

BROOK HOUSE INQUIRY

Supplemental Witness Statement of Mr John Wadham

I provide this statement in response to further questions asked by the Brook House inquiry to the UK National Preventive Mechanism (“UK NPM”).

I, John Wadham c/o HM Inspectorate of Prisons 10 South Colonnade, 3rd Floor, Canary Wharf, London E14 4PU, will say as follows:

Please set out any specific concerns or considerations which relate to difficulties inherent to raising concerns and making complaints while in state detention. In particular, please provide references to any studies or research on the vulnerability of detained persons and how their detained status impacts their ability and propensity to raise concerns.

Please comment specifically on those detained under immigration powers and any particular challenges this raises from a complaints and monitoring perspective. Please comment on the impact of (a) language barriers, (b) knowledge of domestic legal protections, (c) duration of detention and impending deportation and (d) any other factors specific to those detained under immigration powers.

Please set out the risks related to making complaints or raising concerns when detained. Please comment on both perceived and real risks and explain what steps can be taken to mitigate these risks.

1. I will take these three questions together because as outlined in my first statement, the UK NPM Chair and Secretariat does not have an operational role in detention monitoring and therefore cannot offer more detailed answers. The NPM member bodies separately providing evidence to the inquiry, HM Inspectorate of Prisons (“HMIP”) and Independent Monitoring Boards (“IMBs”) would be better placed to answer these

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questions based on their experience, as well the Prisons and Probation Ombudsman (PPO) which investigates complaints.

2. Nevertheless, there is some international guidance which may be of interest to the inquiry regarding detainees in immigration detention¹ and commentary from the United Nations treaty body, the Subcommittee on the Prevention of Torture (“SPT”) itself.² These point to multiple vulnerabilities and needs which together raise challenges from a monitoring perspective. These include but are not limited to the following:

- a. **Mental health:** Those asylum seekers in immigration facilities may suffer particular psychological trauma, as a result of their experiences in the country from which they are fleeing. Those detained may also be affected by the impact of separation from friends and family, or from others with whom they had travelled. The NPM undertaking inspection or monitoring should be aware of the need for detainees to be provided with a *‘full medical and psychological examination undertaken by specialized professionals...for all persons suffering from health and mental health problems.’* Following the examination, migrants should receive the necessary treatment and their health situation should be taken into consideration in any legal procedure for deportation’.³
- b. **Lack of legal support, information and awareness of rights:** Individuals in immigration detention may be held for long periods and may have little information or understanding of their legal status, and the processes involved in their case. This can cause stress and anxiety, exacerbating their feelings of hopelessness. Inspectors and monitors should look at *‘identifying, documenting and reporting on the effects on detainees of the experience of detention (such as the duration of detention or access to procedures)’*.⁴ The NPM may therefore need

¹ Monitoring Immigration Detention, Practical Manual, Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR), 2014 <https://idcoalition.org/wp-content/uploads/2015/06/Monitoring-Immigration-Detention-Practical-Manual.pdf>

² SPT (2018) Country Visit Report: Romania, CAT/OP/ROU/1; section VI. C ‘Centres for migrants and asylum seekers’ SPT (2017) Country Visit Report: Cyprus CAT/OP/CYP/1, paragraphs 31, 59 and 60.

³ SPT (2018) Country Visit Report: Romania, CAT/OP/ROU/1 – section VI. C ‘Centres for migrants and asylum seekers’

⁴ Monitoring Immigration Detention, Practical Manual, Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR), 2014 <https://idcoalition.org/wp-content/uploads/2015/06/Monitoring-Immigration-Detention-Practical-Manual.pdf>.

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to consider the role that the authorities have in providing information about their legal status and process of their application.⁵

- c. **Language:** To be able to understand detainees concerns and experiences, monitors and inspectors will need to have proper access to independent interpreters, not just other individuals in the facility as this may breach privacy and confidentiality.⁶

- d. **Diversity and expertise of inspectors and monitors:** The Optional Protocol to the Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment⁷ (“OPCAT”) and the SPT Guidelines on NPMs note the importance of a ‘*gender balance and the adequate representation of ethnic and minority groups*’ within NPMs and that the NPM should have the ‘*expertise and experience necessary for its effective functioning*’.⁸ In an immigration detention context, it is helpful to include those with a background who understand the legal framework of immigration, health professionals, interpreters and others with expertise in children and psychology.⁹ Furthermore, gender is of great relevance, particularly when conducting interviews in private and with those who may have been subject to sexual violence, with NPMs being sensitive to who undertakes interviews and that the detainee may be reluctant to ask specifically to speak to a male or female in advance of the interview.¹⁰ In the UK, a number of NPM bodies utilise a model of lay visitors who volunteer from the local community. Whilst of course receiving training and support, it may be challenging for these bodies to always operate with the same level of diversity, experience and knowledge as professional inspectorates.

