CPT/Inf (2014) 12

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 28 September 2012

The Government of the United Kingdom has requested the publication of this response. The report of the CPT on its September 2012 visit to the United Kingdom is set out in document CPT/Inf (2014) 11.

Strasbourg, 27 March 2014

RESPONSE OF THE GOVERNMENT OF THE UNITED KINGDOM TO THE REPORT BY

THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE AND INHUMAN OR DEGRADING TREATMENT OR PUNISHMENT

FOLLOWING ITS VISIT TO THE UNITED KINGDOM FROM 17 SEPTEMBER TO 28 SPETEMBER 2012.

January 2014

List of abbreviations

ACDT = Assessment Care in Detention and Teamwork

COPFS = Crown Office and Procurator Fiscal Service

CPO = Community Payback Order

CPT = European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment.

DCM = Detainee Custody Manager

DCO = Detainee Custody Officer

DSO = Detention Services Order

ECHR = European Convention for the Protection of Human Rights and Fundamental Freedoms

EDL = Earliest Date of Liberty

FNLU = First and Last Night Induction Unit

FNO = Foreign National Offender

GP = General Practitioner

HMIP = Her Majesty's Inspectorate of Prisons

HMP = Her Majesty's Prison(s)

IRC = Immigration Removal Centre

NHS = National Health Service

OSCU = Operational Support and Certification Unit

PCO = Prison Custody Officer

PIRC = Police Investigations and Review Commissioner

PPO = Prisons and Probations Ombudsman

SCS = Scottish Court Service

SPS = Scottish Prison Service

SPSO = Scottish Public Services Ombudsman

SSHD = Secretary of State for the Home Department

UK = United Kingdom

Cooperation between the CPT and the UK and Scottish authorities

The CPT noted the situation in relation to gaining entry to HMP Kilmarnock, and trusts this situation will not occur again (paragraph 5 of the CPT report).

1. We note the CPT's comments. The SPS has confirmed that the Director of HMP Kilmarnock was properly advised of the possibility of a visit beforehand but regrettably there was a clear breakdown in local communication. We would express our regret that staff at HMP Kilmarnock (a privately run prison) were unaware that an unannounced visit by the CPT was a possibility and were therefore unprepared for the visit. We fully expect that the staff and management of privately run prisons in Scotland operate to the same high standards as public sector prisons and that their staff act courteously and appropriately. The SPS has raised this issue with the private contractors who operate HMP Kilmarnock to ensure this does not re-occur.

Development of a National Preventive Mechanism

The CPT trusts that the UK will continue to ensure that the National Preventative Mechanism be adequately resourced (paragraph 8 of the CPT report).

2. We appreciate the function of the National Preventative Mechanism, and are satisfied the relevant bodies are adequately resourced in this context.

A. Law Enforcement Agencies

Preliminary remarks

The CPT was informed that consideration was being given to introducing a maximum time limit of 36 hours for police custody. The CPT would like to receive further information on this proposal (paragraph 10 of the CPT report).

3. The Criminal Justice (Scotland) Bill was introduced in the Scottish Parliament in June 2013. This provides for a maximum period of detention before charge of 12 hours. After charge there will be a requirement, wherever practicable, to bring the person before the court not later than the end of the next court sitting day after charge. This is dependent on the successful passage of the Bill. In his review of criminal law and practice, Lord Carloway recommended that the period of time during which suspects are kept in custody, from arrest to first court appearance, should be kept under review by the Crown Office and Procurator Fiscal Service, and that preventative measures should be taken if suspects are being held for more than thirty-six hours. The Scottish Government agrees that suspects should not be unnecessarily or disproportionately held in police custody and has set up a working group to review the matter. The first step in this review process will be to monitor current patterns in the length and geographical location of such detentions. Furthermore, provisions in the Criminal Justice (Scotland) Bill will allow for a split period of police detention through the application of Investigative Liberation. This will facilitate a suspect to

be liberated pending further police enquiries, thereby reducing the overall continuous period of time a person remains in police custody. This is dependent on the successful passage of the Bill.

The CPT trusts that detained irregular migrants will be transferred as quickly as possible to an IRC, which is designed to manage persons held for administrative reasons (paragraph 12 of the CPT report).

4. We note the CPT's comment. Detained irregular migrants are transferred as quickly as possible to an IRC, where this is appropriate. Individuals may be detained for as long as is reasonably necessary for the purpose for which they are detained. No one is detained indefinitely. Detention is, however, frequently prolonged as a result of detainee's own actions. For example, they may seek deliberately to frustrate the removal process or refuse to cooperate with the re-documentation process. Detained persons can apply to the Immigration and Asylum Chamber for bail as many times as they wish and are able to challenge the lawfulness of their detention by a judicial review or habeas corpus claim.

Ill treatment

The CPT suggests that the Scottish authorities must remain vigilant and continue their zero-tolerance policy towards ill treatment within police custody units (paragraph 13 of the CPT report).

5. We note the CPT's comments. We would advise that guidance is available to the police on arrangements for the care of people in custody and the police service is committed to appropriate care being provided. Assurance of appropriate care is provided through the work of independent custody visitors.

Safeguards against ill-treatment

The CPT recommends that appropriate measures be taken to remedy deficiencies in relation to the system for delaying notification of a person's detention in custody to a named person (paragraph 16 of the CPT report).

6. We disagree with this recommendation as we consider there to be appropriate measures already in place. Section 15 of the Criminal Procedure (Scotland) Act 1995 limits the circumstances in which the police can delay notification of a third person and provides that any such delay should only be for as long as is necessary. It also requires that the time of request, and compliance with request, be recorded. We consider the legislation on this right to be proportionate and more appropriate than a specific time limit, which would not allow for flexibility according to the individual circumstances of the case. Furthermore, police guidance requires the police to record the reasoning behind decisions made whilst a person is in custody, which is facilitated by police IT systems.

The CPT invites the Scottish authorities to explore with Bar Associations ways of ensuring that persons detained by the police have prompt and effective access to legal aid lawyers when recourse requires it (paragraph 18 of the CPT report).

7. We note the CPT's comments, and the Scottish Legal Aid Board will consider how this might be taken forward. Under the Criminal Legal Assistance (Duty Solicitors) (Scotland) Regulations 2011, the Board has a statutory duty to arrange for solicitors to be available for the purpose of providing advice and assistance to any person who has a right of access to a solicitor under section 15A of the Criminal Procedure (Scotland) Act 1995. The Board will continue to discuss the efficient and effective operation of the duty scheme as part of regular engagement with representatives of the legal profession.

The CPT recommends that Section 15A of the Criminal Procedure (Scotland) Act 1995 be amended to allow access to another independent lawyer who can be trusted not to jeopardize the legitimate interests of the investigation when a detained person's access to a lawyer of his/her choice is delayed under this Section (paragraph 19 of the CPT report).

8. We accept this recommendation in part. The Criminal Justice (Scotland) Bill, introduced to Parliament on 20 June 2013, provides for a suspect to have access to legal advice from the point of detention (the provisions are dependent on the successful passage of the Bill). The Scottish Government considers it necessary and proportionate, however, to allow the police, in certain circumstances, to delay the exercise of the right of access to legal advice so far as it is necessary in the interest of the investigation or the prevention of crime, or the apprehension of offenders.

The CPT recommends that the right of a detained person to have access to a doctor be expressly provided for in law and in the administrative guidance regulating the deprivation of liberty by the police (paragraph 21 of the CPT report).

9. We accept this recommendation. There is already legislation in place to ensure proper healthcare for people in custody in Scotland. The Chief Constable has a duty of care for the health and wellbeing of people in their custody through the Police and Fire Reform (Scotland) Act 2012 and the Criminal Procedure (Scotland) Act 1995. They also have responsibility for providing healthcare services in accordance with a Scottish Home Department Circular dating back to 1 March 1950. The police also have a Custody Manual of Guidance that seeks to ensure appropriate standards of custodial care for those that come into the care and custody of the police. This includes risk management and the provision of proper medical care.

The CPT recommends that Scottish authorities ensure written information on detained persons' rights is available in all police detention areas, and that it is effectively given to detained persons (paragraph 22 of the CPT report).

10. We accept this recommendation. The Scottish Government introduced a non-statutory Letter of Rights on 1 July 2013, providing persons held in police custody in Scotland with information on their rights. The Criminal Justice (Scotland) Bill, introduced in Parliament on 20 June 2013, puts a statutory requirement on the police to provide persons in police custody with this information (the provisions being dependent on the successful passage of the Bill).

The CPT trusts that an independent custody monitoring service will be implemented along with the establishment of Police Scotland (paragraph 25 of the CPT report).

11. We note the CPT's comments. Independent custody visiting in Scotland was put on a statutory footing through the Police and Fire Reform (Scotland) Act 2012 and new structures have been in place since 1 April 2013.

The CPT would like to receive further information on the new mandate and structure of the Police Complaints Commissioner, as well as the professional profile of staff recruited to carry out investigations (paragraph 26 of the CPT report).

12. Following the implementation of the Police and Fire Reform (Scotland) Act 2012, from 1 April 2013 the role of the Police Complaints Commissioner for Scotland was expanded and the organisation was renamed the PIRC. The PIRC has maintained its police complaint handling review functions, but now also undertakes independent investigations into serious incidents involving the police. The investigations can be undertaken under the direction of the Crown Office and Procurator Fiscal Service or following a referral from Police Scotland or the Scottish Police Authority depending on the circumstances of the incident. The Act also allows the Commissioner to instigate investigations where he believes there is a public interest in doing so. The PIRC provides an assurance that there is independent and effective oversight of serious incidents involving the police and its remit covers all police bodies operating in Scotland. The PIRC has recruited a number of investigators from a wide range of backgrounds. This includes policing, fire service, trading standards, social work, local authorities, the military and others. They have also recruited their first two trainees as part of a strategy to grow its own investigators to meet future demands. At present around 65% of investigative staff are from a police background and 35% from a non-police background, this ratio contributed to the organisation being operationally ready to undertake investigations from 1 April 2013.

Conditions of detention

The CPT recommends that all persons detained for longer than 24 hours be offered the option of access to outdoor exercise, and invites Scottish authorities to enable persons in custody for over 24 hours to access shower facilities (paragraph 27 of the CPT report).

13. We accept this recommendation. At present, most people in Scotland are detained in police custody for less than 24 hours and the number held for longer is likely to fall given current developments in the justice system. In terms of immediate steps, the CPT will appreciate that older facilities are difficult to adapt and to do so would require significant capital investment. With the new single Police Service of Scotland now in place there is likely to be a review of the police estate, including the re-appraisal of current custody facilities, and this may lead to some new facilities being built which would provide more natural light, ventilation and outside exercise facilities.

Glasgow Sheriff Court

The CPT recommends that steps be taken to reduce the occupancy levels in the cells with Glasgow Sheriff Court used for accommodating adult males (paragraph 30 of the CPT report).

14. We accept this recommendation. The SCS seeks to ensure that custody cases, of whatever nature, are dealt with as a priority. SCS also works closely with the judiciary and COPFS to ensure that those appearing from Police custody (after arrest) which comprise the bulk of custody cases are dealt with expeditiously. A standing multi agency group exists for that purpose. The maximum length of custody courts (where the accused appears direct from Police custody) has reduced from eight to five hours. SCS is also applying the use of video technology where this is practicable and legally competent to enable accused persons to appear via video link from prison.

