

## **The UK NPM at five years**

In 2009 the UK established its National Preventive Mechanism (NPM) to fulfil its obligations under the Optional Protocol to the Convention against Torture (OPCAT). On 8 April 2014 an event was held in Bristol to mark its fifth anniversary. The event, co-organised by the UK NPM and the Human Rights Implementation Centre at the University of Bristol, brought together members of the NPM, government, monitored bodies, civil society and international human rights mechanisms and experts. The event set out to take stock of the NPM's work to date and identify ways of further strengthening it over the next five years.

We present here a summary of the day's discussions, highlighting key themes that emerged from the presentations and debate.<sup>1</sup> We thank the presenters for their thought-provoking input, and all attendees for sharing their experience and perspectives.

### **Professor Malcolm Evans**

Chair, UN Subcommittee on Prevention of Torture

### **Nick Hardwick CBE**

HM Chief Inspector of Prisons, on behalf of the NPM Steering Group

### **Professor Rachel Murray**

Director, University of Bristol Human Rights Implementation Centre

## **1. Reflecting on the UK NPM in 2014**

### **Establishing the National Preventive Mechanism**

The unique character of the UK NPM brings advantages and challenges to its work. After ratifying OPCAT in 2003, the UK decided to designate existing bodies across the four jurisdictions whose mandates were compatible with the powers required by OPCAT to form its independent NPM. As a result, 20 bodies – both lay and professional – have been designated to the NPM.

In the view of the UK NPM, the fact that it can draw on the expertise of existing bodies, and encompasses layered monitoring by lay and professional bodies, gives it a considerable advantage. The UK NPM can and does have an impact on treatment and conditions in detention, and ensures that improvements are made. Yet at the same time, the challenge of adjusting to their new or different responsibilities under OPCAT can be considerable for some members, particularly for those whose NPM responsibilities form only a small part of their broader institutional mandate.

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1. These reflect the discussion during the day and do not necessarily represent the formal position of the SPT, the UK NPM, its members or individual participants.

Being part of the UK NPM means member organisations have to understand that they are part of a broader system for human rights protections. All NPMs work with the UN Subcommittee on Prevention of Torture (SPT), the international monitoring body also established under OPCAT, and the meaningful interplay between these international and national monitoring mechanisms is crucial.

While important progress has been made, the UK NPM has not yet reached its full potential, and needs to reflect further on how best to use its resources and expertise to fulfill the mandate established under OPCAT. It is also essential that the NPM reflects further on what a 'preventive approach' means in practice: we may be accustomed to monitoring and observing in the UK, but the culture of preventing abuses is still inadequate.

The UK government is committed to the prevention of torture and obligations under international human rights law. Torture is a criminal offence in the UK, and the government does not encourage torture for any purpose, nationally or internationally.

It is essential that the UK NPM cover all types of detention, draw on appropriate expertise and remain independent. The best time to act is before abuses have taken place, to prevent them happening. Engaging young people will be crucial to stopping abuses in future.

The government proactively promotes bilateral cooperation and international standards. It takes seriously its duty to remind the public that human rights must be protected at home in the UK: they are relevant to people's daily lives and interactions.

**Rt Hon Simon Hughes, former Minister of State for Justice and Civil Liberties**

## **The experiences of NPM members**

Most NPM member institutions long pre-date OPCAT. Since their designation as part of the NPM, members have incorporated NPM powers and responsibilities in different ways into their work and these influence both how they work and what they work on.

With regard to how members work, the NPM has supported joint working and the sharing of information and best practice between members. It has led to members focusing on preventing sanctions or reprisals arising from their contact with detainees. For some members, whose institutional remit extends far beyond detention, being part of the NPM has ensured greater focus on monitoring detention within their work and making sure they have expertise on technical issues relating to detention. In line with the requirement that NPMs have the ability to access all places of detention, important progress has been made in ensuring coverage of court custody, escorts and other places that might be considered 'out of sight'.

With regard to what members work on, the NPM has encouraged focus on specific issues of concern, including the use of restraint and issues faced by children in detention as well as broader attention to what it means to prevent ill-treatment. This is an area that the NPM intends to strengthen further in the future.

