoners'*.²⁰⁶ This interpretation was strongly contested by the interviewees interviewed for this research.²⁰⁷

(ii) *Exercise*

Inspectors for some prisons during the pandemic noted that prisoners were outside and undertaking exercise, although gyms were closed.²⁰⁸ In Barlinnie, for example, prisoners were

*'offered six periods of 45 minutes per day in the fresh air to allow access for residential areas. Inspectors observed fresh air being taken throughout the visit in different areas. The programme of fresh air ensured an equity of opportunities within each residential area as there were different times allocated to each level on different days. Uptake in fresh air exercise was normally above 50%, but in some cases this rose to over 60% of the hall population. Those unable to attend regular exercise due to their health were offered an area to sit outside in a small decking area Although this came under the health and wellbeing banner, it showed HMP Barlinnie adhering to prison rules in offering all prisoners fresh air throughout the day.'*²⁰⁹

²⁰² IPM HMP Edinburgh Quarterly Report April – June 2020.
[HMP Edinburgh_1.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

²⁰³ Independent Prison Monitoring, HMP Barlinnie, Quarterly Report April – June 2020
[HMP Barlinnie_1.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

²⁰⁴ HMIPS, Independent Prison Monitoring, HMP Barlinnie, Quarterly Report July-September 2020.
[HMP Barlinnie_2.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

²⁰⁵ See footnote 189, p.64.

²⁰⁶ CPT/Inf (2019) 30, para 78 (see footnote 5).

²⁰⁷ Interview A. 11 March 2021; Interview C. 12 March 2021.

²⁰⁸ See footnote 192, p.9.

²⁰⁹ See footnote 192, p.16.

(iii) *Other activities*

Access to in-cell activities was noted during the pandemic,²¹⁰ such as DVDs, books and other materials, although this could be erratic. For example, in an HMIPS report in July 2020 on Barlinnie:

*'The prison had provided a large number of DVDs for all prisoners at the start of the lockdown, and had initially allowed families and friends to post in additional DVDs but had then been overwhelmed by the number arriving. This decision frustrated some prisoners, but we recognise why the prison acted as it did. The prison had also provided puzzles, self-learning packs, and a large number of books at the start of the pandemic, but there was an insufficient number of some activity books and they did not appear to have been changed for two months.'*²¹¹

Consequently, HMIPS adopted an Action Point requiring them *'to refresh and update the supply of puzzles, books and other distraction activities'*.²¹²

(iv) *Education*

Pre-pandemic, HMIPS' report on HMP Edinburgh in July 2019 stated that *'the education offer to untried prisoners and female prisoners was limited. The Education Unit had made successful efforts in the last two years to engage more mainstream prisoners in education, encouraging participation by those who were often reluctant to attend purposeful activity'*.²¹³ Reiterating this concern in its November 2020 Annual Report, HMIPS also commented upon *'across Scotland there was insufficient capacity to accommodate the growth in population and high remand and protection cohorts'*.²¹⁴

In general, for all the prison population, there was a lack of or limited educational provision during the pandemic. Some in-cell learning packs had been developed with Fife College and were available in some prisons,²¹⁵ and there were plans for a blended education approach.²¹⁶ However, these in-cell provisions do not necessarily encourage time out of cell,²¹⁷ and we heard concerns that the education provided may 'not go beyond the minimum of what is required for purposeful activities and include

²¹⁰ See footnote 192, p.2.

²¹¹ Ibid, p.16.

²¹² Ibid. pp.14-15.

²¹³ See footnote 199, p.93.

²¹⁴ See footnote 189, p.93.

²¹⁵ Although not in Edinburgh, COVID-19 Pandemic Emergency Liaison Visits – Prisons and Court Custody Units Report on a Liaison Visit to HMP Edinburgh Friday, 1 May 2020, pp.15-16. [HMIPS – COVID-19 – Report on HMP Edinburgh Prison Liaison Visit – Friday, 1 May 2020.pdf \(prisonsinspectoratescotland.gov.uk\)](https://www.prisonsscotland.gov.uk/~/media/Prisons%20Scotland/2020/05/HMIPS_COVID-19_Report_on_HMP_Edinburgh_Prison_Liaison_Visit_-_Friday_1_May_2020.pdf).

²¹⁶ HMIPS July 2020 Barlinnie. Interview F. 15 March 2021.

²¹⁷ Interview F. 15 March 2021

intellectual or cultural stimulus'.²¹⁸ In addition, access to programmes may be limited due to long waiting times.²¹⁹

Various explanations are given for the lack of purposeful activities being provided, particularly to remand prisoners. Firstly, overcrowding: the number of people now held on remand is increasing.²²⁰ As SHRC note in a letter to Humza Yousaf on 15 January 2021:

'We are concerned to note that since June 2020 the Scottish prison population has increased again, from 6,869 on 29 May 2020 to 7,465 on 2 January 2021. Of particular concern is the increase in the remand population. The number of people in prison who have not yet been tried has increased from 982 in April 2020 to 1,832 on 8 January 2021 (see SPS Prison Population).'

Consequently, overcrowding is apparent in some institutions, with the SHRC noting in April 2020:

*'It is our view that non-custodial measures using existing instruments and the emergency release powers (under exceptional circumstances) need to be implemented rapidly. Particular attention should be paid to detainees with underlying health conditions, remanded population, young people under the age of 18 and those in other vulnerable categories as well as in areas of the detention estate that are already worryingly overcrowded and the conditions are not conducive to social distancing requirements (for example, HMP Barlinnie).'*²²¹

Inevitably, this impacts on the availability of programmes and staffing to deliver them and more specifically to particular categories of persons one of which was those on remand.²²²

As the Justice Committee recommended in 2019 *'[t]ackling our relatively high remand rates, for example, would be more effective as would preventing people from offending in the first place'*.²²³ Yet despite some efforts made to reduce the population during the pandemic, as the SHRC indicates, it has risen and measures put in place to deal with the pandemic are not necessarily considered as long-term solutions.²²⁴ Because of overcrowding, then we were told that the focus on purposeful activities has been for those who are convicted or sentenced, rather than those on remand.²²⁵

²¹⁸ Interview F. 15 March 2021

²¹⁹ Interview R. 15 March 2021

²²⁰ Interview F. 15 March 2021

²²¹ SHRC, HMIPS, IPMAG, Briefing for Scottish Cabinet Secretary for Justice, 21 April 2020, <https://www.scottishhumanrights.com/covid-19/prisons-places-of-detention/#prisons-and-places-of-detention-26276>

²²² See footnote 189, p.24.

²²³ Justice Committee, Presumption Against Short Periods of Imprisonment (Scotland) Order 2019, SP Paper 559, 14th Report, 2019 (Session 5), 21 June 2019, para 155. [Presumption Against Short Periods of Imprisonment \(Scotland\) Order 2019 \(azureedge.net\)](https://www.azureedge.net)

²²⁴ Interview A. 11 March 2021

²²⁵ Interview A. 11 March 2021

Secondly, in order to address overcrowding, there are other broader strategies that have been noted and recommended that can assist in addressing the CPT recommendations on this issue. SHRC²²⁶ and HMIPS argue that what is required is *'a cultural shift...to ensure that rehabilitative opportunities should be offered to all cohorts of the population and, apart from offending behaviour programmes, not limited to convicted prisoners only'*.²²⁷

In addition, the decline of the use of early release and electronic monitoring also means there may be less opportunities for those who might otherwise avoid prison on remand.²²⁸ The Scottish Government website flags up new research being conducted by a consultancy firm, KSO Research, on 'Understanding Use of Remand' in response to the Scottish Parliament's Justice Committee's inquiry in 2018.²²⁹ Whilst potentially promising in looking at these systematic issues, it is too early to see the impact of these initiatives and there is a concern that any immediate changes that could be made will be postponed until these reviews are finalised.²³⁰

Thirdly, staff shortages, even before the pandemic, have had an influence on the ability to deliver purposeful activities to all prisoners,²³¹ and specifically for those on remand and women. As HMIPS noted in relation to HMP Edinburgh in 2019 *'[m]ore than half of workshop activities were not available to prisoners due to staffing shortages'*.²³² This has inevitably been exacerbated by the pandemic as staff took sick-leave or were absent for other reasons. However, of particular concern is that the restrictions impacted in particular on those on remand despite some promising developments:

*'There were many examples of good and often innovative practice, however, ... offence and non-offence protection prisoners suffered from a more restrictive regime than other prisoners, with the risk of being locked up for unacceptably long periods. The main concern for Inspectors, stemming from high staff absence, was the frequency with which work sheds had to be cancelled to provide staff to cover essential core duties in the residential areas.'*²³³

²²⁶ Interview C. 12 March 2021

²²⁷ See footnote 189, p.24.

²²⁸ Interview F. 15 March 2021

²²⁹ Scottish Government, Understanding the use of remand:
<https://www.gov.scot/news/understanding-use-of-remand/>

²³⁰ Interview A. 11 March 2021

²³¹ Interview A. 11 March 2021

²³² See footnote 199, p.91.

²³³ See footnote 189, p.13.

Similarly,

‘Our inspections and monitoring evidenced that the provision of education and employment was inhibited by the population growth experienced and staff shortages either through high absence levels or out of date staffing profiles that did not reflect the current population requirements. While the range of educational options was generally good, this was not true for all prisoner groups. For example, there were very few options for women or untried prisoners in HMP Edinburgh.’²³⁴

Assessment

Researchers received conflicting information on this issue. On the one hand, researchers were told by one stakeholder that there appeared to have been ‘no specific changes’,²³⁵ to the issues highlighted in 2012 by the CPT. On the other hand, researchers found it challenging to separate out evidence from , before and during the pandemic, regarding access to purposeful resources for all prisoners and in particular for those on remand. Furthermore, writing to the SPS in September 2020, the SHRC note a lack of accessible data and requested information, among other matters, on:

- ◆ ‘An analysis of time out of cell for each prison and a description of the regime therein.
- ◆ Outdoor exercise – how much time is being afforded to the various prisoner groups across the prisons including those subject to Rule 41 cellular confinement?
- ◆ Work, prisoner programmes and education- opportunities and challenges with provision of the same’.²³⁶

Responding in November 2020 to various concerns of the SHRC, the SPS wrote that it was ‘not able to provide you with an analysis of out of cell time for each prison or with a description of their regime at this time. The regimes being operated in prisons at present are necessarily very fluid to enable them to be able to adapt and react to (1) the impact Coronavirus is having on SPS and NHS staff and prisoners and (2) dynamic Government and HPS guidelines’.²³⁷

²³⁴ See footnote 189, p.24.