Sanctions

⁵ SPT (2017) Country Visit Report: Cyprus, CAT/OP/CYP/1, paragraphs 31, 59 and 60.

⁶ SPT (2018) Country Visit Report: Romania, CAT/OP/ROU/1 – section VI. C ‘Centres for migrants and asylum seekers’

⁷ Information about Optional Protocol to the Convention against Torture and other Cruel, Inhuman or Degrading Treatment or Punishment and Subcommittee on Prevention of Torture and other Cruel, Inhuman or Degrading Treatment or Punishment (SPT) <https://www.ohchr.org/en/hrbodies/opcat/pages/opcatindex.aspx>

⁸ Respectively, OPCAT Article 18(2), CAT/OP/12/5, paragraphs 17 and 20

⁹ Monitoring Immigration Detention, Practical Manual Association for the Prevention of Torture (APT) and United Nations High Commissioner for Refugees (UNHCR), 2014 <https://idcoalition.org/wp-content/uploads/2015/06/Monitoring-Immigration-Detention-Practical-Manual.pdf>

¹⁰ Ibid.

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3. A part of OPCAT of relevance to complaints requires State Parties to ‘*ensure that no authority or official shall order, apply, permit or tolerate any sanction against any person or organization for having communicated to the SPT or NPM any information, whether true or false, and no such person or organization shall be otherwise prejudiced in any way.*’¹¹ The SPT has set out the obligation of State Parties to ensure that there are no reprisals following visits in its guidance to NPMs and to State Parties.¹²
4. In terms of mitigating the risk of reprisals, HMIP, IMBs, Lay Observers and the PPO have developed a joint protocol between the organisations,¹³ to protect any detainee from sanctions or other prejudice arising from their, or someone acting on their behalf, communication with either HMIP, IMBs, Lay Observers or the PPO, and to provide reassurance to detainees that they can freely communicate with these organisations without fear of sanctions or other prejudice. A similar joint protocol has also been developed between HMIP and Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) for the purposes of police custody.¹⁴

The bodies monitoring Brook House, the IMB and HMIP, are organisations initially tasked with monitoring the prison estate.

- a. ***Please explain why these same organisations have been given responsibility for monitoring immigration removal centres?***
- b. ***Please describe any differences in the work and methodology of these bodies as they work within the immigration, rather than prison, estate.***
- c. ***Was there any suggestion or consideration that a separate monitoring body, focused on immigration removal centres, would be more appropriate? If so please give details.***

¹¹ OPCAT Articles 15 and 21.1

¹² Subcommittee on the Prevention of Torture (2010) *Guidelines on National Preventive Mechanisms* CAT/OP/12/5 <https://digitallibrary.un.org/record/695890?ln=en>

¹³ Protocol between Her Majesty’s Inspectorate of Prisons (HMIP), Independent Monitoring Boards (IMBs), Lay Observers and the Prisons and Probation Ombudsman (PPO) <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2016/02/25.02.2021-Prisons-sanctions-protocol-FINAL.pdf>

¹⁴ Protocol between Her Majesty’s Inspectorate of Prisons (HMIP) and Her Majesty’s Inspectorate of Constabulary and Fire & Rescue Services (HMICFRS) <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2016/03/HMICFRSHMIP-sanctions-protocol-2017.pdf>

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5. IMBs and HMIP were given the responsibility for monitoring immigration removal centres before the UK formed an NPM in 2009.¹⁵ I was consequently not involved in these decisions and therefore, unfortunately, I cannot comment. I am not aware of any suggestion or consideration of a separate monitoring body during my time as NPM Chair. The questions would be better directed at the IMBs and HMIP themselves.

Please provide the NPM's view on the adequacy of relying on external oversight as a protective mechanism against ill-treatment. To what extent can external oversight provide reassurance about the treatment of detained persons?