## **The relevance of the NPM mandate to the UK**

Although the creation of NPMs around the world has been a significant development and has brought attention to the need to maintain a focus on preventing rather than just responding to ill-treatment at all times, century-old principles of rule of law and the accountability of the State towards individuals inform the human rights approach to inspecting places of detention. NPMs are crucial to identifying 'fault lines' in the systems under scrutiny: a broad approach to making changes in systems of detention as a whole is essential. To do this, NPMs must avoid

being drawn into the technical and managerial aspects of the institutions they monitor, and maintain their focus on whether individuals are being treated with respect. NPMs need to have standards by which to monitor, but must also understand the culture within institutions and the experience of detention from the perspective of the detainee.

Although the UK has an institutional framework for oversight of places of detention, experiences of those working on deaths in custody demonstrate that this framework has not ensured joined-up, cross-sector learning. Responses to deaths in custody have been fragmented and disparate and there is a gap in independent oversight of cases where those detained under the Mental Health Act have died. The NPM could play a greater role in sharing information and recommendations to fill an accountability gap.

We need the agencies that safeguard [...] and we need them to be independent of government and the statutory sector and we need them to be strong and influential and in tune with the experience of people like me.

Because, when you take away our freedom, when we have usually committed no crime and when you treat us differently to everyone else you need to be sure that you are doing the right thing and that, for lack of safeguard, it doesn't become a very bad thing indeed.

Graham Morgan, Action for Mental Health

## Assessing the UK NPM

In order to inform its future planning and identify areas for future strengthening, the UK NPM conducted a self-assessment exercise in 2013–14, based on the 'Analytical Self-Assessment Tool' published by the UN SPT.<sup>2</sup> This tool, which aims to help NPMs self-assess their operations constructively and thereby foster their development, was turned into a questionnaire and applied by NPM members to their own institutions.<sup>3</sup>

Although findings of a self-assessment are by their nature subjective, they shed light on a range of issues and cross-cutting themes for the NPM.

- NPM members considered that they were largely compliant with OPCAT, reporting compliance with 79% of the questions, partial compliance with 15% and not currently compliant with 4% (and 2% not applicable).
- Lay and voluntary bodies in the NPM were more positive in their self-assessments, citing 85% full compliance compared to 79% among the 'professional' bodies.
- Of the four nations, Northern Ireland members were the most positive, reporting full compliance on 89% of the questionnaire and not currently compliant with 2%.
- NPM members monitoring mental health detention reported lowest compliance.

Analysing the responses in line with the three main NPM powers under OPCAT Article 19<sup>4</sup> showed that members considered themselves to be complying most fully with aspects of their powers to make recommendations (Article 19b) and in their lines of communication with relevant authorities. In relation to specific OPCAT issues, the self-assessment process highlighted the following.

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2. Analytical self-assessment tool for National Preventive Mechanisms, CAT/OP/1

[http://www2.ohchr.org/english/bodies/cat/opcat/docs/AnalyticalToolsNPM\\_en.doc](http://www2.ohchr.org/english/bodies/cat/opcat/docs/AnalyticalToolsNPM_en.doc)

3. A detailed write-up of this process and findings can be found on the UK NPM website.

4. Article 19 sets out that, at a minimum, NPMs must have the power to examine the treatment of detainees; make recommendations; and submit proposals and observations on legislation.

- Compliance with the requirement that NPMs have a gender balance and adequate representation of ethnic and minority groups among visitors needs improvement. Fifty per cent of members thought they complied partially, 11% did not comply and only 39% reported full compliance.
- The requirement that members prevent reprisals arising from their work requires greater focus, with 65% of members reporting compliance with the different aspects of the SPT's guidance and non-compliance reported by 13%. This issue had already been identified within the UK NPM and actions taken by some members.

Other areas identified as warranting further progress included the way members report on, disseminate and publish their work, and their work in relation to individual cases. Assessment of the coordination function of the NPM identified several areas for improvement, including strengthening national and international partnerships, and creating a mechanism for providing simple and accessible information to the public, as well as awareness-raising and training.

## **2. Specific detention-related issues**

As part of the day's events, six small group sessions were organised to focus attention on approaches and themes relevant to the NPM's work. This allowed participants to share experiences and opinions about the role that should be played by the NPM in the future.

### **Diversifying models of service provision: challenges for NPM inspection and monitoring**

The NPM should be able to monitor all places where individuals are deprived of their liberty, regardless of whether responsibilities are delegated by the UK government to third parties. Such delegation does not exempt the State from its international treaty obligations, as ultimately the State is responsible for the application of deprivation of liberty. This means that there must be full access to private prisons, and mapping of detention should ensure that less obvious places where detention may occur are subject to monitoring. As OPCAT refers to the State's 'jurisdiction', the NPM should have the power to inspect detention overseas, such as facilities in military bases.

