



SCOTTISH GOVERNMENT RESPONSE

REPORT ON THE VISIT TO THE UK CARRIED OUT
BY THE COUNCIL OF EUROPE'S COMMITTEE FOR
THE PREVENTION OF TORTURE AND INHUMAN OR
DEGRADING TREATMENT OR PUNISHMENT (CPT)

17 TO 28 SEPTEMBER 2012

INTRODUCTION

1. The Scottish Government is committed to creating a modern, inclusive Scotland which protects, respects and realises the human rights of all. We strongly believe in and subscribe to the principles laid out in the European Convention on Human Rights, and find the practice of torture and the subjection of individuals to inhumane and degrading treatment to be abhorrent.

2. In Scotland, we are proud of our distinctive approach to creating safer and stronger communities and making justice work, but we recognise there is more to be done. That is why we welcome the scrutiny of the Council of Europe's Committee for the Prevention of Torture, Inhumane and Degrading Treatment. We appreciate the constructive manner of the report that the Committee has delivered, and have considered its recommendations and comments carefully.

3. Where we have accepted the recommendation, we have said so and we have said how we intend to implement the recommendation. Equally, in the few areas where we disagree with the Committee, we have said so and stated our position clearly. Where the Committee has requested further information, we have attempted to provide that, in good faith. We appreciate that the Committee's visit takes place in the context of an ongoing dialogue, and we look forward to continuing this in the future.

Scottish Government

10 September 2013

PART 1: POLICE

1. *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.* 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.

2. *The CPT **trusts** that detained irregular migrants will be transferred as quickly as possible to an immigration removal centre, which is designed to manage persons held for administrative reasons.* The Scottish Government has been critical of arbitrary detention in the past, and does not believe that detaining (for example) refused asylum seekers where they are not a danger to the public is helpful. We believe that there should be robust procedures in place so that where migrants can no longer remain legally in the UK, they are removed as quickly as possible without the need for them to spend sustained periods of time in detention and removal centres.

3. *The CPT **suggests** that the Scottish authorities must remain vigilant and continue their zero-tolerance policy towards ill treatment within police custody units.* 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.

4. *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.* We **do not accept** 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.

5. *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.* 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.

6. *The CPT **recommends** that Section 15A of the Criminal Procedure (Scotland) Act 1995 be amended to ensure that the police cannot delay access to a lawyer in relation to the investigation.* 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.

7. *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.* We note 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.

8. *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.* We **accept** this recommendation. The Scottish Government introduced a non-statutory Letter of Rights on 1 July 2013, providing suspects 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 suspects in police custody with this information (the provisions being dependent on the successful passage of the Bill).

9. *The CPT **trusts** that an independent custody monitoring service will be implemented along with the establishment of Police Scotland.* 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.

10. *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.* 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 Police Investigations and Review Commissioner (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.

11. *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.* 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.

12. *The CPT **recommends** that steps be taken to reduce the occupancy levels in the cells with Glasgow Sheriff Court used for accommodating adult males.* We **accept** this recommendation. The Scottish Court Service (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.

13. *The CPT would **appreciate the views** of the Scottish authorities on the standard of food and drink providing to detainees within Glasgow Sheriff Court. 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.*

PART 2: PRISONS

1. *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. 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 Scottish Prison Service their plans for managing prison numbers. As an alternative to short prison sentences, in 2011 we introduced the Community Payback Order (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 provided to them so that they can move away from offending. Phase 2 includes a consultation on community justice structures, with the aim of ensuring 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.

2. *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. 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 or 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. An independent process evaluation into the introduction of the presumption and two related community justice measures (the new Community Payback Order and the revised template for Criminal Justice Social Work Reports) is currently underway, and is due to report in the autumn of 2014.

3. *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. We **accept** this recommendation.* The Scottish Prison Service 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.

4. *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. We **accept** this recommendation.* The Scottish Prison Service has a zero tolerance policy on such behaviours. Staffs 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.

5. *The CPT **recommends** that a more proactive stance be taken towards tackling inter-prisoner bullying at Kilmarnock Prison. 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 Scottish Prison Service are 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.

6. *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). We note these comments.* The Scottish Prison Service 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.

7. *The CPT **recommends** that in HM Prisons Barlinnie, Greenock and Cornton Vale, the outdoor exercise yards are equipped with shelter facilities to protect inmates from poor weather. We **do not accept** this recommendation.* The Scottish Prison Service 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.