²³⁵ Interview F. 15 March 2021

²³⁶ Letter from SHRC to SPS, 17 September 2020, <https://www.scottishhumanrights.com/media/2143/letter-to-sps-sep-2020.pdf>. See similarly, in June 2020: Letter to Cabinet Secretary, 17 June 2020, <https://www.scottishhumanrights.com/news/commission-writes-to-cabinet-secretary-for-justice-on-prison-conditions-during-covid-19/>.

²³⁷ SPS, letter to the SHRC, 18 November 2020, <https://www.scottishhumanrights.com/media/2142/letter-from-sps-nov-2020.pdf>.

Further:

*'However, I can confirm that the majority of prisoners in our care have daily access to time in the open air, showers, to telephones to communicate with family, friends and legal advisors and physical visits with family, friends and legal advisors. In addition, we continue to provide access to Purposeful Activity (PA) which includes prison work, education of any kind including physical education, counselling and other rehabilitative programmes, vocational training and work placements outside the prison. ...Outdoor Exercise (Including Those Subject to Rule 41) The majority of prisoners not subject to Rule 40A or 41 are being given the opportunity to take exercise or where the weather permits, to spend time in the open air for at least one hour per day in accordance with Rule 87 (Exercise and time in the open air) of the Prisons and Young Offenders Institutions (Scotland) Rules 2011.'*²³⁸

Researchers conclude that there is little data on purposeful activities for remand prisoners particularly before and during the pandemic. However, what data there is, suggests that the CPT recommendations have not been met. The pandemic has masked not only time out of cell but also the impact on remand prisoners in particular. In addition, overcrowding and staff shortages remain a problem and contribute to the ability of remand prisoners to spend time out of cell as well as the activities that are offered. There is a need to ensure that both of the CPT recommendations, namely with respect to purposeful activities, as well as that a reasonable part of the day is spent outside of cells, are dealt with together so as to ensure that activities are not simply provided in-cell.

New Area of Concern

The measures introduced in prisons across Scotland in response to the pandemic have brought some positives in relation to purposeful activities as more distance learning, online provision and other in-cell activities have become available. The interviewees confirmed that this is all seen as a positive²³⁹ and noted that these practices are being embedded to ensure that such remain also post-pandemic.²⁴⁰ However, warnings were also raised over the social isolation that is being perceived as unfolding across the 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 the social isolation and out-of-cell activities.

²³⁸ See footnote 237.

²³⁹ E.g. Interview C. 12 March 2021.

²⁴⁰ Interview G. 22 March 2021.

C. Prison estate

The CPT made a number of recommendations in its 2018 report, specifically in relation to Barlinnie but also Grampian as well as in relation to exercise yards for all other prisons.

1. Fit for purpose estate

The European Prison Rules require **prisoners to be normally accommodated during the night in individual cells (Rule 18.5) and accommodation should only be shared if it is in fact suitable for sharing and if prisoners are suitable for association with each other (Rule 18.6)**. The CPT has minimum standards for personal living space in prison establishments.²⁴¹

The CPT Findings

The CPT requested **'an update on the plans for the replacement of Barlinnie Prison once the timing and scale of the refurbishment have been finalised'**.²⁴² In light of overcrowding in the prison it also noted that many cells designed for one person were holding two. Consequently, it recommended that **'the Scottish authorities ensure that cells of 8m² hold no more than one prisoner, and cells of 12m² hold no more than two prisoners. It also recommends that the call bells throughout the prison and especially in Halls A and D are regularly tested and that response times to call bells are tracked and monitored by management'**.²⁴³ Similarly, triple occupancy of cells designed for two in Grampian led the CPT to recommend that **the authorities make maximum use of Cruden Hall, including designating half for non-juvenile prisoners**.²⁴⁴

The Scottish Government Response

In response to the CPT, the Government noted the plans for development of HMP Glasgow to replace Barlinnie.²⁴⁵ It also justified the sharing of cells as necessary to cope with the high population, although acknowledged that it would be taken into account in the design of the new prison.²⁴⁶ The cell call system in Barlinnie, it said had been replaced, had been functioning since December 2018, and was tested each day.²⁴⁷ Furthermore, all prisons had emergency cell call systems and intercom facilities which are auditable.²⁴⁸ With respect to Cruden Hall, the Government responded that

²⁴¹ See footnote 131, p. 1.

²⁴² CPT/Inf (2019) 29, para 44 (see footnote 3).

²⁴³ Ibid, para 45.

²⁴⁴ Ibid, para 50.

²⁴⁵ CPT/Inf (2019) 30, para 67 (see footnote 5).

²⁴⁶ Ibid, para 68.

²⁴⁷ Ibid, para 69.

²⁴⁸ Ibid, para 70.

'alternative arrangements' were in place to alleviate overcrowding and the Operations Directorate of the SPS was leading an overview of the population. It further noted that [g]iven the reduction in the number of young people in SPS care, HMP & YOI Polmont offers the most appropriate regime and accommodation to meet their needs'.²⁴⁹ In a paper produced by the SPS in May 2019, it noted refurbishment plans, with a planned investment of £427.8m and planned completion of HMP Glasgow for 2024.²⁵⁰ The Scottish authorities have announced that they will provide funding to modernise the prison estate with a key priority being HMP Barlinnie²⁵¹ and that 'acquisition of the site near Provanmill in Glasgow is now complete and construction work currently scheduled to commence in Summer 2023'.²⁵²

The Evidence Collected

HMP Glasgow is still in the process of being developed, although HMIPS has urged the Government that this be prioritised.²⁵³ In July 2020 HMIPS noted a fall in the prison population in Barlinnie which brought it close to single-cell occupancy, although the numbers were at that stage starting to creep back up again. It reported then that: *'Cell sharing is once again more common and HMIPS remains concerned. Many of the cells were not designed to hold two people and we urge the Scottish Government to prevent HMP Barlinnie returning to the same overcrowding levels'*.²⁵⁴

In November 2020 HMIPS reported again on the rising population in the prison, noting in addition concerns about the lack of adapted cells and *'[d]ue to overcrowding at Barlinnie, too many prisoners are in cells that are unsuitable for their needs'*.²⁵⁵ It called on the SPS and the Scottish Government to *'take urgent action to rectify these problems'*.²⁵⁶

We were also informed however that the issues faced by Barlinnie were also apparent in other Victorian establishments which were not fit for purpose, and required maintenance.²⁵⁷

Assessment

The recommendations of the CPT have not been addressed. Whilst the response to the pandemic did indicate that the population reduced, this has not been sustained, with a rise again in numbers resulting in overcrowding and sharing of cells suitable for one person. No further information on call-bells was available.

²⁴⁹ CPT/Inf (2019) 30, para 73 (see footnote 5).

²⁵⁰ Scottish Prison Service, Infrastructure Commission For Scotland, Initial Call for Evidence – Submission May 2019, p.7. [ICE127-Scottish-Prison-Service.pdf \(infrastructurecommission.scot\)](#)

²⁵¹ Scottish budget 2021 to 2022 <https://www.gov.scot/publications/scottish-budget-2021-22/>, p.43.

²⁵² Notes on file with authors.

²⁵³ See footnote 192, p.3.

²⁵⁴ Ibid. pp.8-9.

²⁵⁵ See footnote 194.

²⁵⁶ Ibid.

²⁵⁷ Interview A., 11 March 2021.

2. The reception at Barlinnie

The CPT Findings

The CPT noted in its 2018 report that **it had been criticising since 1994 the use of 1m² holding cells in the reception in Barlinnie, colloquially termed ‘dog-boxes’,** noting that the authorities had previously informed the CPT that the “reception cubicles were far from ideal in a modern penal system and that the Scottish Prison Service will initiate a review and bring forward an options appraisal to replace the current cubicles”.²⁵⁸ The CPT considered that holding prisoners in these cubicles could amount to degrading treatment and invoked Article 8(5) to ask for information on what action would be taken.²⁵⁹ While noting this situation was temporary pending the building of HMP Glasgow, it urged the authorities to **‘take some simple but the necessary steps to renovate the reception area at Barlinnie Prison; a simple solution to expanding the cubicles would be to remove the wall between every two cubicles (i.e. to reduce the overall capacity to some 33 cubicles)’.**²⁶⁰

The Scottish Government Response

Responding to the 2018 report, the Government noted the plans to replace Barlinnie and that a ‘full review of the reception facilities, including the holding cubicles, and took technical advice regarding feasible options’, reiterating again that there would be a new HMP Glasgow. In the meantime, however, ‘use of the reception cubicles will continue, though the time individuals spend in them is kept to a minimum, with appropriate staff supervision and access to facilities’.²⁶¹ Humza Yousaf informed Parliament on 19 March 2020 that *‘I can confirm that we have agreed to provide additional funding to SPS for essential remedial work at HMP Barlinnie. This will see the refurbishment of the prisoner reception areas, including removing existing holding cells that have been subject to criticism, and the partial refurbishment of the healthcare facility and additional work to the healthcare and addictions facilities in the accommodation halls. These improvements will help prison and NHS staff overcome daily operational challenges and provide appropriate services and support for those in the care of HMP Barlinnie. £3 million is being provided towards the costs of this work in 2020-21 and further funding will be provided in 2021-22’.*²⁶²

In addition, commenting on a draft of this report, the Scottish Government noted ‘Keir Construction were appointed in November 2020 to develop the design of the improvement works required at HMP Barlinnie and commenced work on site in March 2021. Work within the Residential areas and the Programmes area are due to be

²⁵⁸ CPT/Inf (2019) 29, para 47 (see footnote 5).

²⁵⁹ Article 8(5) of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment provides that during a visit ‘If necessary, the Committee may immediately communicate observations to the competent authorities of the Party concerned’.

²⁶⁰ CPT/Inf (2019) 29, para 48 (see footnote 3).

²⁶¹ CPT/Inf (2019) 30, para 72 (see footnote 5).

²⁶² Question: GIQ; S5W-28005, March 2020 <https://archive2021.parliament.scot/parliamentarybusiness/116291.aspx>

completed by Autumn 2021. The Health Centre refurbishment is then due to commence in Autumn 2021, with completion expected in early 2022. Thereafter the Prison Reception works is due to start and be completed by late Summer/Autumn 2022'.²⁶³

The Evidence Collected

HMIPS and SHRC have repeatedly noted concerns. In December 2019, HMIPS noted that the reception area *'remains a significant concern. The holding cells are not fit for purpose, and the IPM team have continuously raised this with the prison management, the SPS and the Chief Inspector of Prisons for Scotland'*.²⁶⁴

In a report to the UN Human Rights Committee in January 2020, the SHRC repeated the concerns of the CPT.²⁶⁵ In July 2020 HMIPS noted that since its last inspection, there had been action 'to produce plans and a timetable for modernisation and reconfiguration of the reception area',²⁶⁶ but noting delays to the refurbishment due to COVID-19. Indeed, it recognised the current admissions process when individuals arrive in reception:

*'We saw good systems and processes for prisoners arriving at reception. All patients who are symptomatic or report symptoms of COVID-19 are transferred directly to a designated hall, DSL. Nursing assessments are carried out to reduce the potential risk of transmission and new admissions are housed in this area. All other admissions are screened in the reception room. We were shown the cells used to detain prisoners whilst waiting for admission. These are not fit-for-purpose as highlighted in our previous report from the full inspection of HMP Barlinnie in August/September 2019.'*²⁶⁷

However, in November 2020 the HMIPS Independent Prison Monitoring (IPM) team noted again concerns with the use of these boxes, noting a 'recent announcement of £7.5m to refurbish this area'.²⁶⁸ HMIPS has since informed the researchers that demolition of the holding cells is planned but has not yet started and is not expected to complete for another year.