6. The United Nations Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment (UNCAT)¹⁶ provides a solid legal framework to combat and prevent torture and other ill-treatment; it includes a general obligation for each State Party to take effective measures to prevent torture and other forms of ill-treatment, and to make specific provisions to meet this goal. OPCAT was developed as an additional and innovative treaty which was designed to help prevent such abuses in practice by the process of visiting and by making recommendations to the authorities to prevent ill-treatment. Any State that has ratified the UNCAT can and should ratify the OPCAT.
7. The premise of OPCAT and NPMs around the world is that opening up closed places of detention to the possibility of unannounced external visits can have an important deterrent effect. It also gives those detained an opportunity to voice their concerns, make complaints and uncover ill-treatment. Importantly, it also aims to reduce the likelihood that the conditions of detention will deteriorate even further and to reduce the chances that the detained person will be ill-treated. The SPT states:

¹⁵ HMIP and IMBs derive their responsibilities in Immigration Removal Centres from Section 152 Immigration and Asylum Act 1999: <https://www.legislation.gov.uk/ukpga/1999/33/section/152> In addition for IMBs see Part VI of Statutory Instrument 2001 No. 238, The Detention Centre Rules 2001 for immigration: <https://www.legislation.gov.uk/uksi/2001/238/article/63/made>

¹⁶ Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, UN Doc. A/RES/39/46, 10 December 1984

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‘Torture and ill-treatment are more easily prevented if the system of detention is open to scrutiny. NPMs...play a key role in ensuring that such scrutiny takes place.’¹⁷

8. The UK NPM makes nearly 70,000 visits to places of detention each year.¹⁸ This is an incredible achievement and a strength of the UK NPM model. By working together across the detention institutions and across the four nations of the UK, the 21 NPM inspection and monitoring bodies can provide a level of reassurance that the UK NPM works effectively as a protective mechanism against ill-treatment. In particular, it should be noted that OPCAT focuses on *preventing* human rights abuses before they happen rather than on the action that should be taken once a violation has occurred. NPM members strive to undertake ‘preventive’ monitoring and inspection of detention. This has a number of key elements:

a. Monitoring and inspection methods aim to work to a wide-ranging set of standards

At the core of the UK NPM’s work is a human rights approach – this means both placing the lived experience of detainees at the heart of the inspection and monitoring process and using internationally recognised human rights standards in addition to current domestic detention policy standards.

b. Monitoring and inspection visits are regular

This opens facilities up to regular scrutiny and transparency. A distinctive aspect of the UK NPM is the way in which the two layers of oversight – professional inspectorates and lay visitors – complement each other. While inspectorates take place over a period of weeks in places of detention, conducting deep dives into all aspects of an establishment, volunteers are a more frequent presence in these closed

¹⁷ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Twelfth session, 15-19 November 2010 – see point 5h
docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsquBIBCPFD%2bXLNadyD9hiZ4R2ifOm%2fkPeiu3sYGHOMGMsGCei%2fqxK3MyHYEY%2bGl%2b0lrf33FTl4nDSkhMm0WAHWDw1BE%2fFCFsu8qp2vhJ5DM

¹⁸ UK NPM Ninth Annual report (2017-18) see page 4 https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/01/6.5163_NPM_AR_2017-18_WEB.pdf

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spaces. The work of both of these types of organisation has a huge impact on the UK's system of oversight. In 2019 for example, 66,000 independent monitoring visits were conducted by lay members of the NPM, while 1,600 inspections took place.¹⁹

c. The NPM works in a spirit of cooperation

As well as collaborating during inspections and on joint NPM thematic projects, members of the NPM work together on a wide range of initiatives aimed at strengthening their OPCAT compliance and detention monitoring. For example, joint work has developed between criminal justice inspectorates and healthcare focused bodies, allowing them to share expertise and improve the coverage and value of detention inspection.

d. NPM members regularly issue recommendations and concerns to the authorities

This process facilitates a dialogue with authorities responsible for the policies and practices that apply in places of detention with a view to improving the situation. NPM members have at their disposal a variety of ways to raise their findings with officials, politicians, parliamentarians and wider stakeholder groups to secure their implementation. In practice, this means that member organisations work hard to influence and change detention policy and practice so that people's rights are better protected, their safety and dignity are assured, and the risks of ill-treatment are reduced.