8. *The CPT comments that it would be desirable for the exercise yards in HMP Barlinnie, Greenock and Kilmarnock to be equipped with a means to rest. We **do not accept** this recommendation.* We would consider that the time allowed for exercise in the open air should be maximised by prisoners taking part in physical 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.

9. *The CPT **requests further information** in relation to specific arrangements put in place for Muslim inmates of HM Prison Kilmarnock.* 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.

10. *The CPT **recommends** that action be taken at HM Prison 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.* We **accept** this recommendation. The Scottish Prison Service 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.

11. *The CPT **encourages** the authorities to make further efforts to offer meaningful activity to all prisoners at HM Prison Greenock, particularly those allocated to Chrisswell House.* We note the CPT's comments, and would refer to our previous comments at paragraph 9. 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.

12. *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. 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.

13. *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.* The Scottish Government's formal response agreed to 33 of the Commission's 37 recommendations, and of the remaining four has implemented two and will keep the remaining two under consideration. Implementation of this work is being coordinated alongside wider activity to reduce reoffending and reform community justice provision. The Scottish Prison Service 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. The new national facility is expected to be ready in 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. 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 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 are also underway to expedite the availability of a women prisoner's benefits and public housing entitlements on their release from custody, with a pilot

project underway to trial an expedited benefits claim process for women leaving prison. 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 has delivered two such reports to date. That Committee formally replied indicating their recognition of progress that had been made in response to the Commission's report.

14. *The CPT **encourages** the authorities to examine the feasibility of running relevant female offender programmes in HM Prisons Edinburgh and Greenock. 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 Scottish Prison Service will continue to keep this under review and, if there is demand which can be met at HM Prisons Edinburgh and Greenock, would look to offer relevant programmes within these establishments.*

15. *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). We **accept** this recommendation **in part**. The Scottish Prison Service 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.*

16. *The CPT recommends that steps be taken at HMP Cornton Vale to ensure that communal toilet and shower facilities in Younger House are fully partitioned. We **accept** this recommendation. The toilet & 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.*

17. *The CPT **recommends** that the necessary steps be taken at HM Prison Cornton Vale to ensure that waiting times for accessing toilet facilities in Bruce and Younger House are reduced to a minimum. We **accept** this recommendation. The Scottish Prison Service can advise that waiting times for access to toilet facilities has been greatly reduced, with the introduction of a protocol 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).*

18. *The CPT **recommends** that steps be taken to offer activities to young offenders at the weekend. We **accept** this recommendation. The Scottish Prison Service 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 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.

19. *The CPT **recommends** that the authorities take the necessary steps to increase the range of activities on offer to all prisoners. We **accept** this recommendation, and would refer to our comments at paragraphs 9-10.*

20. *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. We **do not accept** this recommendation. The Scottish Prison Service 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 under cover. 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.*

21. *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. We **accept** this recommendation, and would refer to our comments at paragraphs 9-10.*

22. *The CPT **recommends** that the authorities increase resourcing in health care at HM Prison Barlinnie with the establishment of the equivalent of one full time psychiatrist and one full time dentist. 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.*

23. *The CPT **recommends** that the authorities increase resourcing in health care at HM Prison Cornton Vale with the weekly presence of the dentist being increased. 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.

24. *The CPT **recommends** that the authorities increase resourcing in health care at HM Prison Greenock with the increased presence of a psychologist and the weekly presence of a gynaecologist. 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.*

25. *The CPT **recommends** that the authorities increase resourcing in health care at HM Prison Kilmarnock with the creation of an additional full time post of general practitioner and the doubling of psychiatric sessions per week. 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 outwith 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.*

26. *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. We **do not** accept 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 HM Prison Kilmarnock. In addition, all Prison Custody Officers at the establishment are First Aid trained and receive annual refresher training.*

27. *The CPT would **like to receive confirmation** that the presence of a dentist at HM Prisons Greenock and Kilmarnock has been increased. 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.

28. *The CPT **recommends** that remand prisoners in all prison establishments have the same access to dental and ophthalmological services as sentenced prisoners. 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.

29. *The CPT **recommends** that the authorities review the use of the hospital unit at HM Prison Kilmarnock, relative to commentary in paragraph 56 of their report. We **accept** this recommendation.* At the time of the visit the prison's High Risk Assessment Team (HRAT) 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.