The CPT would appreciate the views of the Scottish authorities on the standard of food and drink providing to detainees within Glasgow Sheriff Court (paragraph 31 of the CPT report).

15. We have discussed this point with the SCS. Their view is that standards are good and they are not aware of representations from those in custody as to poor quality. The provision is by a contractor who will have tendered and been awarded the contract on the basis of quality and value for money.

B: PRISONS

Preliminary remarks

The CPT recommends that the authorities pursue their 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, particularly Recommendation No. R(99)22 concerning prison overcrowding and prison population inflation; R(2003)22 on condition release (parole); R(2006)13 on the use of remand in custody; and R(2010)1 on the Council of Europe Probation Rules (paragraph 32 of the CPT report).

16. We accept this recommendation. The Scottish Government has a programme of measures in place designed to reduce reoffending and is confident that these measures will be successful in further reducing the reconviction rate (from its lowest level in 13 years) and in reducing the demand on prison places. As part of prudent planning the Scottish Government regularly discusses with the SPS their plans for managing prison numbers. As an alternative to short prison sentences, in 2011 we introduced the CPO to provide a robust and credible alternative to custody. Early signs suggest that the CPO is working, with courts in Scotland using the order to impose community sentences which are more demanding, commence more quickly, and have better completion rates. We believe reoffending can fall further still, and Phase 2 of our Reducing Reoffending Programme is focused on ensuring that offenders serving sentences in the community, or in short-term custody, build on the support, use the services, and make the most of opportunities provide to them so that they can move away from offending. Phase 2 includes a consultation on community justice structures, with the aim of ensuing that in the future there will be a more strategic and clearly accountable approach to the commissioning of services intended to reduce reoffending. To supplement this work, the Reducing Reoffending Change Fund will work over three years to support ex-offenders after release, providing practical mentoring services to help them get their lives back on track and not reoffend.

The CPT would be interested to receive an update on the result of the presumption against imprisonment measures, and whether the Scottish authorities are considering extending those measures beyond the current 3 month period (paragraph 32 of the CPT report).

17. We are happy to provide an update. At present, it is too early to say with any certainty what effect the presumption against short periods of imprisonment has had. Statistics relating to Criminal Proceedings in Scotland are published by the Scottish Government on an annual basis towards the end of each year. The figures for 2011/12, the first year in which the presumption was in place, show that whilst 808 fewer sentences of 3 months or less were imposed than in 2010/11 (a decrease of 17% year-on-year) 929 more sentences of between 3 and 6 months were imposed than in 2010/11 (an increase of 15% year-on-year). These two figures should not however be looked at in isolation: the number of sentences of 3 months or less has been gradually decreasing for a number of years (down 55% between 2006/07 and 2011/12 from 10,665 to 4,516); and over the same period there has been an appreciable upward drift

in the average length of sentence across all crimes and offences (from 232 days in 2006/07 to 284 days in 2011/12). In combination these two factors suggest that in general terms there has been a broad move away from short sentences. The Criminal Proceedings in Scotland 2012/13 statistics were published on 26 November 2013 and are available on the Scottish Government website at http://www.scotland.gov.uk/Publications/2013/11/2711. The statistics show that the proportion of all custodial sentences imposed that were of three months of less stayed roughly level with that for 2011/12 (at around 29%). That notwithstanding, both the number of sentences of less than 3 months and the number of sentences of less than 6 months fell in absolute terms on the previous year (by 4% and 8% respectively). The 4,334 custodial sentences of 3 months or less which were imposed across Scotland in 2012/13 represent an overall decrease of 57% on the number imposed in 2006/07 (10,046). In addition, an independent process evaluation into the introduction of the presumption and two related community justice measures (the new CPO and the revised template for Criminal Justice Social Work Reports) is currently underway, and is due to report in the autumn of 2014.

Ill-treatment

The CPT recommends that prison officers at Barlinnie Prison be reminded that (i) no more force than is strictly necessary should be used to control prisoners; and (ii) there can be no justification for striking a prisoner after they have been brought under control; and (iii) that there is no justification for assaulting a prisoner who refuses to obey an order (paragraph 35 of the CPT report).

18. We accept this recommendation. The SPS seeks to provide a caring and compassionate service for all offenders who come in to their custody. As such any allegations of misconduct or inappropriate use of force are treated with the utmost seriousness. Specifically, any allegations of excessive force or assault which are reported to or discovered by Prison Service staff are automatically reported to the police. This process is robustly enforced by all Managers and Governors. Where appropriate, a simultaneous internal investigation is conducted. When complaints are substantiated, normal disciplinary procedures and/or criminal procedures are undertaken. In the last 12 months 4 allegations against staff have been reported to the police. In 3 of these the Crown took no proceedings and 1 case is still under investigation. If the CPT has specific information relating to alleged incidents of misconduct or the inappropriate use of force we would welcome further details, so that any such case(s) can be comprehensively reviewed and investigated.

The CPT recommends that officers at Cornton Vale Prison be reminded to treat prisoners with respect at all times, and to use appropriate language when talking to prisoners (paragraph 35 of the CPT report).

19. We accept this recommendation. The SPS has a zero tolerance policy on such behaviours. Staff are trained on interacting appropriately with prisoners, always seeking to treat them with respect and dignity. Where negative behaviour and language is identified SPS will work to challenge such behaviour in all prisons, including HMP Cornton Vale. If the CPT has specific information relating to alleged incidents of inappropriate conduct we would welcome further details, so that any such case(s) can be comprehensively reviewed and investigated.

The CPT recommends that a more proactive stance be taken towards tackling inter-prisoner bullying at Kilmarnock Prison (paragraph 36 of the CPT report).

20. We accept this recommendation. During the visit CPT visited two of eight wings (G and H) in the prison where there was an identified bullying issue. The management of HMP Kilmarnock have confirmed this was not representative of the rest of the prison where there are no substantial issues. G wing is the induction wing and H wing is the protection wing. At the time of the visit, management had concerns that prisoners were being bullied and had put an anti-bullying strategy in place to address this. HMP Kilmarnock are contractually required to have an anti-bullying strategy in place and having reviewed this the SPS is content that it is operated and being managed properly subject to further training. With regards to the specific issues raised, it is believed that some prisoners were being bullied for their medication in these two wings. Management responded to this with identified bullies being relocated to the Segregation Unit. In terms of implementation of the anti-bullying strategy, prisoners at HMP Kilmarnock are advised of the anti-bullying strategy during the prisoner induction programme on their admission. The strategy informs prisoners how to report bullying and, more importantly, how HMP Kilmarnock will seek to deal with any prisoner thought to be bullying others. There are also posters displayed around the prison encouraging zero tolerance against bullying and informing prisoners how to report bullying. Bullies are identified in a number of ways, the most common being for a prisoner to inform a member of staff that that he is being bullied. Anonymous letters are also posted into the mail boxes by prisoners. Staff are advised to be aware of large quantities of goods in prisoners' cells when carrying out daily security checks as this may be an indication of bullying, and staff will also submit intelligence reports regarding this. In relation to the perceived tense atmosphere the SPS controller team within the prison were tasked with reporting on this and have confirmed they have no specific concerns but as part of their normal Controller duties will continue to monitor this in relation to the CPT's comments.

Conditions of detention in Barlinnie, Greenock and Kilmarnock Prisons

The CPT trusts that efforts will continue to be made to accommodate prisoners at Barlinnie one to a cell (save in exceptional cases, where it would be inadvisable for prisoners to be left alone) (paragraph 37 of the CPT report).

21. We note these comments. The SPS is committed to allocating cells designated for single occupancy to one prisoner only unless operational requirements, for instance high prisoner numbers or a loss of cellular accommodation in the event of an incident, require a 'single cell' to be occupied by more than one offender. When it is in an offender's best interest to share a cell with another prisoner the SPS is committed to cell-sharing in cells designated for double occupancy, subject to operational circumstances as above.

The CPT recommends that in HMP Barlinnie, Greenock and Kilmarnock, the outdoor exercise yards are equipped with shelter facilities to protect inmates from poor weather (paragraph 39 of the CPT report).

22. We disagree with this recommendation. The SPS has given this careful consideration, but is of the view that this is not desirable or required. In terms of the Prison Rules, where the weather permits prisoners are given time in the open air for not less than one hour every day. The aim of this is to facilitate time in the open rather than in a contained building and it is our view that the measures suggested may encourage prisoners not to make full use of this time outdoors if they remain standing undercover. It also would present security issues with the potential to lead to increases in bullying and assaults where a number of prisoners are congregated in an enclosed area with blind spots for prison officers. SPS provides adequate rain and wind proof clothing for all prisoners.

The CPT comments that it would be desirable for the exercise yards in HMP Barlinnie, Greenock and Kilmarnock, to be equipped with a means of rest (paragraph 39 of the CPT report).

23. We would consider that the time allowed for exercise in the open air should be maximised by prisoners taking part in psychical exercise by walking around the exercise yard rather than making additional arrangements for prisoners to associate together in areas with opportunities to rest. These areas are available in residential areas and fully accessible by prisoners during association periods

The CPT requests further information in relation to specific arrangements put in place for Muslim inmates of HMP Kilmarnock (paragraph 40 of the CPT report).

24. Halal meat has always been provided for prisoners in HMP Kilmarnock and there is also separate preparation in the prison kitchen. The prison menu incorporates several daily Halal choices including chicken, beef or lamb dishes, as well as vegetarian options. Halal choices are indicated by a symbol on the prisoner ordering system. The Imam has provided advice on how to store, prepare and serve Halal foods and he also makes unannounced visits to

the kitchen. All Halal food is purchased through reputable suppliers and all products have appropriate certification. All catering Officers are aware of how to store, prepare and serve Halal foods and they supervise any prisoners involved in the activities.

The CPT recommends that action be taken at HMP Barlinnie 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 that all prisoners (whether on remand or sentenced) spend a reasonable part of their day (8 hours plus) outside their cells and engaged in purposeful activity of a varied nature such as work with a vocational value; education; sport; and recreation/association (paragraph 41 of the CPT report).

25. We accept this recommendation. The SPS is clear that it has to do more to improve access to purposeful activity for prisoners. In recent years we have seen improvements in this area: for convicted prisoners in HMP Barlinnie and HMP Cornton Vale, the average time per week spent by a prisoner on purposeful activity is respectively 19 hours and 22 hours and in all prisons this is 20. By way of comparison, in 2010/2011 the average time was 9 hours for HMP Barlinnie, 12 for HMP Cornton Vale and 15 for all prisons. Currently prisons are expected to provide year-on-year improvements in the amount of purposeful activity they provide as one of their key performance indicators. HMP Barlinnie plan in the coming year to increase the amount provided for physical activity and other recreational activities for remand prisoners and will appoint an additional sports and games officer to facilitate this. HMP Cornton Vale are looking to open up all education sessions to both remand and convicted prisoners in order to expand remand prisoners access to purposeful activity and have recently opened a new gym. Nationally, the SPS is undertaking an organisational review which will, amongst other things, further align SPS work with the Justice Strategy for Scotland. Following a report by the Justice Committee of the Scottish Parliament in March 2013 into purposeful activity in prisons, the SPS has appointed a senior manager to carry out a root and branch review of purposeful activity to ensure that such activity is meaningful, contributes to reducing reoffending and can be measured in a useful way. The revised strategy will be drafted by early 2014.