Assessment

The boxes were used at the time this research commenced.²⁶⁹ There now appears to be movement on this long-standing recommendation of the CPT, repeated since 1994. While the Scottish Government informed the researchers of the appointment of a contractor for Barlinnie, as of 24 June 2021, the actual work on site is yet to commence.

²⁶³ Notes on file with authors.

²⁶⁴ See footnote 191.

²⁶⁵ SHRC Submission to the United Nations Human Rights Committee (The Committee): NHRI Report to Inform List of Issues Prior to Reporting on the United Kingdom's 8th periodic report under the International Covenant on Civil and Political Rights, January 2020, para 106. <https://www.scottishhumanrights.com/media/1972/shrc-ccpr-loipr-uk-128th-session.docx>

²⁶⁶ See footnote 192, p.21.

²⁶⁷ Ibid.

²⁶⁸ See footnote 194 p.65.

²⁶⁹ The Herald, News report, A national disgrace: Barlinnie prisoners still held in cells condemned 25 years ago <https://mojoscotland.org/a-national-disgrace-barlinnie-prisoners-still-held-in-cells-condemned-25-years-ago/>, 27 May 2020; Interview A. 11 March 2021.

3. Exercise yards

The CPT Findings

Recommendations were made in relation to exercise yards in Barlinnie and other prisons that they should include ‘shelter against inclement weather and seating facilities’.²⁷⁰

The Scottish Government Response

The Government responded that the recommendation ‘will be taken into account when designing the replacement prison for HMP Barlinnie, or during any refurbishment of existing exercise spaces’.²⁷¹ With respect to Grampian, it said that ‘there is provision for shelter and means of rest in the female exercise area but not in the adult male exercise areas’.²⁷²

The Evidence Collected

Reporting in July 2020, HMIPS noted that a ‘health and wellbeing area outside the chaplaincy, which provided an opportunity for older and more infirm prisoners to sit and chat outside in small groups’ had been constructed in Barlinnie, citing this as an example of good practice.²⁷³ Researchers could find no information on developments of such a facility at HMP Grampian. HMIPS reported in May 2019 on HMP Glenochil, stating that when asked about waterproof jackets ‘staff were unable to produce them. However, another member of the inspection team saw limited numbers of them. Prisoners were able to request a fleece to wear for exercise; however, there was insufficient stock should all prisoners wish to take this offer up’.²⁷⁴ In November 2019 with respect to HMP Edinburgh, an inspection reported that some showerproof jackets had been provided, they were thin and there were not always sufficient numbers available, recommending that ‘more waterproof jackets to facilitate access to open air during colder weather’.²⁷⁵

Assessment

Although some changes have been made at Barlinnie with regards to seating, it was not clear if shelter had also been provided. There is no information on whether any such facilities have been provided in HMP Grampian or other establishments and the availability of waterproof clothing was found to be inconsistent in prisons in the estate.

²⁷⁰ CPT/Inf (2019) 29, para 46 and para 51 (see footnote 3).

²⁷¹ CPT/Inf (2019) 30, para 71 (see footnote 5).

²⁷² Ibid, para 76.

²⁷³ See footnote 192, p.14.

²⁷⁴ HMIPS Full Inspection Report on HMP YOI Glenochil Full Inspection – 29 APRIL-10 MAY 2019, p.64 [Report on HMP Glenochil Full Inspection – 29 April-10 May 2019.pdf \(prisonsinspectoratescotland.gov.uk\)](https://www.prisonsofscotland.gov.uk/~/media/PrisonsInspectoratescotland/Reports/2019/HMIPS-Full-Inspection-Report-on-HMP-Glenochil-Full-Inspection-29-April-10-May-2019.pdf)

²⁷⁵ HMIPS Full Inspection Report on HMP Edinburgh Full Inspection – 28 October-8 November 2019, p.96. [Full Inspection Report on HMP Edinburgh: Full Inspection – 28 October – 8 November 2019. \(prisonsinspectoratescotland.gov.uk\)](https://www.prisonsofscotland.gov.uk/~/media/PrisonsInspectoratescotland/Reports/2019/HMIPS-Full-Inspection-Report-on-HMP-Edinburgh-Full-Inspection-28-October-8-November-2019.pdf)

D. Purposeful activities for women in male establishments

The European Prison Rules require that all prisoners are offered a 'balanced programme of activities' which enables them to 'spend as many hours a day outside their cells as are necessary for an adequate level of human and social interaction'.²⁷⁶ Furthermore, 'specific gender-sensitive policies shall be developed', which aim to 'address the underlying factors that led to their offence and cope with the challenges they face', and staffing working with particular groups of prisoners should have appropriate training.²⁷⁷

The CPT Findings

The CPT noted in its 2018 report that while there were activities and work offered to women in Edinburgh prison, half were not involved in any of these during the time of their visit, noting in particular a lack of women-specific programmes. Women were also locked up for 19-20 hours a day compared with a better regime for male prisoners. It recommended 'that the Scottish authorities increase the places available for work and purposeful activities for all categories of women prisoners at Edinburgh Prison to ensure that all women prisoners can benefit from these on an equal basis to male prisoners. This may require increasing the staffing complement'.²⁷⁸

In addition, it also noted similar concerns at Banff House in Grampian Prison, with limited work and activities for the women held there, although the percentage of women who participated was higher and time out of cell was better. The CPT called on the authorities to 'continue their efforts to offer work and purposeful activities for all women inmates at Grampian Prison. It also would appreciate being sent updated information and statistics on the female offending programme'.

The Scottish Government Response

In response to the situation in Edinburgh, the Government noted that due to the number of prisoner categories, 'it is difficult to provide equality in all aspects of the regime' and '[d]espite increasing numbers of women in Ratho Hall and staffing constraints', a number of initiatives had been provided by the SPS.²⁷⁹ In HMP Grampian it noted that all women had an opportunity 'to engage in purposeful activity, which is further enhanced by regular, themed activities and events throughout the year' and a revised female offending behaviour programme, was awaiting approval.²⁸⁰

²⁷⁶ European Prison Rules, s.25.

²⁷⁷ European Prison Rules, s.34.1 and 81.3. Rule 4 of the Nelson Mandela Rules as interpreted in the United Nations Rules for the Treatment of Women Prisoners and Non-custodial Measures for Women Offenders (the Bangkok Rules).

²⁷⁸ CPT/Inf (2019) 29, para 102 (see footnote 3).

²⁷⁹ CPT/Inf (2019) 30, para 115 (see footnote 5).

²⁸⁰ Ibid, para 116.

The Evidence Collected

As with male prisoners on remand, HMIPS in November 2020 recognised similarly that staff shortages and an increase in the prison population resulted in limitations to activities but that there were ‘very few options’ in terms of education for women.²⁸¹ Furthermore, ‘women did not have access to as wide a range of programmes and opportunities as male prisoners’.²⁸² These findings were also reflected on a visit to HMP Edinburgh, noting ‘insufficient employment opportunities...in particular for the female...prisoner populations’.²⁸³

Although the pandemic had an impact on the ability to ensure purposeful activities were provided out of cell, women faced more limitations than men in the same establishment. For example, HMIPS in November 2020 on a visit to HMP YOI Grampian noted that women were only 9% of the prison population, yet with respect to learning

*‘Mainstream prisoners accounted for the majority of the prisoner population within HMP YOI Grampian and so were offered six sessions per week. The female population were offered four sessions per week (two in Banff) and protections two sessions per week’.*²⁸⁴

In addition,

*‘The female prisoners reported that they did not have much to do apart from associate with other women. Inspectors observed some women making up breakfast packs for Ellon Hall and PIACs were being set up to look at other ideas’.*²⁸⁵

There is some limited reference to attempts to adapt activities for women, for example, with HMIPS noting exercise programmes were ‘tailored to groups of prisoners, some targeting those that wished to have a lighter fitness workout such as the women in Banff Hall’.²⁸⁶

Other interviewees noted that as there were more male prisoners than female, males may be given priority for activities.²⁸⁷ Indeed, researchers were also told that staff in the establishments holding women prisoners had not been trained in a gender-specific and trauma-informed approach.²⁸⁸ Indeed, HMIPS reported that:

²⁸¹ See footnote 189, p.24. See also footnote 199 p.93.

²⁸² See footnote 189, p.13.

²⁸³ See footnote 199, p.19.

²⁸⁴ Report On A Liaison Visit To HMP YOI Grampian, 4-5 November 2020, p.18. [HMP YOI Grampian – Liaison Visit Report 2020 – Press Release.pdf \(prisonsscotland.gov.uk\)](https://www.prisonsscotland.gov.uk/~/media/PrisonsScotland/Reports/2020/HMP_YOI_Grampian_-_Liaison_Visit_Report_2020_-_Press_Release.pdf)

²⁸⁵ Ibid, p.15.

²⁸⁶ Ibid. p.20.

²⁸⁷ Interview C., 12 March 2021.

²⁸⁸ Interview A., 11 March 2021.

*'Staff reported that it had been more difficult to engage with women, which may be linked to clashes with their recreation time. To address this tutors had commenced delivery of two new sessions, sewing and health and wellbeing within the female hall and both had received positive feedback. They had recently made up a trolley to take onto the halls advertising their services and carrying activity packs to hand out to prisoners.'*²⁸⁹

Assessment

Although the inspection reports are not always clear in separating what activities are available to the different types of prisoners, the reports do make it clear that different groups of prisoners do not enjoy the same access to various activities. As with male remand prisoners, female prisoners are constantly highlighted and specifically noted as suffering the most in being able to access activities as well as lesser variety.

²⁸⁹ See footnote 284

E. Cornton Vale

The CPT paid particular attention to Cornton Vale, providing a number of recommendations in 2018 and returning in 2019.

