



CPT/Inf (2005) 2

**Response of the United Kingdom Government
to the report of the European Committee
for the Prevention of Torture and Inhuman
or Degrading Treatment or Punishment (CPT)
on its visit to the United Kingdom
and the Isle of Man**

from 12 to 23 May 2003

The United Kingdom Government has requested the publication of this response. The report of the CPT on its May 2003 visit to the United Kingdom and the Isle of Man is set out in document CPT/Inf (2005) 1.

Strasbourg, 4 March 2005

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INTRODUCTION

This is the response of the United Kingdom Government to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following its visit to the United Kingdom and Isle of Man from 12 to 23 May 2003.

This response follows in sequence the issues raised in the CPT's report. Extracts from the CPT's report are reproduced in bold typeface with Paragraph references.

GENERAL OBSERVATIONS

1. The Government of the United Kingdom welcomes the report of the CPT delegation following its visit to the United Kingdom and the Isle of Man in pursuance of Article 7 of the European Convention for the Prevention of Torture and Inhuman or degrading Treatment or Punishment from 12 to 23 May 2003.

CO-OPERATION BETWEEN THE CPT AND THE AUTHORITIES OF THE UNITED KINGDOM AND THE ISLE OF MAN

2. The Government is pleased to note the Committee's initial comment that the co-operation it received from the relevant authorities, and from the management and staff in the establishments it visited was, on the whole, excellent.
3. The Committee made the following comment at paragraphs 8 & 9 of its report:

(At) Winchester Prison . . . the delegation's medical doctor was refused access to the medical records of one particular patient, presented to the delegation as being seriously mentally ill and unable to give his consent to such access. As a result, the delegation was not able to assess the care provided to the patient in question; according to the medical staff, the patient was not receiving and had not been offered treatment.

The information requested was refused with reference to the second sentence of Article 8, Paragraph 2, sub Paragraph (d), of the Convention which states that, in seeking information which is necessary for it to carry out its task, "the Committee shall have regard to applicable rules of national law and professional ethics".

The CPT stressed in the report on its 1994 visit to the United Kingdom that the second sentence of Article 8, Paragraph 2, sub Paragraph 2, sub-Paragraph (d), simply lays down procedural rules to be respected by the Committee in gaining access to the information requested; it should not be used to justify a refusal to grant access to the information requested, nor access under such conditions as would be tantamount to a refusal. In cases where national law or professional ethics represent a potential impediment to the effective provision of information which is necessary for the CPT to carry out its task, it is for the State concerned to ensure that it can, nonetheless, meet its obligations under the Convention.

4. The Government regrets that when the Committee's delegation visited Winchester prison a disagreement occurred which led to its doctor being refused access to the medical records of one particular prisoner. It assures the Committee that health care staff at Winchester acted in good faith. It confirms that it intends to comply with the Convention, as far as the provisions of the Convention itself and any other international obligations (including compliance with the European Convention on Human Rights) permit, and to disclose all information in its possession that it may legally and ethically disclose.

5. The Government notes that Article 8.2 of the Convention states that a party shall provide the Committee with any information in its possession that is necessary for the Committee to carry out its task. This is subject to the stipulation in sub paragraph (d) that, in seeking such information, the Committee shall have regard to applicable rules of national law and professional ethics. The Committee appears to regard this stipulation as a procedural rule that does not limit its powers but simply lays down working rules for the Committee itself.
6. The Government does not, however, accept that Article 8(2) (d) should be interpreted in this way, since to do so would mean accepting that the right to access to medical records under the Convention is an absolute right. Instead, the Government believes that the stipulation should be regarded as requiring that regard should be given to domestic legal and ethical requirements.
7. Under both English law and medical ethics, where a person does not have the capacity to consent to the disclosure of their medical records, the person who holds those records must act in the best interests of the patient. The Government acknowledges that the prison healthcare staff who held the records in question should have had regard to that criterion. It also accepts that, when account is taken of the Committee's preventative functions, it would be difficult to defend a refusal to disclose *except* on the basis that the records contained information disclosure of which would not be in the best interests of the patient. The guidance issued to prison healthcare staff on the protection and use of confidential information in prisons (Prison Service Order 25/2002) refers to the criterion of best interests mentioned above.
8. The Government also has to have regard to the interaction of the Convention with Human Rights Act 1998 which gives effect in UK law to the European Convention on Human Rights (ECHR). Article 8 of the ECHR guarantees the right to respect for private life. This can be interfered with by a state to allow disclosure without consent, but only where it is necessary and proportionate to do so. Ultimately, a balance has to be struck between the need to maintain privacy and the need to disclose in order to achieve a desirable result. There may, therefore, be some circumstances in which the right to privacy would outweigh the benefits to be gained by disclosure of information to the Committee where the patient's consent is withheld or otherwise unavailable (e.g. it is thought that disclosure without consent would worsen an individual's mental health).
9. For the future, the Government will advise officials, when considering similar requests from the Committee, to bear in mind that a balance needs to be struck between the demands of the Convention, UK legal and ethical considerations, and the best interests of the patient. While it cannot, for the reasons outlined above, guarantee that the Committee will be afforded unrestricted access to prisoners' medical records on demand, the Government would expect refusal to be very exceptional. It would expect Committee members to be made aware of its views and would be happy to engage further with the Committee on the matter, if it should so wish.