Based on its powers and remit, the NPM should define a position on areas that are less clear. As conditions of detention are increasingly dictated by contracts, the NPM should consider its powers to access and scrutinise such contracts. There are also crucial issues around the legitimacy of detention – in cases including post-tariff indeterminate prison sentences and in immigration detention – and the NPM should determine whether it has a role in discussing this.

### **Making recommendations: a core NPM function**

As making recommendations is a core function of all NPMs, detailed attention needs to be paid to the NPM's work in this regard. NPM members had provided information on their practices in making recommendations via a survey, and this shed light on a number of important areas (see Appendix 3). The findings of this survey, as well as the discussions, set out a number of areas of agreement and future development.

NPM recommendations must be grounded in findings that are incontrovertible. It should be clear to the bodies that are monitored why specific recommendations are made and what outcomes are expected. Recommendations should address what should be improved, rather than how improvements should be achieved, and they should also be proportionate to the extent that they will have an impact. The NPM needs to be clear in setting out who its recommendations are for, and therefore who is responsible and accountable for giving a response. Clear follow-up procedures should be set out, including expected timelines for implementation.

Practices across the NPM are different, and reflect the specific powers of NPM members. There is also no uniform approach from different areas of government in the way they respond to the NPM's recommendations.

The NPM's ability to ensure its recommendations are implemented is key to its success. As well as strengthening its practice of setting out recommendations, the NPM should continue to reflect on the ways in which it follows up on recommendations. Joint work between NPM members can support this, and mechanisms to track implementation of recommendations, and what their implementation has led to in practice, are crucial to demonstrating the NPM's impact. Creating a database of recommendations that can be searched by theme could enable more sharing of good practice and strengthen consistency across the 20 NPM bodies.

### **The NPM in its international context**

A number of international bodies are involved in monitoring detention, including the International Committee of the Red Cross, the UN SPT and the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT). Efforts have been made by these different bodies to collaborate with each other, but this could be improved. Additionally, some individual members of the UK NPM have conducted work internationally, and this ranges from sharing methodologies, providing training, reporting to international human rights bodies and supporting initiatives to ratify OPCAT. NPM members have found it valuable to open themselves up to questioning by other NPMs, as this promotes useful self-reflection and critique. Sharing expertise and promoting the UK NPM would be strengthened further if it had a website of its own or participated in online platforms.

NPM-to-NPM collaboration could be useful in relation to transfers of detainees from country to country, with direct links to ensure continuity of oversight. In the future, it might be considered unacceptable to forcibly remove a detainee to a country without an effective and independent NPM.

As with their work at the national level, NPM members must take care to safeguard their independence when working internationally. This could be in relation to accepting certain sources of funding for their work, or decisions to visit States where torture is practiced and the NPM's involvement could be construed as condoning such practices.

Another important element to the NPM's work is its reach to the UK's Overseas Territories and Crown Dependencies, as well as extraterritorial places of detention under the effective control of the UK. OPCAT is clear that the NPM should have access to extraterritorial places of detention and information about them. Without the scrutiny that places of detention within UK territory have, it is likely that any abuses committed in extraterritorial detention would pass unnoticed. While some of these places of detention may be subject to other forms of scrutiny, this should not replace the role of the NPM. Further progress on establishing this principle is needed.

### **Preventing ill-treatment through rights-based inspections**

Human rights should be explicit in, and central to, all NPM members' work. International standards and norms that are relevant to specific detention settings should be clearly conveyed to inspection teams, supported by training. To integrate human rights further into NPM members' monitoring activities it would be useful to develop a clearer idea of how human rights apply within the overall objectives of the monitoring, and relevant human rights law and standards should be referenced in reports. Awareness-raising of rights among detainees and detention staff is important to achieving change, and given the negative depiction of human rights in some areas of the media and public life, NPM members should be open with the bodies they inspect that they will be using human rights-based standards to assess them.

A human rights approach can acknowledge that there are certain circumstances in which it is appropriate that individuals are detained, but sets out the importance of treating all detainees with respect for their rights. The overall objective of an inspection that is consistent with human rights standards should be to identify the extent to which human rights are being respected.