The European Prison Rules and Nelson Mandela Rules **provide those suffering from mental illness should be detained ‘in an establishment specially designed for the purpose’** and if held in prison then account should be taken of their status and needs. Psychiatric treatment should be provided to all in need.²⁹⁰

1. Support for those in segregation for longer than two weeks

The CPT Findings

The CPT raised concerns in 2018 about the ‘Dumyat’ segregation unit at Cornton Vale, and these were repeated again in 2019, noting:

‘its recommendation that the Scottish authorities put in place a psycho-social support system for women prisoners held for longer than two weeks in Cornton Vale Prison’s SRU and provide them with greater opportunities for association and engagement in purposeful activities. The aim should be for all women prisoners held under Rule 95 to be offered at least two hours of meaningful human contact every day and preferably even more. The longer the measures of segregation continue, the more resources should be made available to attempt to (re)integrate the prisoner into the main prison community.’²⁹¹

The Scottish Government Response

Responding to the 2018 report the Scottish Government in 2019 noted that all prisoners were given opportunities for exercise outside each day, there was access to occupational therapists and daily sessions with individual staff at the gym, with those on Rule 41 and 95 given one hour of exercise per day. All Rule 95 prisoners were also visited every day by the Unit Manager and reintegration was encouraged.²⁹² Addressing the CPT’s 2019 report, the Government added that *‘[s]taff interact with women removed from association every day to encourage reintegration to mainstream conditions where appropriate. Periods of interaction are not limited to meal provision or facilitating contact with services such as NHS; and that daily narratives were written and available and these set out the interaction with staff.’*²⁹³ During the pandemic, staff interactions were inevitably limited but women were still able to have two hours in the open air, daily exercise and have access to showers and the phone, and contact with Duty Governors continued.²⁹⁴

²⁹⁰ European Prison Rules, s.12; Nelson Mandela Rules, Rule 109.

²⁹¹ CPT/Inf (2019) 29, para 90; CPT/Inf (2020) 28, para 26 (see footnotes 3&4).

²⁹² CPT/Inf (2019) 30, paras 96 and 97 (see footnote 5).

²⁹³ CPT/Inf (2020) 29, paras 41-43 (see footnote 6).

²⁹⁴ Ibid, paras 45 and 46.

The Evidence Collected

HMIPS reported in June 2020 that *'[p]risoner work had understandably decreased, with only essential work parties still operating under strict safety requirements'*,²⁹⁵ although in September that education had recommenced for women in Ross House.²⁹⁶ In October 2020 on a visit to Dumyat, HMIPS noted that *'All those in the SRU are offered fresh air, access to a communal phone, and visits with a 'Removal from association daily record sheet' kept. All prisoners are now offered in-cell telephony so access to the communal phone is not such a requirement. There is no gymnasium within the Dumyat for physical exercise'*.²⁹⁷ However, 'social distancing workouts' were held in an exercise yard and small gym classes were running.²⁹⁸ Further, when they visited there was only one person on Rule 95, and while paperwork on PR2 was lawful, daily narratives were 'evident and concise', *'there was no evidence of a management plan to reintegrate her back to the prison'*.²⁹⁹ HMIPS' Annual Report 2019-2020, in November 2020 notes with respect to Ross House and Dumyat, *'[t]hese areas will remain a monitoring priority for the IPM Team until the new establishment is open, as some of the most challenging and/or vulnerable women are held there'*.³⁰⁰

Researchers also reported from an interview that since the CPT's initial visit there had been some improvements, with women not being kept in segregation as often or for as long.³⁰¹ However, data had also recently been received that there were a number of women in segregation for over a month,³⁰² and over the course of 2020, 'seven women had spent more than 4 weeks in the SRU on rule 41, with two of these episodes lasting more than eight weeks'.³⁰³

²⁹⁵ HMIPS, Independent Prison Monitoring, HMP CORNTON VALE, Quarterly Report April – June 2020 [HMP Cornton Vale_0.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

²⁹⁶ HMIPS, Independent Prison Monitoring, HMP CORNTON VALE, Quarterly Report July-September 2020 [HMP Grampian_2.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

²⁹⁷ HMIPS, Report On A Liaison Visit To HMP YOI Cornton Vale, 7-8 October 2020, p.15. [HMP Cornton Vale – Liaison Visit Report 2020 – Press Release.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

²⁹⁸ Ibid. p.20.

²⁹⁹ Ibid. p.15.

³⁰⁰ Ibid. p.54.

³⁰¹ Interview B. 10 March 2021.

³⁰² Interview B. 10 March 2021.

³⁰³ Mental Welfare Commission for Scotland, Concerns about the care of women with mental ill health in prison in Scotland An analysis of the records of nine women in custody, June 2021, https://www.mwscot.org.uk/sites/default/files/2021-07/ConcernsAboutTheCareOfWomenWithMentalIllHealthInPrisonInScotland_July2021.pdf, p.38.

With the specific purpose of following up on the CPT's findings, the Mental Welfare Commission for Scotland's (MWCS) report on women with mental ill health in prison in Scotland was published in June 2021. It aimed to undertake a *'retrospective review of the prison health records of the women whom the CPT had raised concerns about, and broaden this review to include a number of other women whose mental health care in prison was being followed up by us as part of our routine duties'*.³⁰⁴ With respect to the SRU, the MWCS noted *'records indicated that several women were acutely unwell with psychosis whilst in segregation, where the regime meant they were locked alone in a cell for up to 22 hours a day'*, as well as all the women who were held in the SRU being *'highly distressed'*, with their symptoms, behaviour, self-care and ability to interact with others worsening while there.³⁰⁵

Assessment

While there have been some developments in developing trauma-informed care and training, there is still evidence of women being kept in segregation for over a month. The pandemic has inevitably impacted on time out of cell, and researchers heard that women were given at least two hours a day out of cell although activities were limited. The MWCS's highlights continued concerns.

2. A specialised psychiatric unit

The CPT Findings

Given its concerns that Cornton Vale was not a suitable environment for those women who were seriously mentally ill, the CPT recommended in both its 2018 and 2019 reports that a **specialised psychiatric unit be established in Scotland** to care for them.³⁰⁶

The Scottish Government Response

The Government responded by noting the report of the Forensic Mental Health Services Managed Care Network (*'Women's Service and Pathways across the Forensic Mental Health Estate'*), and recognised that the *'needs of women who require high secure mental health care and treatment is an important matter'*.³⁰⁷ The Government referred to the issues being addressed by the Barron review. It also noted that the New Women's National Facility would *'accommodate people with complex needs and five Community Custody Units (CCU5), aimed at helping women remain connected with communities'*.³⁰⁸

³⁰⁴ See footnote 303, p.6.

³⁰⁵ Ibid. p.8.

³⁰⁶ CPT/Inf (2019) 29, para 96; CPT/Inf (2020) 28, para 37 (see footnotes 3 and 4).

³⁰⁷ CPT/Inf (2019) 30, paras 62 and 63 (see footnote 5).

³⁰⁸ CPT/Inf (2020) 29, para 18 (see footnote 6).

The Evidence Collected

The Barron Review in February 2021 noted 'there is an urgent need to make high secure provision available to women within Scotland'.³⁰⁹

Furthermore,

*'The lack of high secure care for women in Scotland raises human rights concerns on the grounds of gender discrimination. Requiring women to transfer to England for high secure care when men receive it in Scotland creates inequalities in respect of the right to a private and family life as well as access to the appropriate level of care and treatment. Additionally, women receiving high or medium secure care in England have no right to appeal against their detention in conditions of excessive security in the way that they would have in Scotland. There is agreement there should be high secure services for women located in Scotland. There is disagreement however as to how that should be done.'*³¹⁰

Some organisations, such as the Forensic Network Women's Services and Pathways, suggested that a high secure unit be co-located in an existing medium secure unit. An alternative view was for a service to be provided in the State Hospital. Given the urgency of the situation, the Barron Review recommended that provision be in State Hospital within 9 months of the publication of the report, with the Forensic Board considering the longer term approach.³¹¹

Researchers were also told that the absence of small units is surprising as these used to exist in the 1970s-1990s for male prisoners.³¹²

Assessment

The Government's response to the CPT recommendations is that the new women's facility will address women with complex needs and that it was awaiting the findings of the Barron Review. Although the Barron Review's recommendation is that the State Hospital be the immediate short-term solution, it is not clear how the Government now considers the creation of a new separate unit. As one stakeholder researchers spoke with stated, while supporting Barron's conclusion for the short-term, for the longer term: 'is this the right solution? ...I think we can do better'.³¹³

³⁰⁹ See footnote 10 p.26. See also Mental Welfare Commission, Independent Review into the Delivery of Forensic Mental Health Services – call for evidence, Response from Mental Welfare Commission, January 2020. [FinalResponse_MWC_ForensicReview-CallForEvidence.pdf \(mwscot.org.uk\)](https://www.mwscot.org.uk/FinalResponse_MWC_ForensicReview-CallForEvidence.pdf)

³¹⁰ Ibid.

³¹¹ Ibid. p.28, Recommendation 3.

³¹² Interview F. 15 March 2021

³¹³ Interview C. 12 March 2021.

3. Transfer to appropriate psychiatric facility

The CPT Findings

In its 2018 report the CPT stated in relation to women with serious mental disorders, it 'would appreciate being informed about whether considerations have gone into moving such women to a medium-secure hospital such as Rowanbank psychiatric facility'.³¹⁴ In its 2019 report, some improvement was noted in transfers and reduction in delays.³¹⁵ It went on to recommend:

'that the Scottish authorities pursue the target of ensuring women prisoners suffering from severe mental health disorders are transferred to an appropriate psychiatric facility within a period of two weeks'.

In addition, pending creation of specialist psychiatric unit for women in Scotland,

'the CPT recommends that those very few women prisoners requiring treatment in a high-secure mental health hospital do not languish in prison and that steps be taken to facilitate their transfer either to a medium-secure hospital in Scotland, with added security where necessary, or the State Hospital at Carstairs (if the unused bed capacity can be re-provisioned)'.³¹⁶

The Scottish Government Response

The Government in its responses to the 2018 and 2019 reports, noted the establishment of the short life working group to explore female pathways across the forensic estate and its recommendations that women facilities be co-located next to medium secure facilities.³¹⁷ It noted that if a woman met the requirements for medium secure care they would be transferred to somewhere like Rowanbank and those who require high secure care to Rampton Hospital. Acknowledging that '*[p]athways also need to be better developed for the more frequent scenario in which a woman requires transfer from prison to a low secure facility*',³¹⁸ it said this matter would be considered by the independent review (the Barron Review).³¹⁹ In the meantime, the Minister for Mental Health had requested information from the State Hospital Board as to what would be required to provide the necessarily facilities to treat women.³²⁰

³¹⁴ CPT/Inf (2019) 29, para 96 (see footnote 3).

³¹⁵ Ibid, para 36.

³¹⁶ Ibid, para 37.

³¹⁷ CPT/Inf (2019) 30, paras 104-105 (see footnote 5).

³¹⁸ Ibid, para 106.

³¹⁹ CPT/Inf (2020) 29, para 62 (see footnote 6).

³²⁰ Ibid, para 63.