The CPT encourages the authorities to make further efforts to offer meaningful activity to all prisoners at HMP Greenock, particularly those allocated to Chrisswell House (paragraph 42 of the CPT report).

26. We note the CPT's comments, and would refer to our previous comments at paragraph 25. In HMP Greenock on average prisoners were provided with 18 hours of purposeful activity in 2011-2012 and 16 hours the previous year. For convicted prisoners this was 22 hours (2011-12). Every prisoner in Chrisswell House has an individual management plan, and as well as internal work placements the prison also offers community placements where community access has been approved. In addition reparative initiatives are also undertaken where available.

The CPT recommends that the authorities take appropriate steps to provide prisoners placed on protection for more than a short period with purposeful activities and proper support from health care services (paragraph 43 of the CPT report).

27. We accept this recommendation. In relation to particular establishments: prisoners in HMP Barlinnie have access to the same range of recreation opportunities and health care service provision as the rest of the prison population. In light of the CPT's comments, the National Health Service Scotland will review the mental health inputs into this group to identify and respond to any gaps in provision. Prisoners on protection in HMP Kilmarnock are located in H wing. These prisoners have access to a prison workshop and to education and physical education sessions. All prisoners removed from association are provided with appropriate health care to meet their assessed needs as per the statutory prison Healthcare Directions 2011. More generally, where a prisoner is held in specified conditions under Rule 41 to protect the health or welfare of the prisoner or other prisoner due to a medical condition the care plan will detail the health care interventions required. In relation to the afore-mentioned organisational strategic review and the review of purposeful activity referred to previously, both of these will include strategies for all prisoner groups.

Female prisoners

The CPT would like to receive updated information on the Scottish Government's implementation of the recommendations contained within the Commission on Women Offenders' report, notably in terms of the development of new facilities for female offenders and the future of the existing ones (paragraph 44 of the CPT report).

28. The Scottish Government's formal response to the Commission agreed to 33 of the Commission's 37 recommendations, and noted that it would keep the remaining 4 under consideration. Implementation of this work is being coordinated alongside wider activity to reduce reoffending and reform community justice provision. The SPS has confirmed plans to replace the existing national prison facility for women with a new, specifically designed facility which will fit the specific needs of women prisoners, for more appropriate custody and improved scope for rehabilitation. Construction of this new national unit is scheduled for January 2015, to be operational in March 2017. It will be located in the west of Scotland, and will be supported by two regional units specifically prepared for women in the East and North of Scotland.

29. In the meantime, work is continuing to respond to the Commission's recommendations to improve existing facilities for women offenders, improve gender-specific training for prison staff, and to continue the development of staff training and wider support to women offenders with mental health problems. Work has also been undertaken to respond to the wider recommendations of the Commission, including the establishment of a national mentoring service for women offenders, to provide practical support and guidance to ex-offenders on release from custody and in the community; the ongoing improvement of mental health services for women offenders as part of Scotland's national mental health strategy; examination in partnership with local criminal justice, health and wider

public services, of how services provided to women offenders in the community can be co-ordinated, and made more effective; negotiations of a women prisoner's benefits and public housing entitlements on their release from custody, with associated pilot project. The Commission's recommendation for the creation of a single national body to oversee and manage community justice services were taken into consideration as part of a public consultation process on the future development of justice structures in Scotland, which has recently concluded, and the results of which will inform future government policy. The Cabinet Secretary for Justice has agreed to the Commission's recommendation to provide an annual briefing to Parliament on progress against the Commission's recommendations, and the first such report was made to the Parliament's Justice Committee in November 2012. That Committee formally replied indicating their recognition of progress that had been made in response to the Commission's report.

The CPT encourages the authorities to examine the feasibility of running relevant female offender programmes in HMP Edinburgh and Greenock (paragraph 45 of the CPT report).

30. We note the CPT's comments. Unfortunately due to the group numbers required to successfully facilitate specific female offender programmes, it would not be feasible at this point in time for each individual establishment to run its own programme. However, the SPS will continue to keep this under review and, if there is demand which can be met at HMP Edinburgh and Greenock, would look to offer relevant programmes within these establishments.

The CPT recommends that cells of 7m squared do not accommodate more than one prisoner (save in exceptional circumstances where it would be inadvisable for a prisoner to be left alone) (paragraph 46 of the CPT report).

31. We accept this recommendation in part. The SPS is committed to allocating cells designated for single occupancy to one prisoner only unless operational requirements, for instance high prisoner numbers or a loss of cellular accommodation in the event of an incident, require a 'single cell' to be occupied by more than one offender. When it is in an offender's best interest to share a cell with another person the SPS is committed to cell-sharing in cells designated for double occupancy, subject to operational circumstances as above.

***The CPT recommends that steps be taken at HMP Cornton Vale to ensure that the communal toilet and shower facilities in Younger House are fully partitioned (paragraph 46 of the CPT report)*.**

32. We accept this recommendation. The toilet and shower areas within Younger House have been fully refurbished, and the areas now have full doors with a minimum gap at the top and bottom to permit ventilation.

The CPT recommends that the necessary steps be taken at HMP Cornton Vale to ensure that waiting times for accessing toilet facilities in Bruce and Younger House are reduced to a minimum (paragraph 47 of the CPT report).

33. We accept this recommendation. The SPS can advise that waiting times for access to toilet facilities has been greatly reduced, with the introduction of a protocol has been introduced that allows each individual a 7 minute window for access to the ablutions area. The introduction and monitoring of this protocol means that in each unit waiting times are considered acceptable. Monitoring of this has confirmed that no prisoner has raised concerns regarding this over the last 3 month period (between March and June 2013).

The CPT recommends that steps be taken to offer activities to young offenders at the weekend (paragraph 49 of the CPT report).

34. We accept this recommendation. The SPS can confirm that additional weekend activity has been introduced into the Young Offenders regime such as outdoor activities, indoor aerobics, Bingo, Quizzes & debating sessions on topical subjects. More generally, the SPS has established a Strategic Advisory Group for Young People which includes the Scottish Government and third sector partners to oversee a Strategic Action Plan for young people to improve and increase access to education, life skills, work experience, improve, through care and support, to help young people desist from offending.

The CPT recommends that the authorities take the necessary steps to increase the range of activities on offer to all prisoners (paragraph 49 of the CPT report).

35. We accept this recommendation, and would refer to our comments at paragraphs 25-26.

The CPT recommends that the lack of shelter from poor weather in the outdoor exercise yards for women at HMP Edinburgh and Greenock be remedied (paragraph 50 of the CPT report).

36. We do not accept this recommendation. The SPS has given this careful consideration, but is of the view that this is not desirable or required. In terms of the Prison Rules, where the weather permits prisoners are given time in the open air for not less than one hour every day. The aim of this is to facilitate time in the open rather than in a contained building and it is our view that the measures suggested may encourage prisoners not to make full use of this time outdoors if they remain standing undercover. It also would present security issues with the potential to lead to increases in bullying and assaults where a number of prisoners are congregated in an enclosed area with blind spots for prison officers. SPS provides adequate rain and wind proof clothing for all prisoners.

The CPT recommends that the authorities take the necessary steps to increase the range of activities on offer with a view to ensuring that all female prisoners are able to spend up to 8 hours (plus) outside of their cells engaged in purposeful activity (paragraph 51 of the CPT report).

37. We accept this recommendation, and would refer to our comments at paragraphs 25-26.

Health care services

The CPT recommends that the authorities increase resourcing in health care at HMP Barlinnie with the establishment of the equivalent of one full time psychiatrist and one full time dentist (paragraph 54 of the CPT report).

38. We note the CPT's recommendation. Since the transfer of healthcare individual health boards are undertaking a local needs assessment to inform their service re-design and resource allocation. The NHS Prison Lead for Greater Glasgow & Clyde has advised that the level of psychiatry input is commensurate with the needs of the prisoner population. The visiting consultant psychiatrist generally attends with a trainee grade for their session, so the capacity is greater than what is stated in the report, and there has been no evidence of unmet need. They will, however, review provision to ensure that they have sufficient capacity to meet demand. For dental services, they will review existing provision to ensure that they are making best use of existing sessions, and to ensure that they have sufficient core capacity. They are also working with colleagues in oral health to look at enhancing activities that will promote oral health in the prisoner population, and resources have been set aside to support this.

The CPT recommends that the authorities increase resourcing in health care at HMP Cornton Vale with the weekly presence of the dentist being increased (paragraph 54 of the CPT report).

39. We note the CPT's recommendation. Cornton Vale currently has two dental sessions per week, 1 hygienist session per week and 1 oral health promotion session per week. Additional sessions can be added if required. However, currently all patients are seen within 10 week timescales therefore we consider that no additional sessions are required.

The CPT recommends that the authorities increase resourcing in health care at HMP Greenock with the increased presence of a psychologist and the weekly presence of a gynaecologist (paragraph 54 of the CPT report).

40. We note the CPT's recommendation. The NHS Prison Lead for Greater Glasgow & Clyde has advised that they have established a service level agreement with local sexual health services to ensure the sexual health needs of female prisoners are met. This service is now in place. For psychiatry, there has been no evidence of unmet need. They will, however, review provision to ensure that HMP Greenock has sufficient capacity to meet demand.

The CPT recommends that the authorities increase resourcing in health care at HMP Kilmarnock with the creation of an additional full time post of GP and the doubling of psychiatric sessions per week (paragraph 54 of the CPT report).

41. We note the CPT's recommendation. Since the CPT visit, the population of the prison has decreased by over 22%. 10 GP sessions are provided Monday to Saturday, and outside this time, full availability of an "on call" service is available ensuring a safe, effective service; NHS Ayrshire and Arran consider this to be a sufficient resource at this time. In terms of psychiatric sessions, in addition to a mental health nursing service, there are two planned sessions of Consultant Forensic Psychiatry per week and additional attendance for all urgent cases is provided when required. Telephone advice is also available. NHS Ayrshire and Arran are currently looking to provide an additional psychiatric session in response to a needs analysis they conducted.

The CPT recommends that in each prison, there should be someone competent on the premises to provide first aid at night, preferably a person with a recognised nursing qualification (paragraph 54 of the CPT report).

42. We disagree with this recommendation. There is no evidence to support the requirement for a nurse to be present during the night. Nurse cover was removed from all establishments in 2003 except HMP Barlinnie, and a percentage of night shift operational officers completed advanced first aid and defibrillator training to ensure appropriate cover. 24 hour medical cover is available through the on-call doctor service where the doctor will either examine the prisoner in the establishment or transfer the prisoner to hospital where appropriate. The NHS Prison Lead from Ayrshire and Arran has confirmed that they provide an overnight nursing service at HMP Kilmarnock. In addition, all PCOs at the establishment are First Aid trained and receive annual refresher training.

The CPT would like to receive confirmation that the presence of a dentist at HMP Greenock and Kilmarnock has been increased (paragraph 54 of the CPT report).