ISSUES RAISED BY THE COMMITTEE

UNITED KINGDOM

ENGLAND

Prison Service

Paragraph 12: Comment by the Committee

In Pentonville Prison, one prisoner complained of excessive use of force and threatening behaviour by a member of staff a few days previously. The delegation was also informed that allegations had been made of assaults by prison officers on three inmates in March 2003. Further, during the visit to Pentonville the delegation observed that some members of staff on occasion used harsh and inappropriate language when addressing inmates.

10. At the debrief for the visit at which this comment was made, the Committee told the Governor an unnamed prisoner had alleged he had seen a case where, at an undisclosed date and place, he had seen excessive force used against another prisoner. The governor asked for more details, such as the date, place and name of the prisoner, so that the alleged incident could be properly investigated. The Committee delegates refused to provide any further information on the grounds that the information they receive is confidential. The Governor questioned the practicality of raising unsupported allegations which could not be investigated to establish their truth or otherwise. Given that no specific allegations were received, no investigation into the case raised by the committee could take place.
11. However, since the visit by the Committee, two members of staff at Pentonville have been forced to leave the Service as a result of colleagues reporting their violence towards prisoners. This would indicate that violence is not acceptable to Pentonville Staff.

Paragraph 14: Recommendation by the Committee

Following the 2001 visit, the CPT recommended that the authorities at central and local level reiterate vis a vis staff at Pentonville the clear message that abuses of authority by prison officers are not acceptable and will if discovered, be dealt with severely; it further recommended that prison officers in that establishment be reminded that force should only be used as a last resort and must not be more than is strictly necessary.

The CPT recommends that the aforementioned precepts be recalled to prison officers at Pentonville. Further training in inter-personal communication skills, including in-service training should be widely available to prison officers, in particular at Pentonville Prison.

12. Pentonville prison has developed its own pilot training programme to improve and develop inter-personal communication skills. Its Advanced Interpersonal Skills course, which has been run as a pilot on D Wing, gives officers the opportunity to consider their own feelings and actions when faced with a difficult situation and how their responses to these difficult situations can have a negative effect on the atmosphere of a prison wing. The course also reinforces the need to use verbal reasoning skills when dealing with difficult prisoners, as an alternative to physical means of control and restraint. These skills allow officers to reason verbally with a prisoner in order to diffuse the situation, and this has a positive effect on staff prisoner relationships. To date, 26 officers out of a total of 36 eligible staff from D Wing, have undertaken this training. This pilot course has proved to be successful, and there are now plans to offer the programme to other officers across the prison.
13. Greater prominence is to be given to the development of inter-personal skills in nationally delivered entry-level training. The current entry-level training course for new officers is being re-written to cover these skills more thoroughly, and in particular, to focus on the role of peace-keeper. This new version of the course is due to be piloted in September 2004.

Paragraph 15: Recommendation by the Committee

As regards inter-prisoner intimidation and violence, at Winchester Prison, the delegation heard some complaints of bullying and intimidation among prisoners; it appeared that prisoners of foreign origin were particularly vulnerable in this respect. Some inmates claimed that staff were fully aware of the problem but were failing to intervene.

The United Kingdom authorities have previously made reference to the development by the Prison Service of violence reduction and anti-bullying strategies.

The CPT recommends that efforts to implement these strategies be strengthened at Winchester Prison.

14. The Prison Service has increased the emphasis on reducing violence and bullying in prisons. A Violence Reduction Strategy (Prison Service Order (PSO) 2750) ¹was introduced in May 2004 and requires every establishment to have a practical strategy to reduce violence and bullying. The PSO comes with guidance on how to achieve personal safety for prisoners and staff.
15. Winchester is one of the first prisons to implement this policy, following an area based training event in July 2004. The service has provided an electronic toolkit that enables each establishment to adopt a problem-solving approach, cross referencing to other policy areas, and promoting a whole prison solution.
16. It is accepted that there has been a problem of bullying and intimidation among prisoners at Winchester, but positive steps are being taken to address the problem. A measure of the success of these steps is that in November 2004 the Standards Audit Unit of the Prison Service found that the majority of prisoners at Winchester felt that bullying behaviour by prisoners is not tolerated.