The Evidence Collected

HMIPS in October 2020 acknowledged that although there were no women waiting for transfer when they visited, the issue of access to medium secure and high secure beds for women remained an issue, with 'significant delays' or transfer to England.³²¹ It noted that whilst the length of time to transfer had reduced, the delays were still a concern,³²² and that 'there is an expectation' that those with 'complex mental healthcare needs' would be transferred back to or held at Cornton Vale.³²³ The Barron Review in February 2021 highlighted data from the Forensic Network which indicated that the average time between being referred and transfer was 43.2 days.³²⁴ Those we interviewed for the purposes of this research observed 'significant delays' in transfers to hospital care in 2020, with a lack of medium secure beds as one of the causes as well as the potential that those in the community would be prioritised over those in prison who are considered to be in a secure environment.³²⁵ Others researchers spoke with questioned whether the system of transfer was yet suitable.³²⁶

As for the numbers awaiting transfer, HMIPS recorded 11 transfers between March and October 2020 of patients from Cornton Vale for mental health assessment and treatment and that '*[e]xternal assessments for transfer had been undertaken with the availability of 'Near me' described as a positive support for this if required*'.³²⁷ It recommended that NHS Forth Valley '*should ensure that the escalation process for delays in accessing appropriate in-patient treatment is clearly demonstrated and communicated to support planning of care for patients awaiting transfer*'.³²⁸

The Barron Review noted in February 2021 that there were a lack of forensic beds for women, and that the Forensic Network monitored transfers and had reported five from Cornton Vale between February 2018 and May 2020, although the Review considered '*it likely that this under-represents female transfers*', citing data from NHS Forth Valley clinicians of '*at least another four transfers by May 2020, and 11 altogether in the first 10 months of 2020*'.³²⁹ Researchers were also told in the course of interviews for this research that this data from the Forensic Network maybe incomplete because of gaps and inconsistencies in the way in which the information was captured in and from each prison.³³⁰

³²¹ Footnote 297 p.2.

³²² Ibid.

³²³ Ibid. See also Interview B. 10 March 2021.

³²⁴ See footnote 10, p.30.

³²⁵ Although some question this rationale: Interview B. 10 March 2021; Interview A. 11 March 2021

³²⁶ Interview F., 15 March 2021.

³²⁷ Footnote 297

³²⁸ Ibid.

³²⁹ See footnote 10, p.30.

³³⁰ Interview B. 10 March 2021

The Barron Review subsequently recommended, as noted above, that State Hospital be used as an immediate solution. There are differing opinions, which the Review acknowledges, of this approach.³³¹ However, researchers were also told that where in the past transfers had taken place between Cornton Vale and the State Hospital, this had worked well.³³²

The MWCS, reporting in July 2021, noted where there delays in transferring prisoners to hospital, symptoms had escalated and that in a few cases they considered that women should have been referred at an earlier stage. ‘Repeated inequalities’ were found, ‘with women in prison being unable to readily access intensive psychiatric care unit beds or secure forensic female beds’.³³³

Assessment

As the Barron Review indicates, the delays are not within the two weeks recommended by the CPT. In addition, there was still significant challenges with the availability of beds in appropriately secure facilities. The Barron Review recommends that the Short Life Working Group set up to respond to the report on Women’s Service and Pathways should regroup and complete its consideration of pathways across medium, low secure and community settings.³³⁴ The proposal that consideration should be given for immediate transfer to State Hospital in the interim is reiterated in the Barron Review. The MWCS notes continued concerns with the impact of delays on women’s mental health.

4. Multi-faceted approach for those with personality/behavioural disorders

The CPT Findings

The CPT has been recommending since 2012 for the needs of prisoners with personality/behavioural disorders to be addressed through ‘therapeutic tailor-made programmes’ and where they are not eligible for transfer then ‘a multi-faceted approach should be adopted, involving clinical psychologists in the design of individual programmes, including psycho-social support and treatment’.³³⁵ While it noted in its 2019 report that there was ‘some improvement in the regime for women prisoners held on Rule 41, there remained an insufficient provision of psycho-social support for the women concerned. The CPT reiterates its recommendation that the Scottish authorities invest greater efforts and resources to provide more psycho-social support and treatment for women place on Rule 41 orders, and if necessary, increase the presence of clinical psychologists at Cornton Vale Prison...to achieve this’.³³⁶

³³¹ Interview B. 10 March 2021

³³² Interview B. 10 March 2021

³³³ See footnote 303, p.8.

³³⁴ See footnote 10, p.30, recommendation 4.

³³⁵ CPT/Inf (2019) 29, para 94. CPT/Inf (2020) 28, para 28 (see footnotes 3 and 4).

³³⁶ CPT/Inf (2020) 28, para 31 (see footnote 4).

The Scottish Government Response

In its response to the CPT's report in 2019 it noted that NHS Forth Valley was *'in the initial stages of discussing a multi-disciplinary therapeutic model, with psychology leading. A model of clinical care is being written looking at what can be done within the current resources'*.³³⁷ It outlined work that had been undertaken during the pandemic including in-cell support material developed by prison psychologists and other healthcare workers, guidance for prison staff on how to support those struggling with isolation, and access to a phone service for mental health support.³³⁸ Furthermore, it had noted *'gender-specific and consistent trauma informed environments and services is integral to the overarching Strategy for Women in Custody and cited some examples of progress made to date'*.³³⁹ Feedback in the context of the present research from NHS Forth Valley notes that *'Cornton Vale runs the Multi-Disciplinary Mental Health Team meetings ("MDMHTMs") bi-weekly opposite the Clinical Team Meeting ("CTM"). The CTM is held every other week. The MDMHTMs are the responsibility of the Scottish Prison Service ("SPS") and are chaired by SPS senior management. These meetings include representation from NHS psychology/mental health nurses, prison-based social work, Chaplaincy, and first line managers, and actions from this meeting are fed back to the wider SPS. The Clinical Team Meeting (CTM) a bi-weekly and purely clinical, with attendance from psychology, psychiatry, speech and language therapy, mental health nurses, and mental health occupational therapy. Outcomes from the CTM are fed back, if appropriate, to the MDMHT and vice versa'*.³⁴⁰

The Evidence Collected

HMIPS reported in October 2020 that there was *'significant work underway to addressing the CPT recommendations made in respect of a different approach to segregation, including training for staff in gender specific trauma informed approaches and in particular for dealing with multifaceted complex needs. NHS mental health clinical teams are now working in partnership with SPS operational teams to support women with complex and multifaceted needs'*.³⁴¹ This included those with long-term conditions continuing to be identified on admission, with nursing staff aware of their specific needs and meetings every two weeks between the healthcare team and SPS, in respect of which: *'[b]oth SPS and healthcare staff indicated that communication is good and any patients causing any concern will be reviewed'*.³⁴² It also reported that:

³³⁷ CPT/Inf (2020) 29, para 48 (see footnote 6).

³³⁸ Ibid.

³³⁹ Ibid, para 19.

³⁴⁰ Notes on file with authors.

³⁴¹ Footnote 297, p.26.

³⁴² Ibid.

*'The mental health team continued to accept referrals and assess patients identified as requiring support during the pandemic. Patients had access to an initial assessment within one to two days of receipt of referral and there is currently no waiting list. Access to mental health services has been supported through the provision of 'Near Me' consultations. Team discussion and meetings have also continued through use of virtual platforms. Where necessary Psychiatry visits take place and mental health nursing staff provide nursing input within the halls while complying with PPE requirements. Following risk assessments by SPS, activity packs and art materials were given to patients to help support their mental wellbeing. Physical education instructors also provided health and exercise regime information to individuals. TTM [Talk to Me] case conferences and risk management have continued. The usual protocol for transfer of a patient to an in-patient mental health unit also continued. Access to individual psychology sessions was paused at the start of the pandemic in line with the NHS Forth Valley community mobilisation plan. We heard this resulted initially in an increase of people waiting to access psychological therapies. As individual face-to-face sessions service recommenced in early summer this was addressed. Clinical team meetings, case formulation meetings and mental health multi-disciplinary team meetings had continued using a virtual platform. The appointment of a full-time Clinical Psychologist has increased the capacity to offer patient appointments and to provide supervision and training for staff.'*³⁴³

Commenting specifically on the CPT recommendations and that HMIPS had itself looked at mental health provision, it noted the reception process where all women were seen by a nurse from the mental health team; and where placed on Talk to Me (TTM), such staff were involved in the initial assessment and undertook daily visits, which HMIPS consider to be good practice. Also good practices identified were the 'comprehensive care plans' shared with SPS staff and patients on Rule 41 being seen on a daily basis by nurses from the mental health team. Although it acknowledged that delivery of therapeutic interventions reduced because of the pandemic, *'there was evidence within care plans of involvement from across the multi-disciplinary team and input from other available professions and agencies, such as education, translator services and Chaplaincy'*, and a room was allocated in a residential hall for one-to-one activity and for training. Training, such as 'the Decider Skills' has taken place and will be offered to health and SPS staff at Cornton Vale. In addition, it commented on *'evidence of an ongoing programme of development to increase the opportunities for therapeutic interventions with patients by the mental health team'*.³⁴⁴

³⁴³ Footnote 297, p.26.

³⁴⁴ Ibid. pp.26-29.

With respect to trauma-informed care, those interviewed for this research observed that a proposal for trauma-informed care and ethos including training had been put together and would be rolled out.³⁴⁵ Some speech and language therapy had been provided last year which was seen as having a positive impact but it was noted that this may not have been offered to those in SRU.³⁴⁶

MWCS, following-up on the CPT's recommendation specifically, reported in July 2021 that:

*'When we asked mental health managers about progress in this area, we were told that one to one psychology support is now offered in individual cases and that referrals can be made for women with complex needs and behavioural disturbance. In these cases, psychology have on occasion been involved in providing formulation and offering consultation and advice to prison and mental health staff. Health managers told us that enhancement of the multidisciplinary team, and in particular the recent addition of mental health OTs had made a difference, particularly for women held in segregation. We were told the OTs were involved in supporting women through Talk to Me reviews and working with those on Rule 41 where appropriate. This support included sensory work and help with structuring daily activities. The mental health team spoke of this support already having a significant positive impact on women's experience. We welcome the reported progress being made, but there is still a lot of improvement work needed. It is hoped that the new Trauma Informed Strategy will begin to better support this vulnerable group of women once it is operational.'*³⁴⁷

Assessment

HMIPS noted some 'significant' work to address the CPT recommendations, including training and examples of good practice on admission and care plans and there is evidence of positive impact by, for example, speech and language therapists. MWCS also acknowledge improvements.

5. Staffing levels

The CPT Findings

The CPT recommended in 2018 an increase in health care resources, noting in 2019 that staffing had in fact reduced.