43. The NHS Prison Lead from Ayrshire and Arran has confirmed that since the time of the visit to HMP Kilmarnock an additional three sessions per week, now five in total, have been provided for dental care. This has significantly reduced waits for non-urgent treatment with emergency treatment still being prioritised for all prisoners whether sentenced or on remand. Emergency referrals are seen within 24 hours and non-urgent referral waiting times has reduced significantly. Regarding HMP Greenock following the comments from the CPT this was raised with the Clinical Governance Group, and additional funding was provided to reduce waiting lists over a three month period with 12 additional clinics provided. Waiting times are now less than 2 weeks with emergencies being prioritised. Where necessary suitable pain relief is available.

The CPT recommends that remand prisoners in all prison establishments have the same access to dental and ophthalmological services as sentenced prisoners (paragraph 55 of the CPT report).

44. We accept this recommendation. In response to high levels of demand the NHS has introduced a waiting list initiative through the provision of additional dental sessions. Routine monitoring in the uptake of dental appointments has been introduced to help ensure that dental sessions are utilised to best effect. The Chief Dental Officer at the Scottish Government is currently consulting on a Framework for Oral Health Improvement and Dental Services in Scottish Prisons.

The CPT recommends that the authorities review the use of the hospital unit at HMP Kilmarnock, relative to commentary in paragraph 56 of their report (paragraph 56 of the CPT report).

45. We accept this recommendation. At the time of the visit the prison's High Risk Assessment Team strategy for managing prisoners at risk of self-harm or suicide required prisoners assessed as requiring Level 1 or Level 2 observations to be located in the prison's Healthcare Centre. Arrangements are currently underway for the prison to adopt the same policy as the SPS and this will be concluded by August 2013.

The CPT recommends that the necessary instructions be issued to ensure that any relevant statements by newly-arrived prisoners or an inmate involved in a violent incident in prison are recorded by the health-care service, together with the doctor's observations. The existing procedures should be reviewed in order to ensure that whenever injuries are recorded by a doctor which are consistent with allegations of ill-treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill-treatment), the record is immediately and systematically brought to the attention of the police, regardless of the wishes of the person concerned (paragraph 57 of the CPT report).

46. We accept this recommendation. On admission into prison health boards will document any injuries either observed or disclosed by the prisoner. Where a prisoner is involved in a violent incident in the prison a request is made to health care for the prisoner to be examined, details of any injuries sustained will be recorded in the prisoners health care record. If a prisoner wishes to raise a complaint or take legal action health boards will release any relevant information with the prisoners consent respecting their right to give or withhold consent. However, all allegations of assault on a prisoner by prisoner staff are reported to the police as a matter of course.

The CPT invites the authorities to ensure that records are shared effectively amongst the prison medical services (paragraph 58 of the CPT report).

47. We note these comments, and can confirm that this is the current practice. Health boards ensure that all relevant healthcare information is shared with the appropriate medical services. The NHS Prison Lead from Ayrshire and Arran has advised that 'Vision' is the primary clinical electronic record for Prison healthcare, in addition the local Mental Health and Addiction electronic patient records are fully accessible by all medical and nursing staff within the Prison. All relevant information is extracted and shared on transfer to another prison which ensures continuity of information and care.

The CPT would like to receive a copy of the report on the inquiry into the death of X[*] in Barlinnie Prison in June 2012, as well as information on any measures taken in the light of its findings. Further, it would like to be informed of the training provided to staff to identify persons at risk of committing acts of self-harm or suicide (paragraph 61 of the CPT report).

48. The case of X is currently the subject of a Fatal Accident Inquiry. The Sheriff's report will be provided to the CPT when it is published. The CPT will wish to note that all operational staff are required to complete mandatory core suicide risk management training as well as an annual refresher course. The current training measures staff competency.

The CPT would like to receive an update on the care afforded to a prisoner described in paragraph 62 of its report (paragraph 62 of the CPT report).

49. The CPT will wish to note that, subsequent to their visit, the prisoner in question was seen by a psychiatrist and engaged with the prison addiction team whilst in custody. He has now been released from custody.

The CPT recommends that the authorities take steps to ensure that prisoners with a serious mental health disorder are not held in segregation units and that every effort is made to transfer such prisoners to an appropriate psychiatric facility (paragraph 63 of the CPT report).

50. We accept this recommendation. Prior to removing a prisoner from association a request is made to health care staff within the prison to assess if the prisoner is fit to be held in segregation. The prisoner is then assessed on a regular basis. When a prisoner is required to be held in specified conditions under Rule 41 due to a mental health issues health boards will provide a care plan detailing the treatment and interventions required during the time in the Reintegration and Care Unit. SPS is also due to finalise a revised policy on "removal from association". This will emphasise a multi-disciplinary case conference approach to formulate appropriate management and care plans with a view to reintegrating prisoners back in to mainstream at the earliest appropriate opportunity. To reinforce this, prisoners are held in rebranded 'Separation and Reintegration Units' and within these units management and staff will interact consistently and positively with prisoners with a view to reintegrating the prisoner into mainstream circulation at the earliest possible opportunity. HMP Low Moss, a 700 place adult male establishment opened in March 2012 has successfully piloted a 'Separation & Reintegration Unit' which is to be rolled-out as 'best practice' across the rest of the estate on the launch of the revised policy. Staff will also monitor and review prisoner management plans regularly, and ensure that a multi-disciplinary case conference is used to devise suitable management plans. Staff will be expected to manage prisoners according to the appropriate risk assessment applied to each prisoner and in accordance with the management plan prepared for that prisoner, all with the aim of early reintegration. Such plans might include contact with other prisoners through phased reintroduction to mainstream. Likewise, where

[*] In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

appropriate prisoners will be entitled to access to the range of services and opportunities provided in mainstream.

The CPT recommends that the authorities examine the possibility of recruiting clinical psychologists to help manage female prisoners with personality and behavioural disorders (paragraph 64 of the CPT report).

51. We accept this recommendation. Since the transfer of healthcare to the NHS, individual health boards are undertaking a local needs assessment to inform their service redesign and resource allocation. The SPS and NHS are currently in discussions about the introduction of an enhanced assessment/management process for female offenders with personality and behavioural disorders.

The CPT would be interested to receive the observations of the authorities in relation to substance abuse and methods to prevent the spread of transmissible diseases, as outlined in paragraph 65 of its report (paragraph 65 of the CPT report).

52. Harm reduction measures are in place across prisons in Scotland to prevent the spread of transmissible diseases including access to disinfectant (bleach) and condoms and dental dams. A recent Hepatitis C research study demonstrated that the estimated incidence rate was less than 1% among all Scottish prisoners. The low prevalence of injecting in Scottish Prisons may be attributable to the range of harm reduction policies and the increased availability of methadone maintenance therapy in prisons.

Discipline and segregation

The CPT recommends that steps be taken to remedy identified shortcomings in the disciplinary process for prisoners, as per paragraph 66 of its report (paragraph 66 of the CPT report).

53. We accept this recommendation. The SPS issued revised guidance to Governors, a 'Disciplinary Hearing Guide' in December 2012 which replaced 'Orderly Room Guidance' issued in 2006. Governors were instructed to ensure that all managers adjudicating disciplinary hearings were familiar with the revised Guidance. The SPS will further advise Governors of the requirement that all adjudicators engaged in disciplinary proceedings should be reminded of the need to consider all relevant evidence prior to making a decision. The SPS will also amend documentation issued to prisoners subject to disciplinary hearings to ensure that the appeal period available to prisoners is included. As adjudicators come afresh to hearings the potential seriousness of the case and/or the award given to the prisoner cannot be decided in advance. Therefore the SPS believe that the current procedures, which allow a prisoner to request legal representation at a disciplinary hearing, are sufficient and that it is appropriate that the decision to allow such representation remains with the adjudicator. As per the Rules, the prisoner also has the option to appeal against the finding of guilt or the punishment imposed.

The CPT recommends that both a hearing and a possibility of appeal to an independent authority be introduced into the procedure concerning the application of Rule 95 of the Prisons and Young Offenders Institutions (Scotland) Rules 2011 (paragraph 67 of the CPT report).

54. We disagree with this recommendation; SPS considers that there is sufficient independence within the process. By way of background, the SPS provides opportunities for prisoners to appeal against decisions made by prison governors by way of the complaints procedure, by request to an officer to speak to various independent parties, by representation to Scottish Ministers, and through their legal agent. The SPS reviews all cases when prisoners are held under the relevant rule for a period in excess of 3 consecutive months by way of referral to the Executive Committee for the Management of Difficult Prisoners. Members of this body are drawn from Deputy Governors in SPS establishments and the SPS Clinical Adviser, and the Committee is chaired by the Assistant Director of Operations. It meets on a monthly basis and considers the management plan of each offender to inform a decision about whether they be returned to a normal regime. The SPS will consider further if the Commission should also receive representations from prisoners referred in these circumstances. It should be noted that, if the prisoner is dissatisfied with the way this has been handled then he/she can make a complaint to the independent SPSO.

The CPT recommends that steps be taken to ensure that all HMP Barlinnie segregation unit's cells are properly heated and kept in an acceptable state of hygiene (paragraph 68 of the CPT report).

55. We accept this recommendation. Temperatures in cells will be monitored and where the temperatures cannot be maintained HMP Barlinnie will take steps to rectify this. Monitoring of temperatures will be recorded and examined by the unit manager weekly to ensure compliance with standards. Updated cleaning schedules will be implemented and enforced by management and daily rounds by the duty manager will ensure that cells are cleaned to an acceptable standard.

The CPT trusts that the present approach towards the segregation unit (described in paragraph 67) will persist as long as the material conditions in the unit have not been upgraded (paragraph 69 of the CPT report). Furthermore, the CPT recommends that the Scottish authorities take the necessary steps to put in place individual regime plans for persons held in segregation under Rule 95 with a view to assisting them to return to a normal regime, in the light of the comments in paragraphs 70-71 of the report (paragraph 71 of the CPT report).

56. We accept this recommendation. The SPS is committed to its staff engaging with prisoners removed from association on Rule 95 to motivate the individual to safely re-engage with the normal regime. As noted above, the Executive Committee for the Management of Difficult Prisoners reviews management plans for all prisoners held on Rule 95 for 3 consecutive months on a monthly basis. In addition, evidence to support authorisation of Rule 95 applications

must contain details of multi-disciplinary case conference held at the relevant establishment. The SPS will consider what additional evidence, if any, is required from establishments to evidence individual regime plans for prisoners held on Rule 95 for applications for extensions.

The CPT recommends that the authorities put in place the necessary arrangements to ensure that prisoners with significant mental health disorders can be transferred to an appropriate psychiatric facility (paragraph 73 of the CPT report).

57. We accept this recommendation. Very few women patients in Scotland require high security hospital provision and their clinical needs are best met through provision at Rampton Secure Hospital, as is the case for other parts of the UK. Enquires following the CPT's visit have identified that it is not transfer arrangements, but commissioning (i.e. who funds) and diagnostic issues which have been the issue in the case identified by the CPT ('Prisoner A'). We have now intervened to ensure that clinical issues are resolved and form the basis for transfer decisions.

The CPT recommends that the Scottish authorities take the necessary steps towards addressing the specific needs of female prisoners with behavioural disorders through introducing tailor-made programmes, in the light of comments at paragraphs 72-74 of its report (paragraph 74 of the CPT report).