¹ Accessible at http://pso.hmprisonservice.gov.uk/PSO_2750_violence_reduction.doc

17. The local strategy has been reviewed and re-published in 2004. Day to day management of the strategy is co-ordinated by a Senior Officer who is a member of, and reports to the Safer Custody Committee. Anti-bullying is a standing agenda item on that Committee which meets monthly and is chaired by the Deputy Governor. Further, anti-bullying will form a key part of the prison's Violence Reduction Strategy, which will be implemented early in 2005. Again, part of this strategy entails detailed information on bullying activity being fed back to the Safer Custody Committee which will be able to monitor this activity and inform decisions on affirmative action.

Paragraph 16: Comment by the Committee

(The) effects (of overcrowding) were clearly visible in the establishments visited by the CPT's delegation in 2003. As the Committee has pointed out, for as long as overcrowding persists, the risk of prisoners being held in inhuman and degrading conditions of detention will remain

18. The UK Government keeps the impact of population pressures - including overcrowding - under careful review. The Prison Service, on behalf of the National Offender Management Service, has a responsibility to manage the prison population within agreed operating capacities at each establishment. However, it is entirely a matter for the courts to determine who is sent to prison, and for how long.
19. The greatest population pressures are in adult male "local". These establishments are all operating within their operational capacity, which is the total number of prisoners that an establishment can hold taking into account control, security, and the proper operation of the planned regime. The population is carefully monitored to ensure that it does not exceed set operational capacities.
20. Although this is the case in local prisons, elsewhere in the prison estate (i.e. in the Women's, Open, and Juvenile estates, as well as Immigration Removal Centres), establishments are currently operating at or below their in-use certified normal accommodation (CNA) level. This is the uncrowded capacity of the establishment.

Paragraphs 18 and 19: Comment by the Committee

Following the 1994 visit, the CPT was led to conclude that the assumption shared until then by the Committee and the United Kingdom authorities that the significant prison building programme undertaken, coupled with other policies, would lead to an end to overcrowding by the mid-nineties, was no longer valid. The CPT stated that, consequently, the authorities had to be prepared to make more radical efforts to address the problem of overcrowding. The Committee recommended that a very high priority continue to be given to measures designed to bring about a permanent end to overcrowding.

In 1997, the CPT found that the situation had not improved; it recommended that the United Kingdom authorities redouble their efforts to develop and implement a multifaceted strategy designed to bring about a permanent end to overcrowding.

Since then, the prison population has continued to rise and overcrowding is blighting a growing number of establishments in England and Wales, in particular local prisons. At the time of the May 1994 visit, the prison population stood at 48,400; on 16 May 2003 the figure was 72,971, an increase of 50% in less than 10 years. Projections for the next six years put the prison population at between 91,000 and 109,000

21. Although the Government notes the Committee's comments about the building of more prison places, it considers that is right that prison should be reserved for those serious, dangerous and persistent offenders for whom a custodial sentence is the only right and proper response. Where there is a need to protect the public, this will take place in a secure environment.
22. Prison population projections are based on assumptions on future sentencing trends, and the impact of new policies on the prison population, and are subject to change. The projections for the prison population referred to by the Committee in its report were published in December 2002. Four alternative scenarios were produced which projected the following prison populations:

Scenario	2003	2004	2005	2006	2007	2008	2009
A; high	75,800	85,100	93,600	100,700	103,800	106,700	109,600
B: central option 1	74,300	82,400	89,200	94,400	96,000	97,600	98,900
C: central option 2	74,100	81,300	87,200	91,200	94,100	97,000	99,300
D: Low	73,600	79,500	83,900	86,700	88,400	90,100	91,400

23. Revised population projections were issued in October 2003. These figures, which are currently used for planning purposes, are as follows;

Scenario	2003	2004	2005	2006	2007	2008	2009
B							
Total	73,900	77,000	82,900	88,000	89,500	91,100	92,400
Male	69,200	72,300	77,800	82,600	84,000	85,600	86,800
Female	4,700	4,700	5,100	5,400	5,500	5,500	5,600
C							
Total	73,700	76,200	81,500	87,200	88,700	90,300	91,600
Male	69,000	71,600	76,500	81,800	83,300	84,800	86,100
Female	4,600	4,600	5,000	5,300	5,400	5,500	5,500

24. The Correctional Services Review (also known as the Carter Report)² was commissioned by the Government to consider longer-term answers to contain any growth in the prison population. The Report was published in January 2004 and its recommendations indicate that with an increased range of non-custodial sentencing options, such as community sentences, it may be possible to stabilise the prison population at around 80,000 by 2009.