9. There are numerous examples of this including those outlined in the NPM's ten-year anniversary report.²⁰

Enhancing the NPM's work

¹⁹ UK NPM Tenth Annual report (2018-19) <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2020/03/NPM-Annual-Report-201819-WEB.pdf>

²⁰ UK NPM ten-year anniversary report (2020) See pages 18 -19 https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2020/03/6.6303_NPM_10-Years-Report_V7_WEB.pdf

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10. Despite the vast array of work undertaken by NPM members, there is no doubt room to improve and develop even better practices. In acknowledgement of this, when resources in the UK NPM secretariat allow, the 21 NPM members have been asked to conduct a self-assessment using a methodology based on the SPT's 'analytical self-assessment tool for NPMs'.²¹ This tool allows each of the 21 bodies to examine their effectiveness and efficiency against a set of indicators based on the formal NPM mandate²² and has helped NPM members to prioritise specific areas where OPCAT compliance can be strengthened. The last assessment found that members reported full compliance with over 80% of the self-assessment questions, citing the highest level of compliance with 'powers to submit comments on existing and draft legislation'. Lowest levels of reported compliance are in areas concerning whether members have 'developed a strategy for the prevention of reprisals or threats against people interviewed during inspection and monitoring visits'²³ and in the area of 'gender balance and representation of ethnic and minority groups in visiting teams.' My role, as chair of the UK NPM, as previously highlighted, is to support and encourage NPM members in highlighting these areas, but I do not have a mandate to make specific demands of NPM members in making changes as a result of this tool.

International external oversight

11. There are also forms of international external oversight of the UK which offer an opportunity for additional scrutiny at the international level on the prevention of ill-treatment. These are the UN Committee Against Torture (CAT), the SPT and the CPT (Council of Europe Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment). Whilst it is challenging to map action on recommendations by the UK Government as a result of these international bodies, these forms of external oversight, which include both country visits and/or submissions from UK NPM members, arguably generate important links between the

²¹ Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment *Analytical self-assessment tool for National Prevention Mechanisms*

https://www2.ohchr.org/english/bodies/cat/opcat/docs/AnalyticalToolsNPM_en.doc

²² UK NPM Ninth Annual report (2017-18) See page 37 https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/01/6.5163_NPM_AR_2017-18_WEB.pdf

²³ HMIP and IMBs assessed themselves as fully compliant with this indicator due to their development of a protocol as mentioned in the section on 'Sanctions'

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national and international, bringing the day-to-day work of internationally mandated oversight closer to people detained.²⁴

12. Firstly, CAT has a periodic reporting process, where the UN treaty body examines a State's compliance and progress against the obligations in the treaty. In 2019, the UK NPM made a Submission to Committee Against Torture's 66th session on a wide range of issues informed by the NPM members day to day inspection and monitoring of detention. The Committee, in line with a UK NPM recommendation, urged in its concluding observations for the UK Government to 'routinely to compile and publish comprehensive disaggregated statistical information relevant to all complaints and reports received of torture or ill-treatment, whether such complaints led to investigations, by which authority, whether the investigations resulted in the imposition of disciplinary measures and/or prosecutions, and whether the victims obtained redress, in a manner that will enable the State party to provide such information to the Committee and other relevant monitors in the future'.²⁵ The UK NPM will be writing to the UK Government prior to the next CAT examination in 2023 to establish progress on this recommendation and will be submitting our own evidence to inform the committee's next review of the UK in 2023.

13. In addition, there are two international bodies which undertake external oversight to places of detention in the UK through in-person visits. These are the SPT and CPT:

a. Under the OPCAT, the SPT has unrestricted access to all places where persons may be deprived of their liberty, their installations and facilities and to all relevant information. Articles 12-16 of OPCAT requires that States Parties engage with the SPT. Visits from the SPT put national detention and custody facilities under an international spotlight and the SPT undertook its first ever visit to the UK in September 2019. During the visit, UK NPM members were able to discuss some of the NPM's pressing concerns with the SPT. The delegation shadowed NPM

²⁴ Evans, M 2020 Research Handbook on Torture, *Legal and Medical Perspectives on Prohibition and Prevention* https://www.e-elgar.com/shop/gbp/catalog/product/view/_ignore_category/1/id/16755/s/research-handbook-on-torture-9781788113953/

²⁵ Concluding observations on the sixth periodic report of the United Kingdom of Great Britain and Northern Ireland, paragraph 15. 16 May 2019 (CAT/C/SR.1754).