### **‘Who guards the guards?’ Accountability of the NPM and its members**

While the State must be accountable for establishing and ensuring the NPM is able to fulfill its OPCAT mandate, the NPM itself must also be accountable for fulfilling its role with independence. Perceptions of the NPM can influence its ability to perform its functions effectively, and the NPM must demonstrate to both the authorities and civil society that it acts with independence in practice. Some NPM members hire staff seconded from the organisations they inspect, but the desirability of employing staff on permanent contracts rather than as secondees is recognised. Where there is no alternative to using secondees, safeguards against any conflict of interest should be in place.

There are various areas in which the NPM’s independence could be strengthened, including making its members accountable to Parliament rather than the Executive, as this can cause politicisation. A more active role from Parliament, including debate of the NPM’s annual report, should be sought. Training of NPM staff is essential, and NPM members could consider training other members’ staff. Further consideration should be given to the role of volunteers working for lay visiting bodies and the desirability of them having a maximum term of office as well as moving around different places of detention. The work of inspectorates and lay monitors could be more closely linked.

### ***De facto* detention: what are the risks associated with individuals who are not formally detained by law, but who may be deprived of liberty?**

The UK NPM has begun work on the subject of *de facto* detention, identifying cases in which it occurs from across the work of NPM members. This work has identified two important issues: that there are concerns about NPM members’ ability to access those receiving treatment at home or in the community who may be in *de facto* detention; and that greater focus on improving treatment and the capacity of individuals to give consent is needed.

Recent legal developments, namely the decision in the Cheshire West case, require English and Welsh courts to take a broader approach to what constitutes deprivation of liberty. This leads to concerns around whether the lawfulness of a detention necessarily means it is the right measure to take in a given case. It can also lead to unreasonable and excessive treatment being sanctioned during the detention.

There is also uncertainty around applying the new legal standards. The situation surrounding the protection of children and the extent to which they can be deprived of liberty is also a grey area, with children under the age of 16 currently unable to consent/refuse treatment, and instead treated on the basis of parental consent.

The NPM can play an important role in exposing ill-treatment that occurs under *de facto* detention, and in giving service users with mental health problems a greater voice. The NPM should consider shifting its focus from questioning the legality of detention to questions around proportionality and necessity, leading on to ethical questions about the treatment provided during detention.

### **3. Conclusion**

To conclude the day's discussions, the main points from each group session as set out above were presented to the plenary. These will feed into the NPM's future business planning and individual NPM members' own institutional work. Three challenges for the NPM to take on in its next five years were set out, as follows.

#### **Taking forward a preventive approach**

Greater effort is needed to understand the preventive role the NPM plays. This requires further consideration of the way in which the NPM performs its functions through both its formal powers and methodology, as well as identifying tangible results of prevention and making these visible. Any gaps in the NPM's coverage must be identified and addressed.

#### **NPM powers and responsibilities**

Since being designated as members, the 20 bodies that make up the UK NPM have worked differently with their OPCAT mandate. The focus to date on what being part of the NPM brings to its members is important, but greater emphasis on understanding what OPCAT requires of them is crucial at this stage. This should also lead to greater attention on the combined power of the UK NPM in sharing expertise, synthesising good practice and working collectively to prevent ill-treatment.

#### **Strengthening the NPM**

A range of suggestions made during the day could strengthen the NPM's work. The results of the NPM's self assessment painted a positive picture. The UK NPM is seen as a beacon, and is in a good position internationally, but this should not lead to any complacency: there is more work to do to fulfill OPCAT in the UK and critical perspectives on how to do this are essential.

# Appendix 1 – Meeting agenda

## The United Kingdom’s National Preventive Mechanism: Five Years On

Conference organised by the National Preventive Mechanism of the United Kingdom in collaboration with the Human Rights Implementation Centre, University of Bristol  
Tuesday, 8 April 2014 (Bristol, United Kingdom)

### Agenda

**09:30-10:00** Arrival and registration

**10:00-10:45** **OPENING SESSION**

**10:00-10:15** Brief overview of the UK NPM by Nick Hardwick  
(Her Majesty’s Chief Inspector of Prisons)

**10:15-10:30** Opening by the Rt Hon Simon Hughes MP  
(Minister of State for Justice and Civil Liberties)

**10:30-10:45** Introduction by Professor Malcolm Evans  
(Chair, UN Subcommittee on Prevention of Torture)

**Coffee break 10:45-11:00**

**11:15-12:55** **SESSION I – THE UK NPM IN 2014: REFLECTING ON PROGRESS MADE  
AND THE NPM MANDATE**  
**Chair: Rachel Murray (Director, HRIC)**

**11:00-11:55** **Progress made under the NPM mandate: members’ experiences**

NPM members will share their experience of being part of the UK NPM and the impact this has had on the work of their organisation over the past five years.