² Accessible at: www.homeoffice.gov.uk/docs2/changinglives.pdf

25. At 30 June 2004, the prison population was 74,490. This was 2210. below the projected figure – 76, 700 – for this date.

Paragraph 20: Comment by the Committee

. . . the design capacity, or Certified Normal Accommodation (CNA) would seem at present to be of limited practical relevance in local prisons in terms of determining occupancy levels . . . According to the information available to the Committee, the overall prison population in April 2003 was 111% compared to the in-use CNA. Thirty-four prisons were operating at capacities 25% or more above their CNA; nine of those were 50% or more above their CNA. This is a most regrettable state of affairs. In fact, even with an occupancy level of 95% of the total design capacity of a prison estate, it becomes nigh impossible for a prison service to deliver what is required of it, and, more particularly, to ensure respect for inmates' human dignity.

26. The CNA is the uncrowded capacity of the establishment after adjusting for accommodation out of use. A more accurate measure used by the Prison Service is 'Operational Capacity'. This is the total number of prisoners that an establishment can hold – taking into account control, security, and the proper operation of the planned regime. It is determined by operational managers on the basis of their judgement and experience.
27. Where pressures develop, support is provided by moving sentenced prisoners as soon as operationally possible to those prisons with vacancies. In doing so, the Prison Service seeks to make maximum use of all available space within the prison estate to ensure full and complete usage of any spaces.
28. Although the local prison estate is operating above CNA, but within operating capacity, much of the rest of the prisons estate is not. Around 30 % of the Closed Training prison estate is, for example, below CNA, and the Women's, Open and Juvenile estates are also operating below CNA.

Paragraph 21: Comment by the Committee

In the CPT's opinion, the cell capacities approved by the Prison Service are too high; in particular, placing two persons in cells measuring as little as 6.5 m², including the sanitary facilities, cannot be considered acceptable (cf. as regards the establishments visited, Paragraph 29). It should be recalled that, following the 2001 visit, the Committee recommended that cells measuring 8.5 m² or less be used to accommodate no more than one prisoner (save in exceptional cases when it would be inadvisable for a prisoner to be left alone)

29. The UK Government does not set minimum figures for cell size or cell occupancy. The Prison Act 1952 and the Prison Rules 1999/Young Offender Rules 2000 require that no cell should be used to hold a prisoner or young offender unless certified to do so.

30. Prison Service Order (PSO) 1900, entitled “Certified Prisoner Accommodation”³ sets out measurable standards for the certification of cells to ensure consistent application across the prison estate and help achieve the Prison Service aim of providing decent living conditions for all prisoners. The Inspectorate of Prisons (HMCIP) was directly involved in the development of the standard. The PSO does not quote minimum cell sizes: to do so would not necessarily gauge the level of usable space within a cell. Account must be taken of furniture requirements, the amount of space needed for movement and activity within the cell, and how these factors would be affected by the introduction of another prisoner into a cell previously occupied by one person.

Paragraph 22: Comment by the Committee

As regards activities, the objective should remain to ensure that all prisoners spend a reasonable part of the day (eight hours or more) outside their cells, engaged in purposeful activities of a varied nature. However, the ability to provide activities also suffers as a result of overcrowding (cf. as regards the establishments visited, Paragraphs 31 to 33). The Prison Service’s overall Key Performance Indicator for average weekly purposeful activities is 24 hours, i.e. at best an average of 4 to 5 hours per day. Local targets are often set considerably lower.

31. HMPS accepts that high population levels, and numbers of prisoners received and discharged on a daily basis, can require the redeployment of resources from other activities and have a direct impact on establishments’ performance – particularly in hard pressed local prisons. Where this pressure results in overcrowding, it can compromise attempts to improve conditions. It is recognised that overcrowding constrains the amount of time prisoners spend in constructive activity, and can cause relationships between staff and prisoners to deteriorate. The Prison Service is alert to the risks and is doing everything possible to minimise the effects. At the end of December 2004 the Prison Service (including contracted out prisons) recorded that, year-to-date, prisoners were spending on average 24.1 hours per week in purposeful activity. This compared to an average of 23.4 hours for the year 2003-04.

Paragraph 23

One of the principal elements in the authorities’ efforts to deal with overcrowding has been the creation of more prison places. The authorities stated in their reply of 12 May 2003 to the CPT’s letter of 5 May 2003 that “by providing additional prison capacity, together with reforms to the sentencing framework, the Government will continue to provide the places necessary to accommodate those sentenced by the courts”, and in its Corporate Plan 2003-2004 to 2005-2006 the Prison Service includes among its objectives to “provide capacity”. In this connection, the CPT has noted that some 12,000 new places have been provided since 1995 and the prison building programme is continuing.