30. *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. 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, and details of any injuries sustained will be recorded in the prisoner's health care record. If a prisoner wishes to raise a complaint or take legal action, health boards will release any relevant information with the prisoner's 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.

31. *The CPT **invites** the authorities to ensure that records are shared effectively amongst the prison medical services. 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.

32. *The CPT would **like to receive** a copy of the report on the inquiry into the death of the prisoner identified in paragraph 61 of its report 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. The case of this prisoner 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.*

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

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

35. *The CPT **recommends** that the authorities examine the possibility of recruiting clinical psychologists to help manage female prisoners with personality and behavioural disorders. 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.

36. *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.* 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.

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

38. *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.* We **do not** accept 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 Scottish Public Services Ombudsman.

39. *The CPT **recommends** that steps be taken to ensure that all HM Prison Barlinnie segregation unit's cells are properly heated and kept in an acceptable state of hygiene. 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.*

40. *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. 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. 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.*

41. *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. 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.*

42. *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. 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.

43. *The CPT would **like to be informed** as to the current situation of Prisoner "A", as outlined in paragraphs 73-74 of its report.* Prisoner A was reintegrated into a normal mainstream environment in early January 2013. She was subsequently moved to HM YOI 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.

44. *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.* 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.

45. *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.* 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.

46. *The CPT **invites** the authorities to introduce an information video in all Scottish Prisons where this is not already the practice.* 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.

47. *The CPT **recommends** that steps be taken to ensure the induction course is provided on a more frequent basis in HM Prison Greenock, as outlined in paragraph 78 of its report. We **do not** accept 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.*

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

49. *The CPT **recommends** that sufficient staff be assigned to the segregation unit at Kilmarnock Prison to enable all daily activities to be carried out. 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 Prisoner Custody Officers (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.*

50. *The CPT **invites** the authorities to develop follow-up training for all prison officers. 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.*

51. *The CPT would **like to receive** information on the initial and in-service training provided to prison officers employed at HM Prison Kilmarnock. **Annex A** sets out training delivered during the first 6 months of 2013. The initial training provided to Prisoner Custody Officers (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.*

52. *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. 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.

53. *The CPT would **appreciate the observations** of the authorities in relation to remarks about the complaints process in HM Prison Kilmarnock as at paragraph 84 of its report.* 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 PCF1 complaints are dealt with appropriately. 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.

54. *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.* 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 Scottish Public Services Ombudsman (SPSO), who act as an independent 'appellant' body for various public service bodies (including prisons) 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 Scottish Prison Service, 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". 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 accepts 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.

55. *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.* 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).

56. *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. We **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. This is sometimes due to concerns about locating prisoners in Dungavel, the relevant Scottish detention centre, who might pose a risk to other people detained there. 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.

57. *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. This is attached at **Annex B**.*

58. *The CPT **invites** the authorities to remedy shortcomings noted in relation to transport of prisoners between court and prisons by G4S. 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.

PART 3: MENTAL HEALTH

1. *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. 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.

2. *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. 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.

3. *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.* 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.

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

PART 4: OTHER ISSUES

1. *The CPT **noted** the situation in relation to gaining entry to HM Prison Kilmarnock, and trusts this situation will not occur again.* We note the CPT's comments. The Scottish Prison Service have 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 Scottish Prison Service has raised this issue with the private contractors who operate HMP Kilmarnock to ensure this does not re-occur.

2. *The CPT **trusts** that the UK will continue to ensure that the National Preventative Mechanism be adequately resourced.* We appreciate the function of the National Preventative Mechanism, and are satisfied the relevant bodies are adequately resourced in this context.

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

Action Plan for the Removal of Foreign National Prisoners following EDL

Initial Notification

Individual prisons must notify UKBA Criminal Casework Directorate (CCD) 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 UKBA CCD 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 UKBA in relation to the prisoner's Immigration status or nationality has yet to be confirmed by UKBA, prisons should make further contact with the UKBA CCD 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 to CCDGlasgow@homeoffice.gsi.gov.uk (see section 7 below);
- 8 weeks prior to a Risk Management Team considering a prisoner for progression to less secure conditions/unescorted community access by email to CCDGlasgow@homeoffice.gsi.gov.uk (see section 8 below);
- 8 weeks prior to release date by email to CCDGlasgow@homeoffice.gsi.gov.uk;
- 14 days prior to the release date by email to CCDGlasgow@homeoffice.gsi.gov.uk;
- 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 UKBA custody, contact must be made with the UKBA CCD Glasgow at the following intervals at the latest, keeping full notes of all contact in the prisoners file:

- 4 weeks after the prisoner's earliest date of liberty (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 UKBA, with a view to the early removal of the relevant FNP 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.