- **Sue Berelowitz** - Office of the Children’s Commissioner
- **Laura Paton** - Her Majesty’s Inspectorate of Constabulary for Scotland
- **Anna Thomas-Betts** - Independent Monitoring Boards
- **Annette Bruton** - Care Inspectorate

**Short Q and A session**

**11:55-12:50** **The relevance of the NPM mandate to detention in the UK: panel discussion**

- **Dr Silvia Casale** - Implementing a human rights framework when inspecting places of detention
- **Deborah Coles (INQUEST)** - Why independent monitoring is important in the UK: lessons learnt from deaths in custody
- **Graham Morgan (Action for Mental Health)** - A detainee’s perspective on detention and the role of monitoring in preventing ill-treatment

## **Short Q and A session**

**Lunch 12:50–13:45**

**13:45–15:30      SESSION II – LOOKING AHEAD TO THE NEXT FIVE YEARS: FUTURE APPROACHES**  
**Chair: David Strang (Her Majesty’s Chief Inspector of Prisons for Scotland)**

**13:45–14:05      Fulfilling the OPCAT mandate: the findings of the NPM**  
**‘self-assessment tool’ survey**

- **Louise Finer (NPM Coordinator)**

**14.05–15:30      Approaches and themes to strengthen the NPM: parallel sessions**  
**(break-out groups overleaf)**

**Coffee break 15:30-16:00**

**16:00-16:30      CLOSING SESSION: WRAP UP AND CONCLUSIONS**

**16:00-16:15      Key conclusions from the parallel sessions (Nick Hardwick)**

**16:15-16:30      Concluding remarks (Rachel Murray and Nick Hardwick)**

Break-out group I	Break-out group II	Break-out group III	Break-out group IV	Break-out group V	Break-out group VI
<p><b>The NPM in the context of diversifying models of service provision:</b> challenges for inspection and monitoring</p>	<p><b>Making recommendations:</b> a core NPM function. What makes for a good recommendation, and how can the NPM follow up on them most effectively?</p>	<p>The NPM in its international context – how does the UK NPM make best use of its international linkages?</p>	<p>Preventing torture and ill treatment – investing in rights-based inspections.</p>	<p>‘Who guards the guards?’ Accountability of the NPM and its members – what does this mean in practice?</p>	<p><b>De facto detention:</b> what are the risks associated with individuals who are not formally detained by law, but still may be deprived of their liberty?</p>
<p><b>Chair:</b> Juliet Lyon (Prison Reform Trust)</p> <p><b>Speaker:</b> Professor Andrew Coyle</p>	<p><b>Chair:</b> Rachel Murray (HRIC)</p> <p><b>Speakers:</b> Mari Amos (Subcommittee on Prevention of Torture)</p> <p>Danielle Pearson (UK NPM)</p>	<p><b>Chair:</b> Mona Sadek (International Committee of the Red Cross)</p> <p><b>Speaker:</b> Bruce Adamson (Scottish Human Rights Commission)</p>	<p><b>Chair:</b> Stephen Bowen (British Institute of Human Rights)</p> <p><b>Speaker:</b> Theresa Nixon (Regulation and Quality Improvement Authority)</p>	<p><b>Chair:</b> Hugh Chetwynd (Committee for the Prevention of Torture)</p> <p><b>Speaker:</b> Barbara Bernath (Association for the Prevention of Torture)</p>	<p><b>Chair/discussant:</b> Jill Stavert (Edinburgh Napier University)</p> <p><b>Speaker:</b> Donny Lyons (formerly Mental Welfare Commission for Scotland)</p>