32. The UK government continues to investigate options for providing further increases in capacity over the coming years. The Prison Service must have accommodation available to house those committed into its custody by the courts. There are currently a number of projects underway to increase operational capacity.

³ Accessible at: http://ps0.hmprisonservice.gov.uk/PSO_1900_Certified_Prisoner_accommodation

33. These include expanding capacity in existing prisons by building new houseblocks to hold prisoners and by returning refurbished accommodation to use as quickly as possible. New prisons are also being built.
34. Use of accommodation is being maximised through a range of other mechanisms. For example;
- the role and population mix in each establishment is being kept under review; and
 - accommodation will undergo a change of function where this becomes necessary.
35. In addition, Home Detention Curfew continues to provide in excess of 3000 spaces.
36. Approximately 3,200 places are yet to come into use. This includes a new private sector prison, and new and re-claimed accommodation. The public sector prison service is engaged in construction programmes planned to provide an additional 2,100 places by the end of 2006. New prisons include HMP Bronzefield, opened at Ashford (near Heathrow) in June 2004, and HMP Peterborough, which is due to open in March 2005. These additional programmes will increase the total usable capacity of the prison estate to around 79,500 by 2006.

Paragraph 24: Comment by the Committee

(The Committee) remains unconvinced that providing additional accommodation will, alone, offer a lasting solution to the problem of overcrowding; to address that problem successfully will almost certainly also require solutions to be sought at the legislators' and sentencers' levels.

37. Following the independent review of correctional services (the Carter Report), the Government announced on 6 January 2004, in response to the Report's recommendations, a radical reform of the management of offenders with the publication of *Reducing Crime - Changing Lives*.⁴
38. The overriding purpose of the reforms is to improve the management of offenders and reduce re-offending. Offenders for whom prison is the right penalty should continue to be sent to prison. But there are many offenders for whom non-custodial penalties will be more appropriate. The Government's proposals will provide sentencers with a full range of penalties and advice on what is most likely to be effective in reducing re-offending in particular circumstances.
39. The Government is also providing more effective options for sentencers – including community penalties. Although it remains for the courts to decide when custody is the more appropriate sentence for those who are not dangerous, violent, seriously persistent, or sexual offenders, the Government believes that consideration should be given to the greater use of fines, community sentences, treatment orders and curfews. The Criminal Justice Act 2003, supports this approach, by providing for more flexible generic community sentence, and improved frameworks for suspended and short sentences via new sentences of "custody plus" and "custody minus", and through the introduction of intermittent custody allowing offenders to serve custodial sentences at the weekends whilst maintaining employment and family ties.

⁴ Accessible at: www.homeoffice.gov.uk/docs2/changinglives.pdf

Paragraph 25: Comment by the Committee

(Subsequent to the CPT's 1997 visit, the) United Kingdom authorities . . . set as an "uncompromising" objective holding all prisoners in a safe, decent and healthy environment. In 2001, the Committee concluded that much remained to be done to achieve this objective. The CPT's findings during the 2003 visit do not permit it to reach a different conclusion.

40. Measures such as those set out at paragraphs 32 to 36 above, and the planned increase in the use of alternative non-custodial sentences for low-risk less serious offenders, will check the rate of population growth in the Prisons estate. It is thought that the new measures will see a prison population of 80,000 by 2009, rather than the 92,000 anticipated by previous projections. This, combined with an increase in accommodation to hold prisoners, will help in easing population pressures (see also, paragraphs 18-20 above)

Paragraph 26: Recommendation by the Committee

The CPT calls upon the United Kingdom authorities not to abandon the objective of bringing available accommodation and the inmate population into balance; on the contrary, this objective should be pursued vigorously with a view to eradicating overcrowding at the earliest opportunity.

41. The UK government continues to investigate options for providing further increases in capacity over the coming years. The Prison Service must have accommodation available to house those committed into its custody by the courts. There are currently a number of projects underway to increase operational capacity.
42. These include expanding capacity in existing prisons by building new houseblocks to hold prisoners and by returning refurbished accommodation to use as quickly as possible. New prisons are also being built.

Paragraph 26: Recommendation by the Committee

Further, the CPT recommends that the authorities revise the standards as regards cell occupancy levels, in accordance with the Committee's criteria (cf. Paragraph 21).