58. We accept this recommendation. SPS fully recognises the different needs of female offenders in the criminal justice system and fully supports the Commission on Women Offenders' views that a distinctive approach is needed to address the needs of women offenders. In that context, SPS is currently reviewing its Women Offenders Strategy and the Chief Executive has set up a National Steering Group for the Improvement of Services to Women Offenders. In addition, the Scottish Government has commissioned a programme of treatment and support for women with personality disorders in prison. The CPT will be interested to note that NHS Greater Glasgow and Clyde, staff will deliver a programme of mentalisation based therapy, starting in September 2013, which is specifically targeted at supporting the needs of this group.

The CPT would like to be informed as to the current situation of Prisoner "A", as outlined in paragraphs 73-74 of its report (paragraph 74 of the CPT report).

59. Prisoner A was reintegrated into a normal mainstream environment in early January 2013, she was subsequently moved to HM Young Offenders Institution Polmont (when the Cornton Vale Young Offender group was relocated there to allow refurbishment to various house blocks). Prisoner A settled well and in general her behaviour was good, although she did become involved in some low level disagreements with other prisoners. In April 2013 Prisoner A was returned to Cornton Vale after a serious staff assault, and she subsequently spent a period of 27 days in the Separation & Reintegration Unit before returning to mainstream within Polmont. Since her return in May Prisoner A has settled back into a normal regime without incident. Prisoner A was assessed by a national mental health facility on 1 May 2013 to see if they could deal with any underlying mental health issues and we are currently awaiting the outcome of this.

Other issues

The Committee calls upon the authorities to take the necessary steps to renovate the reception area at Barlinnie Prison, in the light of the remarks at paragraph 75 of its report (paragraph 75 of the CPT report).

60. We note the CPT's comments. The SPS accepts that the reception cubicles are far from ideal in a modern penal system, and has advised that it will initiate a review and bring forward an options appraisal to replace the current cubicles. The CPT will wish to note that this review has subsequently extended to a wider review of the prison as a whole. The review will consider whether Barlinnie should be replaced or re-developed. Notwithstanding this wider strategic review steps will be taken to improve the facilities within the reception area as far as this is possible within the context of the wider review. SPS would wish to emphasise that prisoners are kept in the cubicles for the shortest possible time, and the staff presence in the area, which allows access to toilets, and or refreshments, reduces the overall potential impact of being located there. During their visit, the CPT were advised that prisoners are not held in the cubicles for the entire time of the admission process. The prisoners are interviewed, have a medical examination, are searched, have a shower and have their property dealt with in the general reception area. After the final stage of this process small groups are located in a communal room, where safe to do so, to wait transfer to a hall. The safety and welfare of prisoners remains paramount.

The CPT recommends that increased attention be paid to ensuring that all foreign national prisoners are provided with written information on the prison in a language they can understand, and are shown the video (paragraph 76 of the CPT report).

61. We accept this recommendation. The SPS will review the range of languages for which information is provided to prisoners to ensure that there is sufficient coverage to match the profile of non-English speaking prisoners. The SPS will produce any additional material in relevant languages.

The CPT invites the authorities to introduce an information video in all Scottish Prisons where this is not already the practice (paragraph 76 of the CPT report).

62. We note the CPT's comments, and SPS will consider how to take this forward. SPS is currently undertaking a comprehensive review of the provision of prisoners use of technology and will include prisoner communication technology as part of this.

The CPT recommends that steps be taken to ensure the induction course is provided on a more frequent basis in HMP Greenock, as outlined in paragraph 78 of its report (paragraph 78 of the CPT report).

63. We disagree with this recommendation. SPS does not consider that additional induction courses are required at this time; immediate needs are taken care of within the First Night in Custody process within the residential areas and arranging additional national induction classes above the existing frequency is not required at this time as all needs are met.

The CPT recommends that additional female staff be recruited at Greenock Prison, as per remarks at paragraph 80 of its report (paragraph 80 of the CPT report).

64. We accept this recommendation. The SPS will shortly launch a new recruitment campaign and will seek to increase more female staff in both operations and residential groups

The CPT recommends that sufficient staff be assigned to the segregation unit at Kilmarnock Prison to enable all daily activities to be carried out (paragraph 80 of the CPT report).

65. We accept this recommendation. HMP Kilmarnock is of the view, that there are currently sufficient staff to ensure this, even accounting for their requirement to have three PCOs to be present for unlocking a cell. While, on occasion, PCO staff do leave the unit for other temporary duties, that has no impact in providing the requisite daily access to fresh air and telephones for prisoners held there.

The CPT invites the authorities to develop follow-up training for all prison officers (paragraph 81 of the CPT report).

66. We accept this recommendation. The SPS can confirm that it does provide follow up training for prison officers but accepts that more needs to be done. The CPT will wish to note that SPS currently provides a range of compulsory in role training for all prison officers. This includes Health and Safety, Control and Restraint, Safe Working, First Aid, Emergency Response, Control and Restraint supervising and in role, self-defence, Fire awareness, Intelligence awareness, equality and diversity and ECHR and suicide risk management. Many of these refresh the basic training provided, SPS continue to review training, including follow up training provided for all staff to ensure that they are fully competent in their roles. In addition we can advise that as part of the SPS Organisational Review, the need to refresh training for all staff has been identified and this work will be taken forward.

The CPT would like to receive information on the initial and in-service training provided to prison officers employed at HMP Kilmarnock (paragraph 81 of the CPT report).

67. Annex A sets out training delivered during the first 6 months of 2013. The initial training provided to PCOs was redesigned in 2012 and there has also been an independent quality assurance check of the programme. Notwithstanding the (then) failure to establish an Internal Audit Committee, the outcome of the external quality check was extremely positive.

The CPT considers that all prisoners should be entitled to the equivalent of at least one hour of visiting time every week, and it recommends that Article 63 of the Prison Rules be amended accordingly (paragraph 82 of the CPT report).

68. We accept the recommendation in principle and will consider it further. The SPS is currently considering the implications of implementing this recommendation across the prison estate. Factors to be taken into account include the different population groups held within individual prisons and the space available within visiting areas. SPS can confirm that, as well as

providing the statutory minimum entitlement, many prisons provide enhanced and additional visits, including additional parent and child visits as part of a Family Contact Strategy. Across the prison estate, visit times range between the minimum statutory requirement and up to 2 hours per week.

The CPT would appreciate the observations of the authorities in relation to remarks about the complaints process in HMP Kilmarnock as at paragraph 84 of its report (paragraph 84 of the CPT report).

69. Since the CPT visit, the Director at HMP Kilmarnock has introduced changes to the management structure of the Residential function in HMP Kilmarnock. These changes were designed to introduce a more direct and accountable structure to help improve the management of both staff and prisoners. In respect of prisoners, this includes responding to formal complaints and there is now increased managerial scrutiny to ensure that Prisoner Complaint Form 1 (PCF1) complaints are dealt with appropriately. Prisoner Complaint Form 2 (PCF2) complaints have decreased between March and May 2013 following these changes which suggests that prisoners now have more confidence in the PCF1 system. This will be kept under review.

The CPT recommends that a complete written record be made of the outcome of all complaints submitted under the confidential complaints procedure, and that additional efforts be made to reassure prisoners of the commitment of senior prison managers to properly investigate allegations pertaining to the behaviour of prison staff (paragraph 85 of the CPT report).

70. We accept this recommendation. The SPS can confirm that there are written records of the complaints submitted under the confidential complaints procedure. The CPT will wish to note that the SPS has in place a robust and transparent complaints system, supported by statute. This process has been praised by the independent body, the SPSO, who act as an independent 'appellant' body for various public service bodies (including prisons) and in Scotland and act as a 'centre of excellence' for complaints handling. In March 2012 SPSO advised a Parliamentary Committee that ''the other body that deserves praise is the SPS, because whenever we raise an issue with it, the SPS immediately tackles it and tries to resolve it from the top down. That has been really reassuring and I think that people can learn from that.'' In their Annual Report for 2011/2012 they also state ''we have continued to find the SPS particularly receptive to suggestions for improvement and to have taken positive steps to widen the understanding about the learning from complaints throughout the prison estate''.

71. The SPS system for complaints, in line with good practice, is to deal with these at a local level but where the prisoner remains dissatisfied they may take their complaint through a process and up to the Prison Governor. If the prisoner remains dissatisfied they may complain to the SPSO. In 2011/12: of 385 complaints received SPSO upheld 20 partially or in full. SPS, however, is not complacent and accept that prisoners need to have confidence in the complaints system. They are aware that young offenders and female offenders do not have the same faith in the complaints system as male offenders and are currently considering how to promote complaint making positively with these groups. SPS will continue to review practice and apply any lessons learned.

The CPT recommends that the authorities take the necessary steps to provide support to foreign national prisoners, in the light of remarks at paragraph 86 of its report (paragraph 86 of the CPT report).

72. We accept this recommendation. SPS can confirm that it provides appropriate support for foreign national prisoners, who receive access to interpreters and have their dietary, religious and cultural requirements taken into account. SPS holds regular events within prisons to increase knowledge, awareness and promote tolerance and integration. The National Induction Pack provided to all prisoners when entering prison is translated in to 8 languages. Nevertheless, SPS is not complacent and continues to monitor the provision of services to the relatively small number of foreign nationals held in Scottish prisons (approximately 4% of the population).

The CPT recommends that foreign national prisoners, if they are not deported at the end of their sentence, be transferred immediately to a facility which can provide conditions of detention and a regime in line with their new status of immigration detainees (paragraph 87 of the CPT report).

73. We partially accept this recommendation. When requested to do so, the SPS holds a prisoner who is subject to a deportation order in custody pending their transfer to a Home Office detention centre. SPS liaises closely with the Home Office to ensure prisoners are transferred as quickly as possible once their sentence has been completed. We do accept that in some instances this takes longer than we would wish. FNOs may continue to be detained in prison for reasons of security or control and where it is assessed that those concerned are not suitable for the more informal environment provided in IRCs.

74. The SPS are discussing the CPT's concerns with the Home Office and an action plan is in place to minimise this and keep it under constant review.

The CPT would like to receive a copy of the action plan to minimise detention of foreign nationals subject to removal after the expiry of their prison sentence (paragraph 87 of the CPT report).

75. This is attached at Annex B.

The CPT invites the authorities to remedy shortcomings noted in relation to transport of prisoners between court and prisons by G4S (paragraph 88 of the CPT report).

76. We accept this recommendation. With regards to the introduction of seatbelts, the SPS is currently in discussion with G4S regarding a timetable for implementing this. With regards to communicating with prisoners whilst in transit, this matter will be explored further in partnership with G4S.

C. Rowanbank medium-secure psychiatric clinic

Preliminary remarks

The CPT recommends that the necessary steps be taken to ensure that, whenever required, a female patient in need of care in a high-security mental health facility is speedily transferred to an appropriate psychiatric hospital (paragraph 93 of the CPT report).