## Appendix 2 – List of participants

NAME	ORGANISATION
Rt Hon Simon Hughes	Former Minister of State for Justice and Civil Liberties
Bruce Adamson	Scottish Human Rights Commission (NPM member)
Mari Amos	UN Subcommittee on Prevention of Torture
Peter Bennett	International Centre for Prison Studies
Sue Berelowitz	Office of the Children's Commissioner (NPM member)
Barbara Bernath	Association for the Prevention of Torture
Sarah Blackmore	Care Inspectorate (NPM member)
Gary Boughen	Her Majesty's Inspectorate of Prisons (NPM member)
Stephen Bowen	British Institute of Human Rights
Matthew Brazier	OFSTED (NPM member)
Margaret Brown	Her Majesty's Inspectorate for Prisons for Scotland
Annette Bruton	Care Inspectorate (NPM member)
Barbara Buchanan	Her Majesty's Inspectorate of Prisons (NPM member)
Silvia Casale	Expert on Torture Prevention
Hugh Chetwynd	European Committee for the Prevention of Torture
Celia Clarke	Bail for Immigration Detainees
Deborah Coles	INQUEST
Yvonne Cooke	Police Service of Northern Ireland
Sarah Cooke	Independent Consultant
Paul Castella	International Committee of the Red Cross
Richard Costidell	University of Bristol
Professor Andrew Coyle	Expert on Torture Prevention
Donna Davies	Care and Social Services Inspectorate Wales (NPM member)
Natalie Doherty	Foreign and Commonwealth Office
Kevan Downer	Northern Ireland Policing Board Independent Custody Visiting Scheme (NPM member)
Abi Dymond	University of Bristol
Professor Malcolm Evans	UN Subcommittee on Prevention of Torture
Louise Finer	UK National Preventive Mechanism Coordinator
Sofia Galani	University of Bristol
Sonia Ghandi	OFSTED (NPM member)
Francesca Gordon	Her Majesty's Inspectorate of Prisons (NPM member)
Alison Hannah	Penal Reform International
Nick Hardwick	Her Majesty's Inspectorate of Prisons (NPM member)

Lord Toby Harris	Independent Advisory Panel on Deaths in Custody
Glenn Houston	Regulation and Quality Improvement Authority (NPM member)
Ben Hudson	University of Bristol
Evan Humphries	Healthcare Inspectorate Wales (NPM member)
John Johnston	Regulation and Quality Improvement Authority (NPM member)
Emily Kakoullis	University of Bristol
Judy Laing	University of Bristol
Graeme Larkin	Lay Observers (NPM member)
Martin Lomas	Her Majesty's Inspectorate of Prisons (NPM member)
Donald Lyons	Mental Welfare Commission for Scotland (NPM member)
Juliet Lyons	Prison Reform Trust
Catherine May	Equality and Human Rights Commission
Brian McFadyen	Independent Custody Visitors Scotland (NPM member)
Colin McKay	Mental Welfare Commission for Scotland
Judith Million	Her Majesty's Inspectorate of Constabulary (NPM member)
Kerry Morgan	Scottish Government
Graham Morgan	Action for Mental Health
Rodney Morgan	University of Bristol
Julia Morris	Oxford University
Rae Morrison	Independent Monitoring Boards (Northern Ireland) (NPM member)
Rachel Murray	University of Bristol
Theresa Nixon	Regulation and Quality Improvement Authority (NPM member)
Laura Paton	Her Majesty's Inspectorate of Constabulary for Scotland (NPM member)
Harpreet Paul	REDRESS
Danielle Pearson	NPM Coordination
Derek Penman	Her Majesty's Inspectorate of Constabulary for Scotland (NPM member)
Gill Robinson	Scottish Prison Service
Andy Rogers	National Offender Management Service
Lizzie Romilly	Home Office
Paul Rowlands	Her Majesty's Inspectorate of Prisons (NPM member)
Mona Sadek	International Committee of the Red Cross
Ravan Samodov	University of Bristol

Catherine Shaw	Her Majesty's Inspectorate of Prisons (NPM member)
Kim Shepherd	Care Quality Commission (NPM member)
Cecilia Smith	University of Bristol
Ian Smith	Independent Custody Visiting Association (NPM member)
Keith Smith	Secure Accommodation Network
Jill Stavert	Edinburgh Napier University
Alison Stradling	Ministry of Justice
David Strang	Her Majesty's Inspectorate of Prisons for Scotland (NPM member)
Anna Thomas-Betts	Independent Monitoring Boards (NPM member)
Nigel Thompson	Care Quality Commission (NPM member)
Jonathan Timbers	Equality and Human Rights Commission

# **Appendix 3 – Making recommendations: a core NPM function. What makes for a good recommendation, and how can the NPM follow up on them most effectively?**