'However, the number of mental health nurses had been reduced from six to four and the presence of the GP had not been increased. The CPT recommends that the presence of the GP and/or advanced nurse practitioner be increased to the equivalent of three full days per week at Cornton Vale Prison. Equally, given

³⁴⁵ Interview B. 10 March 2021.

³⁴⁶ Interview B. 10 March 2021.

³⁴⁷ Footnote 303, p.39.

*the profiles and increasing mental health care needs of the prisoner population at Cornton Vale Prison, the CPT recommends that the number of mental health care nurses be increased by two. The Committee also invites the authorities to increase the input of the clinical psychologists at Cornton Vale Prison to assist in the formulation of more extensive psychosocial support and treatment programmes for women prisoners held on Rule 41 orders.*³⁴⁸

The Scottish Government Response

The Government responded that there was a ‘fully functioning multi-disciplinary mental health team’, listing among them 6.8 WTE mental health nurses, a mental health team leader; 0.6 WTE addictions/mental health specialist nurse, and additional staff available on some days of the week (two Consultant Psychiatrists over three sessions per week; two Clinical Psychologists one day per week; an Occupational Therapist and an Occupational Therapist assistant, one day per week; and a Speech and Language Therapist one day per week).³⁴⁹ In addition, it considered that as there were a low number of prisoners at that time, staffing was sufficient. However, the deployment of psychological resources was under review and the ‘high turnover of staff and building work has disrupted the process of running nurse-led low intensity psychology groups at Cornton Vale’ and there would be ‘clinical psychology plan to facilitate a group in the near future without the need for additional nursing support’.³⁵⁰

The Evidence Collected

HMIPS reported in October 2020 that in general ‘safe staffing levels have been maintained in the establishment throughout the pandemic’, although recruitment was ongoing and there were at that time three Band 5 mental health nurse vacancies, citing various initiatives to encourage applications.³⁵¹ Those interviewed for this research also commented that not all nursing staff vacancies at Cornton Vale had been filled and this was reflective of recruitment in health across Scotland generally.³⁵² Some considered Cornton Vale to be well-staffed in terms of mental health capacity, when compared with other prisons across Scotland.³⁵³

Assessment

Although there appear to have been attempts to increase staffing provision at Cornton Vale and some considered that it was well-resourced when compared with other prisons, there are vacancies due to challenges in health recruitment across Scotland.

³⁴⁸ CPT/Inf (2020) 28, para 34 (see footnote 4).

³⁴⁹ CPT/Inf (2020) 29, para 99 (see footnote 6).

³⁵⁰ Ibid, para 52.

³⁵¹ Footnote 297, p.32.

³⁵² Interview B. 10 March 2021; Interview A. 11 March 2021

³⁵³ Interview B. 10 March 2021

F. Segregation

The CPT made a number of recommendations regarding segregation in male prisons. These included concerns around prolonged segregation, the use of disciplinary sanctions, the need for purposeful activities as well as therapeutic and step-down facilities.

1. Breaking the cycle

The European Prison Rules note **that the longer a prisoner is separated from others, the more steps shall be taken to mitigate the negative effects of their separation by maximising their contact with others and by providing them with facilities and activities**'.³⁵⁴

The CPT Findings

The CPT in 2018 found that many prisoners on SRU had 'become institutionalised', preferring to remain in SRU where it was quiet and ordered. This resulted in the SRU being at full occupancy, and there was a 'steady number of segregated carousel prisoners who pass through each SRU for several months at a time before transfer to the next one'.³⁵⁵ **The CPT therefore recommended that the authorities 'seek alternative solutions to break the cycle and reduce the number of prisoners held in prolonged segregation in the current SRU system', and 'consider developing step-down facilities to provide a feasible alternative to prolonged segregation' and 'consider investing more in the concept of the establishment of more small therapeutic units that can provide a robust psycho-social support system to engage with these prisoners'**.³⁵⁶ In 2019 the CPT repeated its concerns and recommendations.³⁵⁷

The Scottish Government Response

The government in response in 2018 noted that a short-life working group had reviewed the role and purpose of SRUs and made some initial recommendations, although noting in its response to the CPT's 2019 report that recommendations '*were limited and did not consider in sufficient depth the concerns raised regarding long stays in SRUs*'.³⁵⁸ Consequently, the work had been '*recommissioned to fully consider all aspects of the role and purpose of SRUs, utilising research, (clinical) expertise and best practice to achieve improved practical outcomes*'.³⁵⁹ It further noted the delivery of psychology

³⁵⁴ European Prison Rules, 1 July 2020, Rec(2006)2-rev, s.53A(f).

³⁵⁵ CPT/Inf (2019) 29, para 74 (see footnote 3).

³⁵⁶ Ibid, para 74.

³⁵⁷ CPT/Inf (2020) 28, para 8 (see footnote 4).

³⁵⁸ CPT/Inf (2020) 29, para 7 (see footnote 6).

³⁵⁹ Ibid, para 7.

led training for staff in SRUs and a head of psychology for the Prisoner Management Assurance Group (PMAG) membership. Changes had also been made to the SRUs with new door hatches and the issues were being considered in the building of new prisons.³⁶⁰

In addition, the Government responded that the PMAG would *‘offer additional resources to support specialist work with individuals to support their reintegration into the main prison system. All case management plans for those held over three months are reviewed on a monthly basis at the PMAG meeting’*.³⁶¹ As for step-down facilities, it stated that these are, with the individual, *‘created locally by developing bespoke but robust reintegration plans that provide meaningful opportunities for those exiting SRU conditions, including through gradual reintegration into mainstream activities’*.³⁶²

The Evidence Collected

HMIPS reported in November 2020 that it would be monitoring the issue in the forthcoming year.³⁶³ As there are individual cells in the SRU then those interviewed for this research commented that there may be a reluctance for some to return to the noise of a shared cell and that whilst SRUs tend to be well regulated, there were concerns about social isolation for those who were not in SRU but locked in their cells for the vast majority of the day.³⁶⁴ Others considered a cultural shift was required in order to address the issue properly³⁶⁵ and some highlighted the practice of shifting ‘difficult’ prisoners from the SRU of one prison to another, without ever integrating such prisoners in the mainstream prison population. Although the enormous challenge of such integration was acknowledged, it was nevertheless noted that such a ‘carousel’ of segregation is not compatible with Scotland’s human rights obligations.³⁶⁶

Assessment

In conclusion, while HMIPS reports have focused on other aspects of segregation, as noted below, this issue has not received attention as yet.³⁶⁷ Evidence from this research suggests that there has been little improvement.³⁶⁸

³⁶⁰ CPT/Inf (2020) 29, paras 8-9 (see footnote 6).

³⁶¹ CPT/Inf (2019) 30, paras 91-92; CPT/Inf (2020) 29, para 10 (see footnotes 5 and 6).

³⁶² CPT/Inf (2019) 30, para 88 (see footnote 5).

³⁶³ See footnote 194, p.34.

³⁶⁴ Interview A. 11 March 2021

³⁶⁵ Interview F. 15 March 2021; Interview C. 12 March 2021

³⁶⁶ Interview C. 12 March 2021.

³⁶⁷ Interview F., 15 March 2021

³⁶⁸ Interview C., 12 March 2021

2. Disciplinary sanctions and extended segregation

CPT Guidelines on Solitary Confinement note it should be used as a disciplinary punishment 'only in exceptional cases and as a last resort, and for the shortest possible period of time', and the maximum period should be 14 days for a given offence, and 'preferably lower'.³⁶⁹

The CPT Findings

The CPT recommendation in 2018 was that:

'...the Scottish authorities take the necessary steps to put in place well-developed individual regime plans tailored specifically for persons held in segregation under Rule 95 with a view to assisting them to return to a normal regime, in light of the above remarks.

Further, the CPT would appreciate being sent more information on the due process safeguards regarding the use of disciplinary sanctions of 14 days' segregation for those inmates in the SRU who refuse to reintegrate into the mainstream prison population'.³⁷⁰

The Scottish Government Response

The Government noted a short life working group was making recommendations on SRUs, and gave further information on due process.³⁷¹ It further responded to the CPT's 2019 report clarifying the process where an individual was removed for three or more months, highlighting further 'SPS has evaluated this policy approach and some notable successes in what previously were problematic cases have been achieved'.³⁷² It then continued that no further action was likely until restrictions for the pandemic were lifted, and that '*a different style of SRU' was being designed for the new prisons which could include, for example, 'the provision of secure interview facilities and virtual visits to improve family contact'*.³⁷³ Commenting on a draft of this report, the Scottish Government noted that a number of additional measures were in place including encouraging prisoners to return to the mainstream, holding a case conference after 28 days, and referral to a Prisoner Monitoring and Assurance Group for advice if there was refusal for three months or more. Daily notes were recorded and a member of the Senior Management Team would speak to those in SRU daily. The Health Board Provision of Healthcare in Prisons (Scotland) Directions 2011, direction 5 of the Healthcare in Prisons Directions, require a medical practitioner to visit an individual removed from association as soon as possible and review their condition once at least every seven days.³⁷⁴

³⁶⁹ CPT, Solitary Confinement in Prisons, CPT/Inf(2011)28-part2, para 56(b). [16806cccc6 \(coe.int\)](#)

³⁷⁰ CPT/Inf (2019) 29, para 80 (see footnote 3).

³⁷¹ CPT/Inf (2019) 30, para 93 (see footnote 5).

³⁷² CPT/Inf (2020) 29, para 10 (see footnote 6).

³⁷³ Ibid, para 10.

³⁷⁴ Notes on file with authors.

The Evidence Collected

HMIPS' inspection report on a visit to Grampian YOI in February 2019 raised concerns about the use of an auxiliary 'silent' or special cell in the SRU which had been used 17 times between July 2018 and January 2019, with time spent in there ranging from a few hours to overnight. Paperwork was found to be inconsistent and it recommended a *'more proactive approach to addressing challenging behaviour as opposed to the repeated use of this cell, particularly for those who were located there on more than one occasion'*, and for a significant reduction in its use *'with a view to ceasing it all together'*.³⁷⁵

However, on a visit to Barlinnie in July 2020, HMIPS visited the SRU and those on Rule 95. They noted that it was at 50% capacity, *'the lowest percentage of prisoners we have seen in an SRU since LVs had commenced. One prisoner was on a Rule 95(1), three prisoners were on Rule 95(11), one on Rule 95(12), one on a refusal to return to mainstream, and one on Rule 41 for mental health issues'*.³⁷⁶ They considered paperwork to be lawful, narratives 'comprehensive' and daily logs indicated that daily showers, fresh air and telephone calls had been offered, although the gym was shut. One prisoner had made numerous complaints, and 12 out of his 134 complaints had been upheld by the GIC. He confirmed he had been offered access to daily entitlements but did not always choose to take them.³⁷⁷

Assessment

In conclusion, while the issue appears to be under consideration by various working groups, these have yet to produce outcomes which result in changed practices. There has been limited attention on this issue in HMIPS reports.