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 policies.

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 intervention 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. This position will be reviewed annually and may change depending on the changing dynamics within the role and remit of the directorate.

References

American Psychiatric Association. (2003). *Learning from each other: Success stories and ideas for reducing restraint/seclusion in behavioural health*. American Psychiatric Association, Arlington, VA

Australian Government. (2008). *National Mental Health Seclusion and Restraint Project*. <http://www.nmhsrp.gov.au/c/mh>: Accessed 10/10/11

Bowers L, Van Der Merwe, M, Nijman et al (2010) The Practice of Seclusion and Time-out on English Acute Psychiatric Wards: The City-128 Study, *Archives of Psychiatric Nursing*, vol 24, No 4, 275-286

Cleary M., Hunt G E., Walter G (2010) Seclusion and its context in acute inpatient psychiatric care, *Journal Medical Ethics*, 36, 459-462

Department of Health (1999) Mental Health Act 1983, HMSO, London

Department of Health (2010) Your guide to relational security: See Think Act, COI, London

Donat D C (2002) Impact of improved staffing on seclusion/restraint reliance in a public psychiatric hospital, *Journal of Psychiatric Rehabilitation*, 25, 413-416

Happell., B & Koehn S (2011) Seclusion as a necessary intervention: the relationship between burnout, job satisfaction and therapeutic optimism and justification for the use of seclusion, *Journal of Advanced Nursing*, 67 (6), 1222-1231.

Holmes D., Kennedy S.L. & Perron A. (2004) The mentally ill and social exclusion: a critical examination of the use of seclusion from the patient's perspective. *Issues in Mental Health Nursing* 25(6), 559–578

Janssen, W., Noorthoorn, E., De Vries, W., Hutschemaekers, G., & Lendermeijer, B. (2008). The use of seclusion in the Netherlands compared to countries in and outside Europe. *International Journal of the Law and Psychiatry*, 31, 463–470.

Larue C., Dumais A., Drapeau A, Ménard G., Goulet M (2010) Nursing Practices Recorded in Report of Episodes of Seclusion, *Issues in Mental Health Nursing*, 31: 785-792

Lee S., Gray R., Gournay K., Wright S., Parr A.M., Sayer J (2003) View of nursing staff on the use of physical restraint. *Journal of Psychiatric and Mental Health Nursing*, 10 (4), 425-430

Meehan T., Bergen H. & Fjeldson K. (2004) Staff and patient perceptions of seclusion: has anything changed? *Journal of Advanced Nursing* 47(1), 33–38.

Mental Welfare Commission (2007) *The Use of Seclusion: Guidance on good practice*, MWC, Edinburgh

Mind (2003) R (on the application of Colonel Munjaz) v Mersey Care NHS Trust and (i) Secretary of State for Health and (ii) MIND; S v Airdale NHS Trust and (i) Secretary of State for Health and (ii) EWCA Civ 1036

Ryan, C., & Bowers, L. (2006). An analysis of nurses' post incident manual restraint reports. *Journal of Psychiatric and Mental Health Nursing*, 13, 527–532.

Salius E., & Wahlbeck K (2005) Restraint and seclusion in psychiatric inpatient wards, *Current Opinion in Psychiatry*, 18, 555-559

Scottish Executive (2003) *Mental Health (Care and Treatment) (Scotland) Act 2003*, HMSO, Edinburgh.

Stewart D., Van Der Merwe M., Bowers L., Simpson A. & Jones J. (2010) A review of interventions to reduce mechanical restraint and seclusion among adult psychiatric inpatients. *Issues in Mental Health Nursing* 31(6), 413–424.

Whittington, R., Bowers, L., Nolan, P., Simpson, A., & Neil, L. (2009). Attitudes toward Coercive interventions amongst a national sample of English mental health staff and service users. *Psychiatric Services*, 60(2), 231–239.