## **Background**

1. Article 19(b) of the Optional Protocol to the Convention against Torture (OPCAT) requires that National Preventive Mechanism (NPM) members have the power to make recommendations to the relevant authorities. Recommendations are made with the aim of improving the treatment and conditions of people deprived of their liberty and to prevent torture and other ill-treatment, and should also take into consideration relevant norms of the United Nations.
2. The UN Subcommittee on Prevention of Torture, which scrutinises and supports NPMs in achieving compliance with OPCAT, further elaborates that NPMs should not only make recommendations but also engage in a meaningful process of dialogue with the State concerning the implementation of the recommendations.
3. In 2012–13, the NPM coordination focused efforts on this, gathering information on how NPM members make recommendations through a survey, with a view to analysing how members make recommendations and the extent to which these achieve positive change. This work was conducted with a view to providing subsequent guidance to members on how making and following up on recommendations can be achieved more effectively. Seventeen of the then 18 NPM members completed the survey. Below is a summary of the main findings.

## **Findings**

### **How recommendations are made**

4. The number of recommendations made by members per report ranged from three to 63. There was a general consensus among NPM members that large numbers of recommendations are unrealistic for inspected/monitored organisations to implement and some members suggested that including any more than 10 recommendations per report detracts from their impact.
5. All members agreed that for recommendations to be effective they should be clear, unambiguous, achievable and realistic. Recommendations where their requirement is based in legislation or has emanated from good practice guidance are more likely to be implemented.
6. The majority of NPM members review what partner organisations say on a particular issue when formulating recommendations, with some members building this requirement into their methodology. Given the complex multi-body nature of the UK NPM and the fact that we have a layered system of inspection and monitoring, it would be good practice for members to review, where appropriate, what other members and partner organisations have previously said on the particular issues.
7. A minority of members take the inspected institution's budget into consideration when making recommendations. A number of members stated that they were conscious of an inspected/monitored organisation's resources when making recommendations, as if they do not have the budget they will not be able to implement all recommendations made. One NPM member who does not take budget into consideration stated that caution needs to be taken if considering an inspected/monitored body's budget, as in some cases lack of budget could be used as an excuse for not implementing recommendations.



## Implementation/non-implementation of recommendations

8. Some NPM members have enforcement powers. Unsurprisingly members with enforcement powers felt that their recommendations were implemented. However, one member stated that enforcement powers can cause a negative relationship with the inspected/monitored body because those with enforcement powers could be wary of making recommendations or raising issues that they would not be prepared to follow through to enforcement action. Members should be cautious that their enforcement powers do not detract them from making observations about problems that have no apparent ready solution, or about matters that may seem relatively minor to the inspected/monitored body, but are important to the detainee.
9. Of the members who do not have enforcement powers, none felt that such powers would improve the implementation of recommendations. One reason given was that it may change the dynamic between the inspected/monitored body and the member and collaborative working may not be achieved. These members felt that if there is an appropriate process which a member can follow in order to raise concerns over recommendations which are not implemented, there is no need for enforcement powers.
10. Those members that do not have enforcement powers have developed a number of ways of dealing with inspected/monitored bodies that fail to implement recommendations including: discussing the recommendations with the inspected/monitored body and if there is still no success raising with the governing body and the relevant Minister; conducting follow-up inspections on a more regular basis; raising the issue in annual reports; continuing to make the recommendation until it is implemented; and building alliances with partner organisations who can uphold recommendations that an NPM member has made.

## Information management

11. All members were in agreement that individually they should hold information on the recommendations they make (as an organisation) to inspected/monitored organisations and whether they have/have not been implemented and why, as it better informs follow-up visits and allows members to effectively track recommendations made to inspected/monitored organisations. Although not all members record this information there is some good practice to be demonstrated, such as one member's 'impact log', which operates in addition to a recommendations database to assess the impact that their recommendations have had.
12. Where members do hold information on the implementation of recommendations, is held in a variety of formats including: databases; excel spreadsheets; report format; and electronic action plans.

## Media involvement

13. The majority of NPM members use the media to publicise reports. However, there were mixed views on whether the media positively impacted on the implementation of recommendations by inspected/monitored organisations. Some members felt that media attention can cause embarrassment to an inspected/monitored organisation and so they are more likely to implement recommendations. However, it ultimately depends on the type of recommendation and the impact that not implementing it has.