3. Minimum contact and levels of exercise and purposeful activities

Prolonged solitary confinement is prohibited under Rule 43(1)(b) of the Nelson Mandela Rules, with confinement being defined as **'22 hours or more a day without meaningful human contact'**, and it will be prolonged if over 15 consecutive days.³⁷⁸

CPT standards, Solitary Confinement in Prisons,³⁷⁹ provide that those in solitary confinement **'should be subject to no more restrictions than are necessary for their safe and orderly confinement must be followed'** and **'special efforts should be made to enhance the regime of those kept in long-term solitary confinement, who need particular attention to minimise the damage that this measure can do to them'**.

³⁷⁵ Full Inspection Report of YOI Grampian, 4-15 February 2019, p.65. [SCT06193394641.pdf](https://www.prisoninspectorscotland.gov.uk/SCT06193394641.pdf) ([prisoninspectorscotland.gov.uk](https://www.prisoninspectorscotland.gov.uk))

³⁷⁶ See footnote 192, p.13.

³⁷⁷ See footnote 192, p.13.

³⁷⁸ Nelson Mandela Rules, Rule 44.

³⁷⁹ See footnote 369, para 61.

The CPT Findings

The CPT made numerous recommendations with respect to minimum level of contact, exercise and purposeful activities for those in SRUs, noting that in some prisons (citing Barlinnie, Edinburgh, Grampian and Shotts) prisoners were in their cells for 23-24 hours a day for several weeks, maybe months.³⁸⁰ Indeed, it used Article 8(5) of the Convention to require that immediate action be taken to ensure minimum daily levels of outside exercise and meaningful human contact,³⁸¹ stressing that **'the longer the measure of Rule 95(11) segregation continues, the more resources should be made available to attempt to (re)integrate the prisoner into the main prison community'**.³⁸²

In its 2018 report the CPT specifically recommended that:

- ◆ 'prisoners placed on non-offence protection for more than a short period are provided with a range of purposeful activities, education and sport and risk-assessed association time and that all segregated prisoners should be offered at least two hours of meaningful human contact every day, preferably even more';
- ◆ 'the Scottish authorities ensure that all segregated inmates, and particularly those inmates who are held outside of the SRUs under Rule 95 orders, are offered at least one hour of outdoor exercise every day'.³⁸³

The Scottish Government Response

The Government response was that the PMAG offers support to individuals and there was a short life working group looking at SRUs. However, concerns were highlighted to researchers by one interviewee that these groups were not necessarily independent of government and that their consideration of the issues could take years and might not lead to any concrete outcomes.³⁸⁴

In response to the Article 8(5) notice, the Government stated that a Governor's and Manager's Action Notice was issued, reminding all senior management of the legal requirements namely Rule 87 of the Prison and Young Offenders Institution (Scotland) Rules 2011 which requires prisoners be offered not less than one hour every day for exercise or in the open air.³⁸⁵

³⁸⁰ CPT/Inf (2019) 29, para 6 (see footnote 3).

³⁸¹ Ibid, paras 63 and 74.

³⁸² Ibid, para 74.

³⁸³ CPT/Inf (2019) 29, p. 6 and para 63 (see footnote 3).

³⁸⁴ Interview C., 12 March 2021

³⁸⁵ CPT/Inf (2019) 30, para 90 (see footnote 5).

The Evidence Collected

Reporting on HMP Edinburgh prior to the pandemic, HMIPS highlighted concerns for offence and non-offence protection prisoners in Glenesk Hall, noting that they did not have access to the same regime as others in the same category: *‘The logistics of population management, compounded by issues of overcrowding across the estate, prevented them from participating with other prisoners in their categories’*, resulting in them spending *‘a disproportionate amount of time within their cells, including meal times, which may amount to effective solitary confinement, as it is understood there may be instances where it could be up to 22 hours a day’*.³⁸⁶ It gave purposeful activity a ‘poor performance’ rating and recommended at that time that *‘HMP Edinburgh should ensure all eligible prisoners and all prison populations have an opportunity to attend an appropriate range of employment and training opportunities’*.³⁸⁷

HMIPS in their Annual Report published in November 2020 noted that *‘there were many examples of good and innovative practice’*,³⁸⁸ and provision of in-cell activities and access to mobile phones.³⁸⁹ However, for the general prison population and in the context of the pandemic many prisoners were getting limited time out of their cell (maximum two hours) and *‘very little social interaction with other prisoners apart from when queuing in small groups for meals or to use phones or communal showers’*. Work, for example, had decreased because of safety requirements due to COVID-19.³⁹⁰ However, HMIPS continued to have particular concerns for prisoners on offence and non-offence protection, noting:

- ◆ On a visit to HMP Edinburgh in May 2020, that ‘All prisoners had access to 30 minutes of fresh air, unless on Rule 41’, and calling in general for in-cell learning packs to be available to all prisoners.³⁹¹
- ◆ That those on SRU did not have access to the same regimes as others: ‘...offence and non-offence protection prisoners suffered from a more restrictive regime than other prisoners, with the risk of being locked up for unacceptably long periods. The main concern for Inspectors, stemming from high staff absence, was the frequency with which work sheds had to be cancelled to provide staff to cover essential core duties in the residential areas’.³⁹²

³⁸⁶ See footnote 165, p. 33.

³⁸⁷ Ibid. p. 92.

³⁸⁸ See footnote 189, p.57.

³⁸⁹ See footnote 215, p.2; HMIPS COVID-19 Pandemic Emergency Liaison Visits – Prisons and Court Custody Units Report on a Liaison Visit to HMP Shotts (3 June 2020), p.2. [HMIPS – Report of Liaison Visit to HMP Shotts – 3 June 2020.pdf \(prisonsinspectoratescotland.gov.uk\)](#). See also Independent Prison Monitoring HMP Shotts Quarterly Report July – Sept 2020, which noted re-opening of work sheds and education provision and the gym. [HMP Shotts_2.pdf \(prisonsinspectoratescotland.gov.uk\)](#)

³⁹⁰ HMP Edinburgh Quarterly Report April – June 2020; [HMP Edinburgh_1.pdf \(prisonsinspectoratescotland.gov.uk\)](#). Independent Prison Monitoring Bulletin HMP Edinburgh July-September 2019; [Edinburgh_2.pdf \(prisonsinspectoratescotland.gov.uk\)](#). See also footnote 201

³⁹¹ See footnote 192, p. 15-16 and Action Point 7.

³⁹² See footnote 189, p.13.

- ◆ 'Access to fresh air for those on Rule 40/41: while it was reported that all establishments afforded all prisoner categories time in the fresh air, those in isolation under Rule 41 (that is confirmed COVID-19 positive/symptomatic/contact with confirmed case) were in some prisons not permitted to leave their cell for up to 14 days during the period April-June 2020. Staff explained that the decision to implement was taken following Health Protection Scotland (HPS) guidance. They also quoted logistical reasons (including – if it were to happen – the need to clean any area the isolated prisoners traversed). While this may be the case, it left isolated prisoners unable to exercise their basic right to time in the fresh air. SPS guidance allowed access to fresh air for those on Rule 41 based on local risk assessments, but allowed restrictions to what the Governor-in-Charge (GIC) considered deliverable alongside meeting other statutory requirements. As an example, some prisons restricted COVID-19 isolated prisoners to accessing fresh air only three times per week. HMIPS continued to challenge this interpretation, arguing that every prisoner should have a right to fresh air every day for at least one hour. Recording time out of cell: there was a variance in the method establishments use to record time in the fresh air and time out of cell. Some recorded solely the length of the activity being undertaken out of cell, whereas others also included the time prisoners take to walk to and from that activity'.³⁹³

Assessment

In conclusion, the concerns raised by the CPT in 2018 remain.³⁹⁴ The pandemic has moved the focus away from SRU because social isolation and lack of access to purposeful activities is affecting the entire prison population.³⁹⁵

³⁹³ [National Report On Inspection And Monitoring Activity And Findings, April-September 2020](#), pp.2-3. See also [HMIPS Chief Inspector's Annual Report 2019-2020](#), November 2020, p.13 which notes concerns of social isolation for non-offence prisoners 'who were locked in their cell for long periods with very little access to any regime', to which the Governor 'immediately responded...and changes were made to provide time out of cell'.

³⁹⁴ Interview F. 15 March 2021

³⁹⁵ Interview A. 11 March 2021

G. Mental health provision

The European Prison Rules provide those suffering from mental illness should be detained in ‘an establishment specially designed for the purpose’, or if not possible then there should be ‘special regulations that take account of their status and needs’.³⁹⁶ In addition, prisoners should be provided with medical services which ‘seek to detect and treat physical or mental illnesses or defects from which prisoners may suffer’³⁹⁷ Medical practitioners should see prisoners as frequently as they would in the community and the prison should ‘provide for the psychiatric treatment of all prisoners who are in need of such treatment’.³⁹⁸

The CPT Findings

Following its 2018 visit, the CPT made a specific recommendation concerning the appropriate levels of healthcare, including mental health, staff at various establishments.³⁹⁹

- ◆ **at Barlinnie Prison**, three full-time posts of GP should be provided (i.e. increased by two full-time equivalent of GPs) and the mental health nurse positions should be increased by three (i.e. to a total of six);
- ◆ **at Cornton Vale Prison**, one full-time post of GP should be provided and the presence of the dentist should be increased to full-day weekly visits. Further, the vacant posts for a team leader for mental health and addiction and a prison healthcare addiction worker should be filled;
- ◆ **at Edinburgh Prison**, for the size and diverse needs of the mixed category prisoner population, two full-time posts of GP should be provided (i.e. increased by 1.5 fulltime equivalent of GPs) and the presence of a psychiatrist should be increased. Further, the vacant post for an addiction nurse should be filled;
- ◆ **at Grampian Prison**, an additional full-time GP should be provided and the presence of the psychiatrist should also be increased. Further, there is a need for a dentist to spend a full day a week in the establishment. Also, the vacant posts for four addiction nurses should be filled; and
- ◆ **at Shotts Prison**, the presence of GPs should be increased to the equivalent of one and a half full-time posts (i.e. increased by one full-time GP) and a further two psychiatric sessions should be provided. Also, the vacant post for a primary care nurse should be filled’.

³⁹⁶ European Prison Rules, Rule 12.1 and 12.2.

³⁹⁷ European Prison Rules, Rules 40.4 and 40.5.

³⁹⁸ European Prison Rules, Rules 43.1 and 47. Nelson Mandela Rules, Rule 24.

³⁹⁹ CPT/Inf (2019) 29 at para 110 (see footnote 3).

The CPT also highlighted good practice, at Edinburgh Prison, where a number of nurses, including all five mental health nurses, were qualified in non-medical prescribing.⁴⁰⁰ The CPT recommended this to be replicated across the Scottish prisons.