77. We accept this recommendation. The Scottish Government agrees that where it is necessary, transfer of a female patient to a high security hospital should take place as quickly as possible. The Inter-Regional Leads group of the Forensic National Network is reviewing the Referral Protocol to Rampton Secure Hospital to give greater detail on the mechanism for cross-border transfers. In addition, the review group has a remit to advise on the procedures which will support on-going engagement with local Health Boards. The aim is to create a seamless pathway and improve dialogue between Rampton and Health Boards prior to the patient's repatriation to Scotland.

The CPT trusts that the necessary steps will be taken to address the issue of purposeful activity for patients at Rowanbank Clinic, in the light of the remarks at paragraph 96 of its report (paragraph 96 of the CPT report).

78. We note the CPT's comments. The CPT will wish to note that there has been a marked increase in activities available to patients since their visit, as part of Rowanbank's ongoing commitment to provide patients with structure and meaningful occupation. Programmes of purposeful activities throughout each day (including the 1pm to 2pm slot) now exist for all patients in the clinic, 7 days a week. These are tailored to each individual patient's needs and recorded in their care plans. Rowanbank has also reviewed its access to bedrooms policy to ensure that it has much more flexibility, is individualised and is more easily understood by patients in the clinic.

The CPT would appreciate the observations of the authorities on issues of physical restraint, in the light of remarks at paragraph 102 of its report (paragraph 102 of the CPT report).

79. It is recognised that in most secure forensic mental health units incidents involving aggression and violence tend to be much more frequent within female-only wards. This is to some extent due to higher rates of emotionally unstable personality disorder within the female forensic population. Many of these patients are admitted to forensic settings in the first place because they have been exhibiting challenging behaviour in general psychiatry wards. The behaviour of a single patient can be enough to bring about a marked apparent difference in the incidence of the use of aggression management techniques between male and female admission wards. As noted in paragraph 99 of the Committee's report, seclusion is not used in Rowanbank Clinic. The rationale for this is contained within the Directorate's Position Paper on Seclusion at Annex C. Inevitably this will result in an increased use of aggression management techniques in some cases. Such techniques are employed, as per Health Board policy, to ensure the safety of the patient, other patients in the vicinity and staff.

The Committee would like to receive updated information on the case of the female patient mentioned at paragraph 103 of its report (paragraph 103 of the CPT report).

80. The patient in question made an excellent recovery in the weeks following the CPT visit. She has subsequently been transferred to a low secure hospital en route to returning home.

ENGLAND AND WALES

Immigration detention

Preliminary remarks

The CPT recommends that the UK authorities reconsider their policy of indefinite immigration detention (paragraph 111 of the CPT report).

81. We disagree with this recommendation, and there are no plans to introduce a fixed maximum time limit for immigration detention. Although there is no statutory maximum period of immigration detention in the UK the power to detain is used only as a last resort and for the shortest period necessary. All decisions to detain are taken on their individual merits. To be lawful immigration detention must be based on one of the statutory powers in the Immigration Acts and accord with the limits implied by domestic and ECHR case law. Detained persons can apply to Immigration Judges for release on bail and are able to challenge the lawfulness of their detention by judicial review or by applying for a writ of *habeas corpus.*

The CPT trusts that the UK authorities will pursue their efforts to ensure that the detention of any child prior to deportation is a measure of last resort, taken in the best interest of the child and for the shortest possible period (paragraph 112 of the CPT report).

82. The UK Government remains committed to the new process for managing family returns which has the welfare of children at its heart. Families are given every opportunity and support to leave voluntarily and enforcement action is taken only when they fail to take up these opportunities. Enforcement options include the possibility of a short stay in a completely new type of high quality, secure pre-departure accommodation (Cedars) which has been designed with families in mind and where families are accommodated in self-contained apartments with freedom of movement within the facility's extensive grounds. Families are taken to Cedars only after advice has been sought from an independent panel of safeguarding experts.

83. A separate process has been developed for families who are encountered at the border on arrival in the UK. It continues to be necessary, on occasion, to hold children and families at the border while enquiries are made to decide whether they can be admitted to the country, or until the next available return flight if they are refused entry. The great majority of children and families who

are stopped at the border are held for short periods at the port itself where the maximum period of stay is 24 hours. Where it is necessary to hold a family for longer, they may be moved to the family unit at Tinsley House IRC which provides more suitable facilities for families. The statistics quoted in the report include stays in Tinsley as well as in Cedars. The maximum period of stay for families in Cedars and Tinsley is the same: usually 72 hours but with the possibility of extension up to a week with the personal authorisation of the Minister.

84. The Government's policy is clear and the family returns evaluation published on 12 December 2013 shows that the new process works. Nevertheless, the Immigration Minister advised the Immigration Bill Public Bill Committee on 5 November 2013 that he will consider drafting an amendment to put some or all of current policy on child detention into primary legislation.

The Committee would like to receive relevant information in relation to the specific case referred to in paragraph 113 (paragraph 113 of the CPT report).

85. In summary, if a claimant files an application for permission to seek a Judicial Review he must serve it on the SSHD and also to the Treasury Solicitors. The SSHD has 21 days to file a response (Summary Grounds of Defence and Acknowledgement of Service). The court will consider both sets of papers (i.e. from claimant and SSHD) and makes a decision 'on papers'. If permission is refused, the claimant has 9 days to 'renew' the application for an oral hearing where a judge considers the case, with Counsel for both sides to set out the oral arguments. In her summary grounds the SSHD may request that the court makes a finding of no merit and/or that renewal is no bar to removal. This means that if the judge makes either or both findings, and the claimant 'renews', the SSHD is able to continue with enforcement action unless the claimant obtains a further injunction from the court to prevent removal and re-instate the application to seek a Judicial Review as a barrier to removal. In the Nigerian national's case permission was refused and the Court made those both those findings in an outcome dated 22 August 2012. There was therefore no legal barrier to his removal. The Nigerian national did attempt to renew but the Court deemed that his application was without merit. A further application for an injunction was also refused. He was removed from the UK on 10 October 2012.

The CPT would appreciate the observations of the UK authorities on the case of a Cameroonian national (paragraph 113 of the CPT report).

86. If a claimant files a Judicial Review he must serve it on SSHD and also on the Treasury Solicitors department. Similarly if an injunction is granted, the UK Authorities will take action to defer removal upon receipt. The team responsible for doing so is the OSCU. Measures are in place to ensure court orders are transmitted immediately by the courts to both OSCU and the Treasury Solicitor. A dedicated phone contact is also available for Judges to orally advise of granted injunctions. Our initial investigations suggest the Cameroonian national made further representations on 28 August 2013 which OSCU responded to on 1 September 2013. However it does not appear that the court order was passed to OSCU on 31 August 2012 and it was not until 3 September 2013 that they became aware of it and updated the Case

Information Database to indicate to the case owner that a barrier had been created. OSCU do not maintain their paper records beyond 3 months and as such it is not possible to give much more information at this time.

87. The procedures for addressing incidences where injunction orders are received in cases facing imminent removal were revised in October 2012 and can be found at:

    http://www.ukba.homeoffice.gov.uk/sitecontent/documents/policyandlaw/enforcement/detentionandremovals/ (Chapter 60 Judicial review and injunction).

Colnbrook and Brook House IRCs

Ill Treatment

The CPT recommends the UK authorities to remind staff in the Brook House and Colnbrook IRCs that no more force than is strictly necessary should be used to bring agitated/recalcitrant detainees under control. Further, it should be made clear to staff members at the Induction and Reception Unit in Colnbrook that all detainees are to be treated with respect and that abusive language will not be tolerated (paragraph 116 of the CPT report).

88. We accept the recommendation. At Brook House the service provider has specifically targeted a formal briefing to all DCO and DCM grades regarding the legalities and appropriateness of when force may be used. This training has been completed in addition to the annual control and restraint refresher training received by all DCO and DCM staff. The service provider has also introduced body worn cameras which also record sound and has reported that these have proved to be very useful in documenting instances of force and in the review of incidents. In addition they have produced a Restraint Minimisation Strategy. Colnbrook IRC is unable to comment on the individual cases without more specific information relating to these allegations. However, complaints concerning the use of force are investigated by the Professional Standards Unit, which is separate to Detention Operations. All such allegations are passed to the appropriate authorities such as the police, or other oversight bodies, where appropriate. In the case of the police, they will take forward their investigations in parallel to our own internal enquiries. It is open to the police to take action at any time, even where the Department itself finds a case to be unsubstantiated.

The CPT would like to be informed of the lessons learned and action taken following the incident at Brook House (paragraph 116 of the CPT report).

89. Following the incident at Brook House IRC a full investigation was undertaken by the Healthcare service provider. The learning from this investigation has resulted in changes to practice in relation to the management of detainees who require medical supervision. In the circumstance that a GP decides that a detainee requires isolation or a higher level of supervision due to medical reasons, the individual will remain in the healthcare centre until arrangements are made for them to be escorted by the duty manager to the most appropriate area.

Conditions of detention

The CPT would like to receive confirmation that the matter of washing and availability of clean clothes at the Induction and Reception Unit at Colnbrook IRC has been satisfactorily resolved (paragraph 119 of the CPT report).

90. Length of stay within the FNLU at Colnbrook IRC is limited to 24 hours and in the Induction Unit to 5 days. At the time of the visit, work on the laundry facilities had not yet been completed. This work was completed in November 2012. However, in line with the Detention Centre Rules and the Operating Standards for IRC, all detainees would have been provided with clothing which is adequate for warmth and health and provided with a pack of toiletries to meet their immediate needs.

The Committee would like to receive confirmation that the lack of means of rest and shelter from poor weather in the outdoor exercise yards at both Brook House and Colnbrook IRCs has been resolved (paragraph 120 of the CPT report).

91. Since the Committee's visit the service provider at Brook House IRC formally approached the Home Office for provision of a shelter in one of the exercise areas at Brook House. The initial proposal was rejected on cost grounds and further consideration of more cost effective alternatives has been delayed due to changes in personnel within Immigration Enforcement. Work will continue to explore alternatives with minimal impact on existing security arrangements and the physical limitations of the building.

92. At Colnbrook IRC recreational furniture is provided in two exercise yards with the remaining two yards used for team/group games. Detainees have free access to move between the outdoor and inside areas should the weather become inclement. The service provider has undertaken to review the provision of additional shelter.

The CPT invites the UK authorities to develop a broader range of purposeful activities for detainees staying for more than a few months in immigration detention (paragraph 120 of the CPT report).

93. The welfare provisions the Detention Centre Rules 2001 provide for activities for the development of skills, paid activities, educational activities and classes, sports and health related activities and access to a library with resources for the linguistic and cultural needs of the population. The range of different activities and a two tiered incentive and earned privilege scheme are provided in line with the Operating Standards for IRCs. Most IRCs have detainee consultative committees to engage with detainees to take on board suggestions for improving centre regimes. Paid work opportunities may be provided in accordance with paragraph 17 of the Detention Centre Rules 2001 and managed in accordance DSO 01/2013.

The CPT recommends that the management of Colnbrook ensure that the necessary information is provided during the induction period in a language that detainees can understand (paragraph 121 of the CPT report).

94. We accept this recommendation. Induction information at Colnbrook IRC is currently available in a number of languages and the service provider is actively reviewing the documentation to ensure that it is easy to understand.

The CPT considers it inappropriate to use detained persons as interpreters apart from emergency situations (paragraph 122 of the CPT report).

