



ENSURING THE INDEPENDENCE OF NPM PERSONNEL

GUIDANCE FOR MEMBERS OF THE UK NATIONAL PREVENTIVE MECHANISM

Background

1. The Optional Protocol to the United Nations Convention against Torture (OPCAT), under which the UK National Preventive Mechanism (NPM) is established, sets out the requirement:

States parties shall guarantee the functional independence of the national preventive mechanisms as well as the independence of their personnel. (Art.18)

2. This requirement has been further elaborated on by the UN Subcommittee on Prevention of Torture in its 2010 *Guidelines on national preventive mechanisms* (CAT/OP/12/5):

18. The State should ensure the independence of the NPM by not appointing to it members who hold positions which could raise questions of conflicts of interest.

19. Members of NPMs should likewise ensure that they do not hold or acquire positions which raise questions of conflicts of interest.

30. The NPM should carry out all aspects of its mandate in a manner which avoids actual or perceived conflicts of interest.

3. In 2013 the UN Committee against Torture, the official UN body that oversees States parties' progress in implementing the UN Convention against Torture and the Optional Protocol, reviewed the UK. During this review it raised the following concern and recommendation:

14. The Committee, fully cognizant of the State party's willingness to promote experience sharing, notes that the practice of seconding State officials working in places of deprivation of liberty to National Preventive Mechanism' bodies raises concerns as to the guarantee of full independence to be expected from such body (art. 2).

The Committee recommends that the State party end the practice of seconding individuals working in places of deprivation of liberty to National Preventive Mechanism' bodies. [...]

4. The UK NPM comprises 20 different bodies, each with different practices regarding the use of secondees. A survey conducted by NPM members in May 2013 identified that 8 NPM members use secondees in fulfilling their NPM mandate. It should be noted that the powers and scope of some NPM members are much broader than their OPCAT functions, and so they may employ secondees for work that is not related to their NPM activities.
5. At the same time as ensuring that their staff are fully independent, OPCAT also requires that the NPM ensure that their staff hold sufficient technical expertise, capabilities and professional knowledge to fulfill their mandate (*SPT Guidelines para.20*).
6. The NPM Business Meeting in October 2013 agreed the broad outline of a response to the CAT Committee and that the Steering Group should draft a response reflecting members' comments and circulate for agreement. This was done and the NPM letter sent to the CAT Committee in March 2014 (Annex B). Based on this agreed position, which also received broad support from those attending the NPM Five Years On conference in April, the Steering Group agreed at its meeting in May 2014 that the guidance below should be recommended to the June Business Meeting for adoption.

The guidance

7. Noting the recommendation of the CAT Committee and the unique composition of the UK NPM, NPM members have agreed to work progressively towards a reduction in their reliance on seconded staff for NPM work. Until this is achieved, and in the cases where it is ultimately not possible, NPM members will implement procedures to avoid conflicts of interest as a safeguard to preserve the independence of the NPM. To achieve this, they will work to establish a clearer delineation of staff assigned to NPM work, particularly among members whose work extends beyond the NPM mandate.
8. This guidance applies to all NPM members and guides their practice in relation to seconded staff, preventing conflicts of interest, and safeguarding the independence of personnel. Its provisions should be incorporated as appropriate into staff handbooks and other internal policies.
9. NPM members will aim to clearly identify which of their staff are involved in NPM work, and will consider locating them within a separate unit or department (*SPT Guidelines para.32*). The identification of NPM staff will encompass a broad understanding of how the NPM mandate is fulfilled, to include both frontline and support staff.
10. The NPM as a whole commits to reducing its reliance on seconded staff for NPM activities, and to tracking and accounting for progress over time.
11. The hiring of any new secondees for NPM work will be avoided where possible unless the knowledge and expertise the individual brings to the NPM member cannot be found elsewhere. Where this is the case all recruitment

processes will be open, transparent and inclusive, and in accordance with published criteria (*SPT Guidelines para. 16*).

12. A full assessment of possible areas of conflict of interest will be conducted by appropriate managers of existing and new secondees.
13. On the basis of this assessment, NPM members will assign work in such a manner as to ensure the secondee is not put at risk of a conflict of interest. Regular support and supervision from managers should ensure that any issues of concern are identified and addressed at the earliest possible opportunity
14. On no occasion will seconded staff be involved in the inspection of an establishment from which they are seconded, are likely to return, or have an otherwise close affiliation.
15. Where seconded staff are involved in NPM work, they will be made aware of their responsibility to act with real and perceived independence.
16. NPM members will report on their progress in implementing this guidance as part of the annual reporting process on their NPM activities.

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