During its 2018 visit, the CPT also observed a situation of a female prisoner at Grampian Prison who had undergone the amputation of a leg during imprisonment without receiving any mental health support, although she had made several requests for this. The CPT considered that the absence of any mental health support represented a form of medical negligence and recommended that this person, as well as others who might be in similar situation, be given rapid access to the mental health team.⁴⁰¹

The Scottish Government Response

In response to the recommendation, the Government initially noted the increase in staffing levels since 2006.⁴⁰² It noted that a fully integrated health and social care workforce plan would be published in 2019 and highlighted a commitment by the Scottish Government to increase access to the overall mental health workforce by 800 additional staff.⁴⁰³ Commenting on a draft of this report, the Scottish Government Directorate for Mental Health and Social Care notes that 'as of 1 January 2021, an additional 560 whole time equivalent (WTE) mental health posts have been recruited to under this commitment. This includes over 41 WTE additional mental health posts in prisons, covering a range of roles from support roles, MH nursing roles, psychology/psychiatry and other MH specialist roles and consultant roles'.⁴⁰⁴

Turning to specific establishments, the Government explains that at the Grampian Prison, psychiatrists are present for 12 sessions per month (one band 6 at 0.5 WTE) and a 0.5 WTE post is currently being advertised. With regard to nursing staff, there are 2.8 WTE band 5 nurses and a full time post being advertised.⁴⁰⁵

In relation to the specific situation of the female detainee, the Government, while noting the CPT's recommendation, stated that it does not consider it clinically necessary, or appropriate, for every surgical procedure to be accompanied by an automatic mental health assessment.⁴⁰⁶ When a patient also has significant psychiatric problems or seeks mental health support, it must be clear to personnel in all healthcare settings how to access mental health services and all prisons in Scotland have mental health teams with straightforward referral mechanisms and readily available access to relevant staff.

⁴⁰⁰ See footnote 3.

⁴⁰¹ Ibid, at para 119.

⁴⁰² CPT/Inf (2019) 30, at para 122 (see footnote 5).

⁴⁰³ Ibid, at para 125.

⁴⁰⁴ Notes on file with authors.

⁴⁰⁵ CPT/Info (2019)30, para 124.

⁴⁰⁶ Ibid, at para 135.

Further information provided by the NHS Forth Valley on this draft report note a commitment to increasing staffing for mental health provision, including, specifically in prisons.⁴⁰⁷

The Evidence Collected

Overall, stakeholder's reports since the CPT's visit in 2018 do not reveal issues over the appropriate mental health staffing levels, albeit issues over healthcare staffing levels in HMP Grampian⁴⁰⁸ are reported without specifying whether this concerns also mental health staff.

In terms of the service provided, although some delays in terms of healthcare provision are noted, the stakeholders report services being provided and treatments being available, although with some delay at times.⁴⁰⁹ Notably, the impact of the pandemic upon the provision of healthcare (including mental health provision) is not reported as significant and/or negative though some delays have occurred which are reported to be the same as faced in the community: *'There is no waiting list for access to the mental health nursing team and routine appointments and review clinics have continued. This is very good practice. All patients were provided with self-help literature to support them during the pandemic. The mental health nursing team has also been proactive in arranging materials for prisoners such as crosswords and colouring books to help keep them occupied, alleviate stress and support relaxation'*.⁴¹⁰

The interviews conducted for this research unanimously confirm an overall shortage of mental health professionals in Scotland, and especially in the Highlands and Islands, and record challenges faced not only by the prison service, but also other services, to recruit the requisite numbers of mental health staff.⁴¹¹

⁴⁰⁷ Scottish Government, Mental health workers: quarterly performance reports <https://www.gov.scot/publications/mental-health-workers-quarterly-performance-reports/>; and Mental Health Strategy 2017-2027, <https://www.gov.scot/publications/mental-health-strategy-2017-2027/>.

⁴⁰⁸ HMIPS, [Report on Return Visit to HMP YOI Grampian, 1-3 October 2019](#), pp.3-4; HMIPS, [Report on Return Visit to HMP YOI Grampian, 1-3 October 2019](#), pp.15-17.

⁴⁰⁹ HMIPS, Independent Prison Monitoring, [HMP Edinburgh Quarterly Report April – June 2020](#); HMIPS, Independent Prison Monitoring, [HMP Barlinnie, Quarterly Report April – June 2020](#).

⁴¹⁰ See footnote 192 pp.21-23; See also HMIPS, Independent Prison Monitoring, [HMP Barlinnie, Quarterly Report July-September 2020](#); HMIPS, Independent Prison Monitoring, [HMP Grampian, Quarterly Report April – June 2020](#); HMIPS, COVID-19 Pandemic Emergency Liaison Visits HMP [Shotts](#), see [footnote 389](#), pp. 18-19.

⁴¹¹ Interview B. 10 March; Interview A. 11 March interview; Interview C., 12 March

Assessment

The Government response does not explain how the increase in staffing levels in NHS Scotland relate to the staffing levels recommended by the CPT in specific prisons. Therefore, specific questions relating to the staffing levels in individual prisons remain. The evidence gathered indicates serious challenges around recruiting mental health professionals across Scotland and not just in prisons. However, its stated commitment to increasing staffing levels including in prisons is to be welcomed.

Interestingly, the Government in its response does not address the good practice example highlighted by the CPT and it is thus unclear whether there are any plans to replicate the highlighted practice across Scotland.

The Government has not adequately replied in relation to the specific case raised as no update about the female prisoner is given. The Government also seems to be rejecting the wider recommendation by the CPT as it indicates that it does not consider mental health support necessary for every major operation. No stakeholder's reports on this situation have been identified.

Conclusions and Recommendations

In conclusion, two strands of overarching observations emerge. These can be summarised as procedural and thematic observations, underpinning issues impacting on a range of CPT recommendations.

1. Procedural observations: a strategic approach required

The NPM welcomes evidence pointing to a number of changes, made in both prison and police settings, to address CPT recommendations. However, the research notably indicates many CPT recommendations which have yet to be implemented. Some recommendations have been outstanding for a decade and the implementation of these should therefore be prioritised. It is the duty of the Scottish Government to implement all recommendations made by the CPT.

The research was unable to identify a strategic approach by the Scottish Government to implement all the CPT recommendations, nor a mechanism set up to monitor the progress of such implementation. At times, the approach of the Government has been to utilise as its response to the CPT existing review processes addressing issues that fall broadly under those identified by the CPT. One such example is the *Independent Review of Complaints Handling, Investigations and Misconduct Issues in Relation to Policing* by Dame Elish Angiolini. Although this was initiated prior to the CPT visit in 2018, the Scottish Government centred its response to the CPT in both 2019 and 2020 concerning the police complaints handling system on the awaited outcomes of this Review. However, this Review was not set up specifically to address the recommendations by the CPT. Whilst the Government has announced the acceptance of the majority of the recommendations made by the Review and commenced work on their implementation, there are recommendations which it has not accepted. The research has not been able to identify any examination on behalf of the Scottish Government as to whether the recommendations of the Review and of the CPT coincide. Consequently, it is not possible to ascertain whether and to what extent all the recommendations of the CPT concerning the police complaints handling system are being implemented.

Similarly, the research noted various working groups established to examine an issue underpinning the recommendation made by the CPT to seek to identify ways of addressing it. While, in principle, this is a commendable approach allowing for stakeholder involvement and broader consultations, there seems to be two key problems: (i) without an overall, systemic approach, the work of these various working groups do not feed into a wider reform strategy/process and there is a risk of contradiction; (ii) it is not yet or always clear what action the Government will take in response. The Government should ensure there is institutional memory in the approach to the consideration of CPT recommendations and connectivity between various initiatives to implement the individual recommendations. Greater transparency would be achieved through the adoption of a systematic recording of the measures taken.

Equally, for many of the CPT recommendations it was difficult to make an assessment as to the extent to which they had been implemented because of the lack of publicly available data. The Scottish Government provided researchers with some detailed responses on an earlier draft of this report and these have been incorporated. However, there were areas where the Government outlined that it had no data to support its submissions. Data on implementation of each of the CPT recommendations should be collated on a regular basis. This information should be publicly available and easily accessible. The absence of such also contributed to the overall challenge faced by the researchers in terms of the available data.

2. Thematic observations: due implementation of the presumption of liberty

The Criminal Justice (Scotland) Act 2016 has been praised for progressively incorporating the presumption of liberty. Despite this, the research points to a gap in how this principle is being translated into practice. This is leading to, for example, detention in police stations which is longer than absolutely necessary, as well as contributing to overcrowding in prisons, both issues highlighted by the CPT not only in 2018 and 2019 but as far back as 2012. In the context of police detention, the CPT in 2018 noted the numbers of people detained for longer than 24 hours have not decreased since 2012 and described the 2018 numbers as 'significant'.

The research carried out strongly suggests that the proper implementation of the presumption of liberty would contribute significantly to addressing these long-standing CPT's recommendations which, in turn, would have a positive impact upon the implementation of other CPT recommendations. However, the responsibility for translating into practice the relatively newly introduced presumption of liberty by all actors of the Scottish criminal justice system does not rest with just a single body. Indeed, joint activity by the executive, police, prosecution services and the courts is required to give full effect to the presumption of liberty as incorporated in the Criminal Justice (Scotland) Act 2016. The research was not able to identify any such coordinated action.

In the context of prisons, overcrowding in Scottish prisons has continued and the CPT has repeatedly raised this issue since 2012. Although there was some encouraging reduction in prisoner numbers in response to the pandemic, these appear to have been short term and overcrowding in Scottish prisons persists. Compounded by staff shortages, overcrowding has had a significant negative effect not only on 'out of cell' activity time, the variety of activities, but also on key activities which form part of the release plan for individual prisoners.

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 in practice. This will go some way to addressing the systemic issues at the heart of many CPT recommendations.**

ANNEX: Organisations present at the roundtables

Policing Session Attendees – 13th May 2021

Representatives of the:

- ◆ Scottish Government
 - Directorate for Safer Communities
 - Directorate for Equality, Inclusion and Human Rights
 - Directorate for Mental Health and Social Care
- ◆ Police Scotland
 - Criminal Justice Services Division
 - Professional Standards Department
- ◆ National Health Service
 - National Police Care Network

Prisons Session Attendees – 14th May 2021

Representatives of the:

- ◆ Scottish Government
 - Directorate for Justice
 - Directorate for Equality, Inclusion and Human Rights
 - Directorate for Mental Health and Social Care
- ◆ Scottish Prison Service
 - Directorate of Operations
 - Directorate of Strategy and Stakeholder Engagement
- ◆ National Health Service
 - National Scottish Prison Clinical Psychology Advisory Group
 - Scottish Prison Care Network
 - NHS Forth Valley