95. The operating standards for IRCs state that it is acceptable for the centre to use other detainees, visitors or staff to interpret for other detainees, provided that both parties agree. A language interpreting service may also be used. They also state that where detainees and staff are used for the purposes of translating, the centre must bear in mind possible sensitivities and ensure that a detainee or staff member of the same sex (as the detainee requiring assistance) is asked to perform the task. Language translation services are regularly used by staff to communicate with detainees with little or no English. Staff are regularly reminded about the need to use interpreters or an interpreting service. Interpreting services cannot always be used for confidential/sensitive information as some detainees have expressed a lack of trust and will only speak through someone they regard as a friend. Immigration Enforcement staff will normally consider sympathetically, requests from detainees to be accompanied or assisted by other detainees with regard to interpretation.

The CPT recommends that the UK authorities ensure that detained persons are allowed a minimum of one hour outdoor exercise per day, including when accommodated in an induction and reception unit (paragraphs 123 and 125 of the CPT report).

96. We accept this recommendation. Rule 18(1) of the Detention Centre Rules 2001 requires that detainees shall be given the opportunity to spend at least one hour in the open air every day. This is regardless of where they are detained in a centre. During the 24 hour period spent in the FNLU, at Colnbrook IRC, residents are offered the opportunity to take outdoor exercise. Home Office Immigration Enforcement and the service provider are working together to ensure that accurate records are kept that detainees have been offered fresh air and their acceptance/declination. The regime in the FNLU has been improved to allow much more open access to fresh air.

Health care

The CPT would like to receive the observations of the UK authorities on complaints received about delays in accessing the services of a GP at Colnbrook IRC (paragraph 126 of the CPT report).

97. The current waiting times for a doctor's appointment at Colnbrook IRC is 24-48 hours. Complaints records for Colnbrook IRC show that there were 6 service delivery complaints between 01/06/12 and 16/09/12 relating to appointments prior to the Committee's visit. In detail therefore: two were about delays in seeing the doctor with the outcome of 1 substantiated and, 1 not substantiated; three

were regarding delays in obtaining hospital appointments/missed appointments with outcomes of 1 substantiated and 2 not substantiated; and, the remaining one was regarding a detainee not being informed of a doctor's appointment and found not to be substantiated. We will continue to monitor the number of service delivery complaints regarding healthcare services at Colnbrook IRC.

The CPT recommends that the presence of a psychiatrist in Colnbrook be increased to at least the equivalent of a half-time post. It would also be desirable to increase the presence of a dentist (paragraph 126 of the CPT report).

98. We disagree with this recommendation. The current provision is in line with contractual requirements for Colnbrook IRC. However, the responsibility for healthcare commissioning in the detention estate is in the process of being transferred to the National Health Service. The current provision for dental services at Colnbrook IRC allows all referrals to be seen within seven days.

The CPT would like to be informed, in due course, about the outcome of the internal review in respect of the death of Y[*] at Colnbrook IRC in 2011, and of any steps taken, and the findings in relation to the death of Z[*] at Colnbrook IRC in 2011 (paragraph 127 of the CPT report).

99. The internal review following the death of Y identified eight areas of improvement which have now been addressed:

- Healthcare staff are given specific training in the management of emergencies conditions such as Asthma, Epilepsy, Diabetes and Chest pain.
- Refresher workshops have taken place to remind all DCO staff of the use of Cardiopulmonary resuscitation.
- Defibrillators not in use are clearly identified as such and located in a discrete area.
- Emergency bags are checked daily and replenished after use to ensure the correct equipment is available.
- DCO staff have been reminded to move co habiting residents from the scene if a medical response is required.
- CCTV times are regularly synchronised with Cell call system. A new cell call system was installed in 2013.
- ACDT records are now routinely reviewed in the event of a death in custody within the centre or wider estate.
- All residents are requested to provide Next of Kin details on arrival.

100. The inquest for Y has concluded. The jury found that Y died of coronary heart disease. However, neglect in terms of the immediate clinical decisions contributed to the death of Y who had a pre-existing heart condition. The Coroner did not produce a Rule 43 report (where the Coroner has the power to issue a report to an organisation where they believe that action should be

[*] In accordance with Article 11, paragraph 3, of the European Convention for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment, certain names have been deleted.

taken to prevent future deaths) on the basis that she was satisfied that with the actions taken and those that were to be taken following the death.

101. A redacted copy of the PPO Report for Y is available at http://www.ppo.gov.uk/immigration-removal-centre-investigations.html .

102. A redacted copy of the PPO Report for Z will be sent once the inquest into his death has concluded.

The CPT recommends that the presence of GPs at Brook House IRC be increased by the equivalent of a half-time post. The presence of the psychiatrist should be increased to offer a sufficient number of sessions to cover the existing needs. The presence of a dentist should also be increased (paragraph 128 of the CPT report).

103. We disagree with this recommendation. The current provision of 38 hours per week of GPs' time at Brook House IRC has been recognised by HMIP as meeting the needs of the population. In addition to these hours, there is an out of hours, 7 day per week GP on call service which is covered by the same group of 7 GPs. A recent health needs assessment has been conducted by NHS England and the service provider is currently working alongside them to source 'talking therapies' for detainees suffering from mental health difficulties. These will be aimed at providing counselling support and coping mechanisms, thus enabling more effective use of the current psychiatrist hours. Since the Committee's visit the number of Registered Mental Health Nurses employed by the Healthcare provider has increased, to provide availability 24 hours a day. In relation to the dentist, there are no current waiting lists. Emergency treatment is provided on site, while other treatment required is undertaken at the local dental access clinic, as noted by HMIP.

The CPT recommends that the UK authorities ensure that the application of handcuffs to persons escorted out of an IRC is based upon a thorough individual risk assessment (paragraph 130 of the CPT report).

104. We agree with this recommendation. The application of handcuffs on a detainee under escort will be based upon an individual risk assessment. This risk assessment process may include the consideration of the specific risks or needs of the detainee, their previous history and the nature of the locations to which the detainee is being escorted to and from.

The CPT calls upon the UK authorities to take steps to ensure that detained persons are not handcuffed during medical examinations and that all such examinations are conducted out of the hearing and - unless the doctor concerned requests otherwise in a particular case - out of the sight of escorting officers. In order to ensure that these requirements can be met at the same time as meeting security needs, provision should be made for a secure room in each hospital where examinations of detained persons regularly occur (paragraph 130 of the CPT report).

105. We note the CPT's comments. Detainees will only be handcuffed during a medical examination if a risk assessment deems this necessary. If the doctor requests that handcuffs are removed, this is complied with. Medical

examinations are conducted out of the hearing and sight of the escorting officers, where requested.

The CPT comments that medical screening by a nurse upon admission to an IRC is acceptable provided that the nurse concerned is fully qualified and reports to a doctor on the outcome of the screening (paragraph 131 of the CPT report).

106. Nurses employed in IRCs are required to be fully qualified and must be registered with the Nursing and Midwifery Council. Following medical screening by a nurse on admission to an IRC, which takes place within 2 hours of their arrival, all detainees are given an appointment to see a doctor. The doctor's appointment should take place within 24 hours of a detainee's admission to the centre. Reports on the outcome of initial screenings are not routinely passed to the IRC doctor, unless the nurse undertaking the screening has immediate concerns about a detainee's health and makes arrangements for them to have an earlier appointment with the doctor. In all other circumstances the centre doctor would access and review the initial screening information during the detainee's appointment with them.

The CPT recommends that cases falling within Rule 35.3 of the Detention Centre Rules (2001) be rapidly reviewed in order to determine whether continued detention is appropriate (paragraph 132 of the CPT report).

107. We accept this recommendation. Rule 35 of the Detention Centre Rules 2001 requires medical practitioners working in IRCs to issue a report if it appears likely a detainee's health will be injuriously affected by their continued detention; if they suspect a detained person has suicidal intentions; or if there is concern that a detained person may have been a victim of torture. Cases in which there are concerns that a detained person may have been a victim of torture are covered by Rule 35(3). Guidance to staff contained in DSO 17/2012 and the revised Asylum Instruction on Rule 35 processes makes it clear that Home Office staff working in IRCs must pass all Rule 35 reports, including those covered by Rule 35(3), to the relevant Home Office case worker by fax/email within 24 hours of receipt. This provides for appropriateness of the individual's continued detention to be reviewed. Case workers are required to respond to Rule 35 reports within 2 working days of receipt. It is therefore not true to say that completion of a report under Rule 35(3) has no further consequences.

The CPT recommends that steps to be taken to ensure that any detainee displaying a significant mental health disorder is transferred without delay to an appropriate psychiatric facility (paragraph 133 of the CPT report).

108. We accept this recommendation in part, as Home Office Immigration Enforcement's current position on the detention of persons with mental health problems is that, where such persons are suffering from serious mental disorders that cannot be satisfactorily managed in detention, they will normally be regarded as unsuitable for detention other than in very exceptional circumstances. In the case of FNOs, the risk of further offending or harm to the public will be carefully weighed against the reason why the individual may be unsuitable for detention- the risk of harm to others may outweigh factors that would normally indicate that a person was unsuitable

for detention, including serious mental ill health. There will be circumstances where it may be necessary for detention at a removal centre or prison to continue while individuals are being or waiting to be assessed, or are awaiting transfer under the provisions of the Mental Health Act. Some of the challenging issues relating to individuals suffering from mental disorders fall squarely to Home Office Immigration Enforcement (i.e. the decision as to whether to authorise or continue detention and, where detention is authorised, ensuring that appropriate provision is made in the detention estate for the care and management of persons with mental disorders). Other matters, such as arranging the transfer of detainees to mental health beds in the community, will not be matters where Home Office Immigration Enforcement can dictate what happens or, indeed, when it happens – all the Home Office can do is ensure that there is good engagement with the relevant health authorities and encourage them to act expeditiously. Home Office Immigration Enforcement is currently considering how healthcare provision for detainees with mental health issues can be improved.

The Committee would like to receive up-dated information on the case of the Sri Lankan national (paragraph 133 of the CPT report).

109. Details of this case have been provided to the Committee. The case has also been investigated by the service provider. The Healthcare Team at Colnbrook IRC have been reminded to raise all such cases for the attention of the on-site Home Office Immigration Enforcement Manager for urgent escalation and action.

110. A Sri Lankan national was held at a UK IRC in late 2012 for two and a half months when he was granted bail. He was taking medication to treat Schizophrenia (Olanzapine 10mg) and other medications to treat depression and acid reflux. Whilst at the centre he was being treated by the on-site Mental Health Nurses. Case Information records state that he was refractory, aggressive and threatening towards staff and other detainees and had spent time in separation and Healthcare. Removal Directions were scheduled on a charter flight to Sri Lanka after he had spent two weeks in the centre and these were cancelled due to further representations.

Other issues

The Committee comments that training on inter-personal skills should be provided to staff in both centres on an ongoing basis, in particular as regards interacting with potentially vulnerable detainees (paragraph 134 of the CPT report).

111. Interpersonal skills training is a core part of the initial training of all DCOs in the detention estate. Service provider staff also receive training on ACDT to help them to manage vulnerable detainees. Refresher training for ACDT should take place every two years.