43. The UK Government does not accept this recommendation. The UK Government accepts that the "doubling-up" of prisoners in cells of less than 8.5m² can result in cramped conditions and is less than ideal. But, regrettably, it is sometimes necessary to locate prisoners in cells of this size in order to accommodate fluctuations in the prison population. It is likely that this accommodation will continue to be used for the present time. In addition, it should be noted that some prisoners prefer to share a cell, and it is sometimes preferable for other prisoners, such as those at risk of self-harm, to share. A full risk assessment is carried out before prisoners are considered suitable to share a cell.

44. Space and privacy requirements for crowded conditions are defined within Prison Service Order 1900 as follows;
- The number of crowded places is determined on the basis that the accommodation provides adequate space for each prisoner and the ability to use the WC with some privacy. Use of the WC “with some privacy” is defined to mean with body screening (screening which conceals the body but is not full height of the cell) from the fixed points of the cell i.e. the table(s) and beds. In crowded conditions, the WC area need not be ventilated separately)
 - Each crowded place must provide sufficient space for:
 - A bed, which may be two-tier;
 - Storage, which may be compacted;
 - A chair and table area; and
 - Circulation and movement.
45. It is accepted that cells measuring less than 7m² should not, where possible, be used to hold two people. The requirements of the standard mean that it is unlikely that any cell, significantly less than 7m² and with integral sanitation, would be assessed as suitable for accommodating more than one prisoner.

Paragraphs 27 and 28: Comment by the Committee

The CPT’s delegation found that high occupancy levels had a significant negative impact on the quality of life in all three prisons visited and on the establishments’ ability to deliver basic services. Especially affected were the material conditions and regimes offered to prisoners and the provision of health care. Further, overcrowding prevented work being done with individual prisoners on rehabilitation and resettlement, one of the declared objectives of the Prison Service with a view to reducing reoffending.

Liverpool Prison had a CNA of 1,190 and an operational capacity of 1,508. On the first day of the visit, it was holding 1,409 prisoners (1,246 convicted and 163 on remand).

Pentonville Prison had a CNA of 889 and an operational capacity of 1,205. On the first day of the delegation’s visit, the prison was accommodating 1,200 inmates (754 convicted and 446 on remand).

Winchester Prison had a CNA of 371 and an operational capacity of 550. It was holding 547 inmates on the day of the visit (348 convicted and 199 on remand)

46. Liverpool, Pentonville and Winchester are all adult male prisons receiving convicted prisoners directly from busy local courts: in common with most establishments in this category, they are currently operating above their Certified Normal Accommodation (CNA), but within their Operational Capacity. In addition to sentenced prisoners, they accommodate a number of remand prisoners, who must be held as close as operationally possible to the court that is hearing their case.

47. When remand prisoners receive their sentence, they can then be moved to another establishment according to their specific security requirements, programme and regime needs, and their age, gender and legal status. The prison population is carefully monitored to ensure that those establishments experiencing particular difficulties receive support through the movement of sentenced prisoners to other prisons with vacancies as soon as operationally possible.
48. CNA is the uncrowded capacity of an establishment. Operational Capacity is the total number of prisoners an establishment can hold taking into account prisoner safety, control, security and the proper operation of the planned regime). It is determined by Prison Service Area Managers on the basis of operational experience and judgement.
49. Cell capacities are certified by Prison Service Area Managers (as required by s.14 of the Prison Act 1952) in accordance with Prison Service Order 1900 and Performance Standard 1 on Accommodation. These provide clear guidelines on determining cell capacities. Area Managers must ensure that each cell used for the confinement of prisoners has sufficient heating, lighting and ventilation and is of adequate size for the number of prisoners to be held in it.
50. Governing Governors, and Controllers and Directors of contracted out prisons, must ensure that the approved operational capacity is not normally exceeded other than on an exceptional basis to accommodate pressing operational need.

Paragraph 29: Recommendation by the Committee

The majority of prisoners at Liverpool and Pentonville, and two thirds of inmates at Winchester, were doubled up in cells measuring from 7 m² to 8.5 m² which, with the exception of Liverpool's A Wing . . . included partially screened sanitation . . . The conditions observed in J Wing and parts of the health-care centre at Liverpool Prison, where cells used for double occupancy measured 7 m² including sanitation, were extremely cramped. It should be recalled that, following the 1994 visit, the CPT recommended that J Wing be used for single occupancy only

Immediate steps to be taken to ensure that cells measuring 7m² or less are never used to accommodate more than one person.

51. Pentonville: Whereas prisons have a CNA which represents the number of certified cells in each prison, this figure does not take account of their size, either in floor space or volume. Pentonville's cells are large, having been designed originally for a prisoner to work in (usually on a loom). They measure on average (2.4x 4.1x 3 high) metres, which is ample for two prisoners. No cell contains more than two prisoners.
52. Liverpool: Liverpool currently has a temporarily reduced operational capacity of 1440. Impending closure of the current healthcare unit will result in the need for healthcare spaces elsewhere whilst the new unit is built. J wing has therefore closed to allow for the necessary refurbishment for use as a temporary healthcare unit.
53. Winchester: Winchester's main cells have an average size of 8m², though of course some are smaller (7.5 m²). However these are single cells in the healthcare centre. All cells have privacy screens, but it is recognised that some are not built to current standards. These are being upgraded as part of an ongoing cell refurbishment programme.