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members on various inspections and visits, conducted their own visits to places of detention and held meetings with government officials, national human rights institutions and third sector organisations with expertise in detention-related issues. The SPT's expert insight from this visit is a valuable reiteration of some continuing areas of concern for NPM members. This for example amongst other issues, included findings on the treatment of people with mental ill health in prisons and a 'request culture' for some detained in police custody.²⁶ The report prompts a response from the UK Government²⁷ and SPT has held a follow up meeting with the UK Government to push the relevant ministers and officials on key recommendations.

- b. The CPT has a mandate to assess States parties' compliance with international law on the prohibition and prevention of torture.²⁸ The CPT has undertaken four ad-hoc visits to England, Scotland and Northern Ireland between 2017-2020. The CPT's findings offer an opportunity for NPM members to hold authorities to account by highlighting areas of shared concern at both the national and international levels. For example, the UK NPM's response to the Justice Select Committee on children and young people in custody, included highlighting findings and recommendations from the CPT's report on detention in England in 2020.²⁹ The Scottish NPM subgroup also last year undertook an examination of progress made by the Scottish Government in implementing key recommendations made by the CPT from their 2018 and 2019 visits to Scotland, and utilised this analysis for dialogue with relevant Government departments.³⁰

External scrutiny just a part of the picture

²⁶ The Independent Custody Visiting Association (ICVA) blog: <https://icva.org.uk/icva-volunteers-across-the-uk-given-opportunity-to-influence-united-nations-anti-torture-committee-report/>

²⁷ United Nations Subcommittee on Prevention of Torture's report to the UK Government: *UK National Preventive Mechanism (NPM) response* June 2021 <https://www.gov.uk/government/publications/united-nations-subcommittee-on-the-prevention-of-torture>

²⁸ The CPT's work builds on the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR) (1953), Article 3: "No one shall be subjected to torture or to inhuman or degrading treatment or punishment."

²⁹ UK NPM Submission: Justice Select Commission on children and young people in custody <https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2020/07/072020-UK-NPM-submission-to-JSC-re-children-and-YP-.pdf>

³⁰ Scotland's progress in the prevention of ill-treatment in places of detention: An assessment of the implementation of recommendations made by the European Committee for the Prevention of Torture, August 2021, https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/08/NPM_report_FINAL.pdf

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14. The external oversight as outlined, offered by national and international bodies cannot alone prevent all ill-treatment occurring in detention. As identified by leading academics: *'It is not realistic to presume that one institution, whether that be the SPT at the international level, or the NPM at the national level, will be able to achieve this single-handedly. It needs to be placed within the broader context of factors that play a part'*.³¹
15. This view is shared by the SPT itself and international guidance. The SPT states that: *'the prevalence of torture and ill-treatment is influenced by a broad range of factors, including the general level of enjoyment of human rights and the rule of law, levels of poverty, social exclusion, corruption, discrimination.'*³² International guidance³³ states that: *'Visits themselves are not enough to prevent torture and other ill-treatment...[this] requires a range of legislative, administrative, judicial and other measures.'* It goes on to highlight multiple areas where action is needed including changes to public policies, effective procedural safeguards, adequate training of all officials involved in deprivation of liberty, that breaches of the law must be appropriately sanctioned, and that effective complaints mechanisms and media reporting all play a part.
16. With this broader context in mind, a public policy issue of relevance, which the UK NPM collectively, as well as the SPT have commented on, is the need for a time-limit on immigration detention. NPM members regularly encounter detainees who have been detained for unacceptably long periods. The UK NPM has repeatedly called on the government to establish a statutory time-limit in immigration detention.³⁴ This

³¹ Murray, R, Steinerte, E, Evans M, Hallo de Wolf, A (2011) The Optional Protocol to the Convention Against torture; Oxford University Press

³² Subcommittee on Prevention of Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, Twelfth session, 15-19 November 2010, See point 5a docstore.ohchr.org/SelfServices/FilesHandler.ashx?enc=6QkG1d%2fPPRiCAqhKb7yhsquBIBCPFD%2bXLNadyD9hiZ4R2ifOm%2fkPeiu3sYGHOMGMsGCei%2fqxK3MyHYEY%2bGl%2b0olrf33FTl4nDSkhMm0WAHWDw1BE%2fCFsu8qp2vhJ5DM