ANNEX A

HMP KILMARNOCK: TRAINING (2013)

January
PPT Operational
C&R Instructor Assessments
C&R Phase 1
Mandatory E Learning Health & Safety
Mandatory E Learning Suicide Awareness
Mandatory Security Awareness Refresher
Risk Management Training
First Aid Refresher Training 2 day
Non-custodial Induction Training (new staff)
Fire Safety Training
PPT Non-operational Training

February
PPT Operational
C&R Phase 3
C&R Phase 1
C&R Phase 2
Protecting People Awareness Training
Intel Gathering Training
First Aid Refresher Training 2 day
First Aid Refresher Training 3 day
Mandatory E Learning Health & Safety
Mandatory E Learning Suicide Awareness
Management Development (Session 1 x 3 sessions)
Excel for Analyst Training
I2 Charting Course
Drug Dog Refresher Training
Forklift Supervisor Training
Forklift Training

March
First Aid Refresher Training 3 day
C&R Phase 1
C&R Phase 2
Drug & Alcohol Awareness Training for Managers
Intel Gathering
Mandatory E Learning Health & Safety
Mandatory E Learning Suicide Awareness
Mandatory Security Awareness Refresher
Management Development (Session 2 x 3 sessions)
Warrant Foundation Training

Non-custodial Induction Training (new staff)
PPT Non-operational Training
SROBP
C&R Phase 3

April
X-Ray Training
Search Training
Mandatory Drug Tester Staff Awareness Training
Mandatory Drug Tester Training
Intel Gathering Training
Fire Safety Refresher
Mandatory E Learning Health & Safety
Mandatory E Learning Suicide Awareness
Mandatory Security Awareness Refresher
First Aid Train the Trainer Training
Management Development (Session 3 x 3 sessions)
Warrant Intermediate Training
Non-custodial Induction Training (new staff)
PPT Non-operational Training

May
Intel Gathering Training
C&R Phase 1
C&R Phase 2
Fire Safety Training
Mandatory E Learning Health & Safety
Mandatory E Learning Suicide Awareness
Mandatory Security Awareness Refresher
Act 2 Care Train the Trainer Training
Management Development (Session 4 x 3 sessions)
Tipping Skip Training
Warrant Intermediate Training

June (planned)
First Aid Refresher Training 3 day
First Aid Refresher Training 2 day
Mandatory E Learning Health & Safety
Mandatory E Learning Suicide Awareness
Mandatory Security Awareness Refresher
C&R Phase 1
C&R Phase 2
REHIS Advanced Diploma Course in Food Hygiene
Act 2 Care Training Roll out
Visual Basics for Access/Excel

ANNEX B

Action Plan for the Removal of Foreign National Offenders following EDL

Initial Notification

Individual prisons must notify Home Office Criminal Casework within 24 hours of all foreign nationals, dual nationals, and those whose nationality is unclear or where the prisoner refuses to give nationality so that Criminal Casework can establish their Immigration status using referral forms *CCD 1 (Scotland)* and *CCD 2 (Scotland)*.

On-going Monitoring

If no decision has been received from Criminal Casework in relation to the prisoner's Immigration status or nationality has yet to be confirmed by the Home Office, prisons should make further contact with Criminal Casework Glasgow at the following intervals, keeping full notes of all contact in the prisoners file:

8 weeks prior to consideration for release of a short-term prisoner on HDC by email (*see below*);

8 weeks prior to a Risk Management Team considering a prisoner for progression to less secure conditions/unescorted community access by email (*see below*);

8 weeks prior to release date by email;

14 days prior to the release date by email;

24 hours prior to the release date by telephoning the enquiry line. The urgent nature of the case must be clearly explained.

For those prisoners held solely on an immigration warrant, where the above process has not led to the release of the prisoner in to Home Office custody, contact must be made with Criminal Casework Glasgow at the following intervals at the latest, keeping full notes of all contact in the prisoners file:

4 weeks after the prisoner's EDL;

8 weeks after the prisoner's EDL (copied to the Assistant Director of Prisons);

If this does not resolve the issue, the Assistant Director of Prisons should be informed and will take this matter up direct with the Home Office, with a view to the early removal of the relevant FNO from SPS custody.

As an additional safeguard the Population Manager will also monitor this and provide regular information on foreign nationals held on an immigration warrant only to the Assistant Director of Prisons to ensure any issues are dealt with quickly and appropriately.

ANNEX C

Position Paper on Seclusion

Directorate of Forensic Mental Health & Learning Disabilities

NHSGGC

Introduction

The Directorate of Forensic Mental Health & Learning disabilities has been providing secure care and treatment to mentally disordered offenders at a local, level since April 1999 and more recently, at a regional and national level within Rowanbank since 2007 and 2011 respectively.

As a host for national and regional services the directorate is required to provide a position paper on the subject of seclusion to our patients, carers and NHS partners. This will clarify our position on seclusion and describe our current provision for the care and treatment of patients who present with severely disturbed or challenging behaviour.

Purpose

The directorate has produced this position paper in response to the Mental Welfare Commission good practice guideline (2007) and as a result of discussions with regional partners and national services, where it has become apparent that most forensic services at regional or national level operate with seclusion polices.

Definitions

Definitions of seclusion can vary quite widely, but a recent review (Stewart *et al*. 2010) reported that seclusion is typically defined as "*the temporary isolation of a patient in a purpose designed room; the room is usually non-stimulating, bare or sparsely decorated, is locked from the outside and generally has a window for observation".*

The Mental Health (Care & Treatment) (Scotland) Act 2003 does not contain a definition of seclusion. However the code of practice to the Mental Health Act 1983 defines seclusion as "…*the supervised confinement of a patient in a room, which may be locked to protect others from significant harm. Its sole aim is to contain severely disturbed behaviour, which is likely to harm others*" (HMSO, 1999). The Court of Appeal in England further described seclusion as *"…keeping a person under regular frequent observations while he is prevented from having contact with the world outside the room where he is confined*." (Mind 2003).

The Mental Welfare Commission view of seclusion is based on a guidance of good practice paper published in March 2007. It states that seclusion is "… *the restriction of a person's freedom of association, without his or her consent, by locking him or her in a room. Seclusion can only be justified on the basis of a clearly identified and significant risk of serious harm to others that cannot be managed with greater safety by any other means"* (MWC 2007).

The use of seclusion is considered a controlling, restrictive and coercive intervention of last resort, only to be used in extreme circumstances when less restrictive forms of treatment, has been excluded or attempted (Cleary et al 2010).

Justification for the use of Seclusion

The use of seclusion has been described as a necessary management strategy for the prevention of violence, and is an appropriate intervention which offers therapeutic opportunities in the care of acutely disturbed patients (Lee et al, 2003, Meehan et al 2004, Happell & Koehn 2011).

The MWC (2007) suggested that the use of seclusion should only be considered where:

There is a clear identified risk that the person who is to be secluded presents a significant degree of danger to other people; and

That the situation cannot be managed more safely or appropriately by any other means.

In practice the commission highlighted that the decision to use seclusion should only be made where the balance between the potential risks of seclusion and any other intervention, such as prolonged physical restraint, indicates that it would be safer and more therapeutic to use seclusion.

The Impact of Seclusion

The use of seclusion is associated with a number of negative effects and has been widely questioned over the last decade (Larue et al 2010). Whilst some may argue that patients benefit from seclusion by being in a low stimulus, controlled and safe environment (Meehan et al 2004), the majority of studies would report that seclusion is interpreted by patients as a form of punishment with little or no therapeutic value (Meehan et al 2004, Larue et al 2010). Other studies have described psychological harm reported by patients who have been secluded around issues of shame, sense of injustice, post-traumatic symptoms and abandonment (Holes, Kennedy & Perron, 2004, Salias & Wahlbeck 2005).

However the most serious concern about the impact on the use of seclusion is the absolute lack of research or evidence to demonstrate that seclusion is actually effective in improving patient's subsequent reactions and behaviour or in changing their adaptation strategies (Donat, 2002).

Current Provision for Managing Severe Disturbed / Challenging Behaviour

In light of the MWC positional statement on the use of seclusion, the directorate convened an extraordinary clinical governance meeting to review both this document and our current position on the use of seclusion. It was agreed that the directorate's position on patients and staff safety stems from the well-established and inter-related aspects of security within our service. These are;

Relational security: The knowledge and understanding staff have of a service user and of the environment, and the translation of that information into appropriate responses and care.

Procedural security: The policies and procedures in place to maintain safety and security.

Environmental security: The building, fixtures and fittings, alarms and so on that keep people safe.

The directorate recognises that the balance between these three dynamics often shifts, requiring the service to change plans to meet the needs of a particular service user or situation. However it is essential that all three are in place at all times, and one should never substantially compensate for the absence or ineffectiveness of another (DoH 2010).

Taking cognisance of these inter-related aspects of security the directorate currently manages patients with severely disturbed and challenging behaviour by implementing a policy of exclusion using time-out supervised by nursing staff rather than seclusion. The practice of time-out is less well studied in comparison to seclusion (Bowers et al 2010). There is a lack of empirical studies in the use of time-out as a containment and management method for services users displaying severely disturbed and challenging behaviour (Ryan & Bowers 2006). However in a survey of more than a thousand inpatients and a thousand staff across three regions of England, time-out was rated as much more acceptable than seclusion (Whittingham et al 2009).

The directorate defines time-out ‘as removing the service user from a stimulating environment to a quiet area where they can spend some time alone, as a means to de-escalate disturbed or challenging behaviour’. Time-out is implemented as part of a structured behaviour support plan. The purpose of using ‘time out’ is to achieve a change in the service user’s behaviour over a period of time when used alongside a range of other interventions as part of an individual support plan.

The practice of time-out is supported by a number of protocols and policies within the directorate, these include;

De-escalation protocol

Nurse attack response protocol

Enhanced observation protocol

Debriefing protocol

Rapid tranquilisation policy

Aggression management policy and guidance.

Position Statement

During the last ten years the directorate has found neither the need nor the situation for the use of seclusion in the management of patients with severely disturbed and challenging behaviour. The directorate is of the opinion that at a time when several countries are reducing and diverting away from their use of seclusion, including the United States (American Psychiatric Association 2003), Australia (Australian Government 2008), and the Netherlands, (Janssen et al, 2008), it would be remiss for the directorate to introduce seclusion for the care and treatment of patients with

severely disturbed and challenging behaviour. One of the major and most effective strategies to eliminate the use of seclusion within these countries is the removal of seclusion rooms.

Another major concern of the directorate is the evidence which points to seclusion being used as a first line management invention to the care of patients with severely disturbed and challenging behaviour instead of a third stage strategy. The literature would suggest that this happens irrespective of how robust and methodical the clinical guidelines and policies are surrounding the use of seclusion.

The MWC guidance on good practice for implementing the use of seclusion was not an endorsement of the approach. The guidance contains the following statement *"There is a paradox in providing written guidance on the use of seclusion. The very existence of guidance such as this document can be construed as supporting the practice"* (MWC 2007 p.1). At this time the directorate does not support the use of seclusion and will instead use 'time-out' and enhanced observation in the care and treatment of patients with severely disturbed and challenging behaviour. This position will be reviewed annually and may change depending on the changing dynamics within the role and remit of the directorate.

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requests for information (not for publication)