Paragraph 30: Recommendation by the Committee

The premises were on the whole clean and in a good state of repair in Winchester and Pentonville Prisons. However, in the latter establishment, conditions in Wings A & D left something to be desired. Liverpool Prison was generally run down, and cells and communal areas in certain sections (especially Wings H and K) were very dilapidated; the delegation saw many cells with windowpanes missing and rising damp. Further, mattresses were often well past their natural life spans, especially at Liverpool and Pentonville. As regards hygiene, prisoners in those two establishments complained about the presence of insects and mice in their cells.

The CPT recommends that steps be taken to remedy these shortcomings.

54. Pentonville: Pentonville's A & D wings have not been refurbished in recent years. However, preventative and reactive maintenance is carried out as speedily and as fully as possible. Since the ECPT's visit both wings have been painted throughout and communal areas have been given as much attention as possible. The installation of electric points into cells commenced on 1st April 2004 on D Wing. This seven-year programme will equip each cell with power points for televisions and kettles.
55. Pentonville has an exceptionally high turnover of prisoners, both on remand and convicted. The associated wear and tear on the fabric of cells and the lack of willingness on the part of many prisoners to look after cells and their associated furniture make it difficult for prison staff to maintain standards. Mattresses are replaced regularly, and there is a constant programme of maintenance on windows and other damaged items. External specialists carry out a regular programme of pest control. In addition, any particular problems that emerge are dealt with as soon as possible.
56. Liverpool: Since the CPT visit, a full cell-repainting programme has been started at Liverpool. Over 50 % of the cells have been already painted. This includes a full wing repaint of H & K Wing. A small number of damp cells have been discontinued as accommodation due to dampness.
57. Regular cell inspections result in replacement mattresses being ordered as and when necessary. There is an ongoing problem with cockroach infestation, particularly on the ground floor landings. HMP Liverpool has recently appointed a pest control officer and the problem is being contained. Rats are also a problem around the external perimeter of the buildings. Recent reports indicate fewer sightings than previously, since the appointment of the pest officer.

Paragraph 31: Comment by the Committee

The overall Key Performance Indicator for average weekly purposeful activity of 24 hours (cf. Paragraph 22) was not being met in any of the prisons visited.

58. The most important factor in the apparent fall in average Purposeful Activity hours is the rising prison population. This means prison resources are under constant pressure to match the increasing prison population, and ultimately this has had an effect on the overall average purposeful activity hours achieved by the Prison Service.
59. Moreover, the overall figures mask the significant achievement in actual delivery. Since 1994-95, prisons are delivering more than 30% more purposeful hours since that time, despite limited workshop and classroom capacity.
60. The amount of purposeful activity varies according to the function of an establishment. Levels of activity will also be higher in establishments with a settled population. For example, local prisons have an inherently transient population and generally speaking do not hold prisoners long enough to complete education courses and offending behaviour programmes. Liverpool, Pentonville and Winchester are all local prisons. By contrast, Category B and C establishments, which have prisoners who have been sentenced and categorised, are able to implement sentence plans and to provide more hours of activity.
61. Liverpool: Liverpool's target for purposeful activity is 18 hours a week. It is currently delivering an average of 21 hours. As the report states, 386 prisoners are in full time work. However, 240 are also in education classes or are employed as Wing Cleaners or to keep the grounds tidy. Some are in Offending Behaviour Groups. 425 prisoners are unemployed
62. "Performance Testing proposals" have been designed to increase the prisoner employment profile and education places available. This is dependent on additional funding being made available. Purposeful activity has noticeably increased since the transition to the Performance Testing proposals, the year-end (to 31 March) figure being 18.7 hour per week. In March 2004 22.9 hours per week were being delivered, which is indicative of recent months' performance.
63. Many of the full time work places have now been allocated on a part time basis, thus doubling the numbers of places available.
64. Pentonville: Staffing levels and the high turnover of prisoners prevent Pentonville from meeting its Purposeful Activity target of 16 hours. The target for Purposeful Activity for 2003/2004 was almost achieved. This is a significant achievement given the turnover of prisoners at Pentonville.
65. The trend is now upwards, due to better staffing levels, and it is likely that next year's target will be met.