³³ Association for Prevention of Torture (APT) OPCAT Implementation Manual, 2010, pages 19-22 <https://www.iidh.ed.cr/IIDH/media/1535/protocolo-facultativo-de-la-convencion-ingles-2010.pdf>

³⁴ United Kingdom National Preventive Mechanism submission to the 66th session of the Committee against Torture https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/03/UK-NPM_Submission-to-CAT-66.pdf and United Nations Subcommittee on Prevention of Torture's report to the UK Government: *UK National Preventive*

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was outlined in the UK NPM 2019 submission to CAT and in the UK NPM response³⁵ to the SPT after its UK visit report.³⁶ In its report the SPT raised concerns at the government's lack of progress in establishing a time-limit for immigration detention outlining concerns that migrants are being held in de facto indefinite detention with possible implications on their mental health.

17. In the UK NPM Submission to CAT in 2019 in relation to this issue it was stated that:

“in 2017 the IMB reported that at Heathrow IRC, 105 men were detained for over 12 months, with the longest stay at nearly five years³⁷ at Brook House IRC, seven men were detained for over 12 months;³⁸ and at Yarl's Wood IRC, three women were detained for over 12 months.³⁹ Some detentions were prolonged by poor case progression by the Home Office. In some cases, removal was not able to be achieved within a reasonable period (in order for detention to be lawful, there should be a realistic prospect of removal within a reasonable period of time).⁴⁰ NPM members often speak to individuals who say that their mental health is affected by prolonged and/or open-ended detention.

The conditions in IRCs also impact on detainees' well-being. A number of IRCs are prison-like environments and aspects of security at some centres are disproportionate. For example, inspections of Colnbrook IRC and Harmondsworth IRC found that detainees attending external appointments were routinely handcuffed without sufficient justification of risk.⁴¹ At

Mechanism (NPM) response June 2021 https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/06/NPM-response-to-SPT-report_FINAL.pdf

³⁵ United Kingdom National Preventive Mechanism submission to the 66th session of the Committee against Torture, https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/03/UK-NPM_Submission-to-CAT-66.pdf

³⁶ United Nations Subcommittee on Prevention of Torture's report to the UK Government: *UK National Preventive Mechanism (NPM) response* June 2021 https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/06/NPM-response-to-SPT-report_FINAL.pdf

³⁷ IMB, *Annual Report of the Independent Monitoring Board at Heathrow Immigration Removal Centre*, 2018, [4.15], available at <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2018/04/Heathrow-IRC-2017-AR.pdf> accessed 21 March 2019.

³⁸ IMB, *Annual Report of the Independent Monitoring Board at Brook House Immigration Removal Centre*, 2018, [4.9], available at <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2018/04/Brook-House-2017.pdf> accessed 21 March 2019

³⁹ IMB, *Annual Report of the Independent Monitoring Board at Yarl's Wood Immigration Removal Centre*, 2018, [4.5], available at <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2018/05/Yarls-Wood-2017.pdf> accessed 21 March 2019

⁴⁰ HMIP, *Report on an unannounced inspection of Colnbrook Immigration Removal Centre*, December 2018, <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/04/Colnbrook-web-2018.pdf>

⁴¹ See HMIP report on Harmondsworth (2017) <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/03/Harmondsworth-Web-2017.pdf> HMIP, *Report on an unannounced inspection of Colnbrook*

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Harmondsworth, detainees were routinely handcuffed to be taken to the care and separation unit (CSU) and also routinely strip-searched when relocated to the CSU.⁴² The impact of open-ended and prolonged detention, particularly for those held in prison-like environments and who are subject to disproportionate security measures, may be such that it amounts to inhuman or degrading treatment for some detainees.”

Please provide the NPM’s view on any barriers to effective oversight of immigration detention centres.

18. As outlined in my first statement to the Inquiry, the UK NPM Chair and Secretariat do not have an operational role in detention monitoring. I am afraid I do not have the detailed knowledge or expertise necessary to answer this question. The NPM members tasked with specific oversight of immigration detention, HMIP and IMBs providing evidence separately to the inquiry would be better placed to answer this question in detail, based directly on their first-hand experience.

Please refer to the report by the UN Subcommittee on Prevention of Torture and Other Cruel Inhuman or Degrading Treatment or Punishment (SPT) following its visit to the UK from 9-18 September 2019:

Please comment on the SPT’s recommendation regarding healthcare in places of detention (see paras 65-69) by reference to healthcare safeguards in immigration detention centres. Does NPM agree with the SPT’s concerns? Please set out any steps taken following the report.

19. On the basis of information and the expertise of the 21 NPM members, the UK NPM has twice commented on this issue and shares many of the SPT’s concerns. Firstly, in

Immigration Removal Centre, December 2018, <https://www.justiceinspectorates.gov.uk/hmiprisoners/wp-content/uploads/sites/4/2019/04/Colnbrook-web-2018.pdf>

⁴² Ibid Harmondsworth [1.52].

the UK NPM's submission to the 66th session of the Committee against Torture⁴³ in 2019, on pages 39-41 the UK NPM stated:

“NPM members find that those who may have experienced torture (in the country they left) are identified by health care staff on arrival in IRCs. In recent inspections of IRCs, HMIP found that most medical practitioners and some nurses received training on carrying out Rule 35 assessments and recognising torture.”⁴⁴ However, HMIP has continued to find too many Rule 35 reports which fail to provide sufficient information and judgements to Home Office decision-makers. For example, a recent inspection of Campsfield House IRC found [m]ost reports lacked necessary detail. Although most contained reasonably clear judgements on physical signs of torture, the reasoning for them was not always evident. The assessment of psychological trauma was weak (...) one torture report in the sample was woefully inadequate. It should have been returned to the doctor to be completed properly, but instead the Home Office concluded that the detainee had not been tortured, and detention was maintained.”⁴⁵ In addition, the Home Office often fails to explain the exceptional circumstances for maintaining detention in cases where there is professional evidence of torture. During recent inspections of Harmondsworth IRC and Yarl's Wood IRC, HMIP found that detainees at both centres had their detention maintained despite professional evidence of torture; about 30% of Rule 35 reports at Yarl's Wood led to release, and at Harmondsworth it was 10%.⁴⁶

In relation to short-term holding facilities (STHFs), which hold immigration detainees, Rule 32 of the Short-term Holding Facility Rules 2018 requires a health care professional to report to the Home Office any detainee he or she is concerned may be a victim of torture. In practice, while STHF detainees have access to health care professionals in an emergency, unless they are in one of the three residential STHFs, they are not routinely examined by a

⁴³ United Kingdom National Preventive Mechanism submission to the 66th session of the Committee against Torture https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2019/03/UK-NPM_Submission-to-CAT-66.pdf

⁴⁴ See, for example, HMIP report on Dungavel (2018) [2.53] <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/11/Dungavel-Web-2018.pdf>

⁴⁵ See HMIP report on Campsfield (2018) [1.15] <https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2019/01/Campsfield-House-IRC-Web-2018.pdf>

⁴⁶ HMIP, *HM Chief Inspector of Prisons for England and Wales Annual Report 2017–18*, page 24 https://www.justiceinspectorates.gov.uk/hmiprisons/wp-content/uploads/sites/4/2018/07/6.5053_HMI-Prisons_AR-2017-18_revised_web.pdf. Page 74, HMIP, *Annual Report 2017/18*.

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health care professional who would be able to detect and document physical and psychological sequelae of torture.”

20. The UK NPM made the following two recommendations to the CAT examination of the UK as a result:

“Provide training for medical practitioners in IRCs which ensures they are able to recognise signs of torture and report accordingly.

Ensure that detainees in non-residential STHFs are seen by health care staff who are able to detect signs of torture”.

21. Secondly, the UK NPM, in our response to the United Nations Subcommittee on Prevention of Torture’s report to the UK Government in 2021⁴⁷ stated that:

“The SPT’s report also discusses concerns around the provision of healthcare in IRCs. The IMBs have, in recent months, found improvement to healthcare provision in some centres. However, the concern about migrant’s mental health remains, as do concerns around the operation of the Home Office’s Adults at Risk policy, with high proportions of detainees being put under self-harm and suicide prevention plans and other vulnerable people being placed in detention.”⁴⁸

22. We also stated that in relation to lengthy period of detention:

“the IMBs still found migrants spending lengthy periods in detention, in some cases even after a claim to be a victim of torture has been accepted.”⁴⁹

23. In terms of work taken forward by the UK Government or NPM bodies, on this specific issue since the SPT’s visit, UK NPM members providing evidence separately

⁴⁷ United Nations Subcommittee on Prevention of Torture’s report to the UK Government: *UK National Preventive Mechanism (NPM) response* June 2021 https://s3-eu-west-2.amazonaws.com/npm-prod-storage-19n0nag2nk8xk/uploads/2021/06/NPM-response-to-SPT-report_FINAL.pdf

⁴⁸ IMB, Independent Monitoring Boards in the immigration detention estate: *Annual Report for 2019* <https://s3-eu-west-2.amazonaws.com/imb-prod-storage-1ocod6bqky0vo/uploads/2020/10/IDE-National-Annual-Report-for-publication.pdf>

⁴⁹ Ibid.

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to the inquiry who have a specific mandate in the monitoring of IRCs; IMBs and HMIP would be best placed to respond to this question.

At paragraph 101(d), the SPT recommended that the UK “c) Ensure effective oversight, monitoring and complaints policies and procedures in the immigration detention estate to ensure that any ill-treatment is immediately identified and ensure the effectiveness of investigations into allegations of ill-treatment”. Please set out the NPM’s response to this recommendation, and any steps taken to effect the recommendation.

24. The UK NPM has not undertaken an analysis of complaints policies and procedures specific to immigration detention. However, NPM members and the CPT have identified concerns with complaints processes in the UK in the context of prisons and police custody which may be of interest to the inquiry.

25. In the UK NPM response to CAT in 2019, NPM findings we outlined in relation to complaints, in order to support the committee in reviewing the UK’s compliance with a functioning internal and external complaints system as a key component to prevent ill-treatment. We stated the following:

“HMIP and the Independent Monitoring Boards (IMBs) both identify concerns with complaints processes. HMIP data from 2017–18 shows that only 29% of adults responding to surveys (which are carried out as part of each inspection) who had made a complaint felt their complaint had been dealt with fairly, and even fewer noted their complaint had been responded to within seven days. IMBs also report delays in dealing with complaints and the failure of complaints systems in resolving particular types of issues. For example, at women’s prison HMP Downview, less than half (47.5%) of complaints were answered within the time limit in 2017–18.³¹

In Northern Ireland, CJINI found, on two recent inspections, that although most replies to complaints were reasonably good, some were superficial and did not demonstrate that sufficient investigation had taken place. A few were particularly dismissive. Inspectors were

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not confident that complaints against staff were always dealt with adequately and too many said they had been prevented from making a complaint.

When inspecting police custody, NPM members have found variation in the extent to which information explaining how to complain and the arrangements for taking and dealing with complaints is promoted. This extends to information relating to the appeals processes available through the Independent Office for Police Conduct and Police and Crime Commissioners. In one example, a 16-year-old girl complained to a custody sergeant that she felt violated after having her clothing removed by staff, yet no complaint was recorded, nor was the matter referred to the local safeguarding authority.

Recommendation

Ensure complaints procedures are understood by staff and detainees, and all complaints are handled consistently, effectively and fairly”.

26. The CPT has also commented on complaints processes. Following its targeted follow-up visit to England in 2019 to focus on the persistently high levels of violence in the adult and juvenile prison estates, its report said :⁵⁰

“The CPT’s delegation found that many accountability procedures remained underdeveloped, including the existing reporting procedures, oversight and governance systems to monitor and tackle violence by staff. Notably, the complaints’ system needs to be reviewed and reformed to ensure its procedural effectiveness, fairness and transparency.”

⁵⁰ Committee for Prevention of Torture, Executive Summary CPT/Inf (2020) 18 Page 2 <https://rm.coe.int/16809e4405>

<u>Statement of Truth</u>	
<p>I believe that the facts stated in this witness statement are true. I understand that proceedings for contempt of court may be brought against anyone who makes, or causes to be made, a false statement in a document verified by a statement of truth without an honest belief in its truth.</p> <p>I am content for this witness statement to form part of the evidence before the Brook House Inquiry and to be published on the Inquiry's website.</p>	
Name	John Wadham
Signature	<div style="border: 1px dashed black; padding: 5px; display: inline-block;"> Signature </div>
Date	11.03.22

Witness Name: John Wadham
 Statement No: 2
 Exhibits: [INSERT]