66. Changes have been made to the assessment process for allocating employment to prisoners. Out of a prison roll of 1,205, the following purposeful activity places now exist;
- 476 Workshop/Wing based jobs.
 - 84 Education Places
 - 45 Induction spaces.
67. Prisoners undergo drug/alcohol detoxification are not eligible for work and education. Remand Prisoners cannot be required to work and with an average of 30 % of the remand population being discharged to court every day even those who wish to work find this disruptive. Overall, a total of 61% of prisoners are now engaged in some form of work or other purposeful activity.
68. In September 2004 the construction of 2 new workshops will be finished, which will provide about 80 additional prisoner employment spaces.
69. All the available prisoner jobs at the establishment are now filled despite an increased turnover of prisoners. All prisoners are allocated a labour band that qualifies them for distinct work opportunities in the prison. Although the majority of prisoners are employed, there is insufficient work for every prisoner.
70. Winchester: Winchester's target for Purposeful Activity is 20 hours per week. In the 7 months September 2003 to March 2004, Winchester's weekly average for Purposeful Activity hours was 22.14 for the main male prison.
- September 2003 - 21.7 hours
 - October 2003 - 22.3 hours
 - November 2003 - 22.8 hours
 - December 2003 - 21.8 hours
 - January 2004 - 22.6 hours
 - February 2004 - 22.4 hours
 - March 2004 - 21.4 hours
71. Winchester now regularly meets and exceeds its Key Performance Target for purposeful activity. Regime improvements are being made in many areas and include:
- a revamped induction programme that includes a Preparation for Work Course,
 - the introduction in 2005 of PASRO and SDDA (substance misuse) courses and
 - a new detoxification regime to help prisoners with substance misuse,
 - the opening of wing serveries on B and C Wings to speed up the serving of meals and introduce a corresponding increase in Core Day activity times,
 - an in-cell electrics programme to allow TVs in all cells by the end of 2005/early 2006,

- a new visits facility opening in early 2005 to significantly improve the environment for social visits,
- improvements to access to gym activities in 2005, incorporating learning and skills opportunities into all workshops,
- a new BICS (Industrial Cleaning) course in 2005
- the development of the resettlement regime in West Hill to include opportunities to work out in the community.

Paragraph 32: Comment by the Committee

Vulnerable Prisoners had some access to education at Liverpool and Winchester, but not at Pentonville. The least developed regimes were invariably those of remand prisoners, the majority of whom were not involved in either work or education.

72. Liverpool: Liverpool moved to a new core day in August 2003. Since then the time out of cell for Vulnerable Prisoners on K Wing is 10.5 hours. This is slightly above the average unlock time. This is due to a more relaxed staffing arrangement for vulnerable prisoners; because they are exclusively employed in the laundry (which often operates outside normal hours) and the breakfast pack workshop, and take part in wing based education classes.
73. Pentonville: At Pentonville, there are 35 prisoners in the Vulnerable Prisoners' Unit (VPU). Their work opportunities are limited to in-cell work or the 4 wing based jobs as cleaners/serverly workers. Prisoners on the VPU have access to 10 hours of education a week.
74. Remand Prisoners: Remand prisoners in local prisons have access to the same level of education as sentenced prisoners. They are accessed on reception in the same way, and can choose appropriate education or training. Unlike sentenced prisoners, they do not have to work, but in some prisons once they have agreed to attend a class, they sign a compact which commits them in the same way as a sentenced prisoner.
75. Legal visits and court appearances means that remand prisoners are more likely to miss sessions, but this does not affect their opportunities to take part in work or education.
76. The Self-Assessment Report for the quality improvement process in every prison will include a needs analysis. This will enable local managers to devise a programme that meets the need of the prison's population, taking into account length of stay as well as other educational factors.

Paragraph 33: Comment by the Committee

. . . in the three establishments . . . When the days without association and gym coincided with inclement weather, prisoners who did not have activities were locked in their cells for 23 hours or longer. Such a situation is completely unsatisfactory

77. There is always a difficulty in large prisons ensuring that all prisoners are able to spend at least an hour in the open air. This is particularly pronounced during the winter months when the weather is frequently unsuitable. The Prison Service Order states that prisoners must be given the opportunity to spend time in the open air each day, but does not specify a minimum except for those prisoners on a restricted regime such as those located in segregation. Guidance offered to prisons is that they should aim to provide an hour, but not less than half an hour a day, except when weather makes this impractical.
78. Liverpool: When days without association and gym coincided with inclement weather, prisoners were being locked up for up to 23 hours. This is no longer the case. A more open regime is now in operation. Regardless of the weather prisoners are now unlocked at some point 3 times a day. They also have access to showers and phones.
79. Pentonville: Pentonville has within the last few weeks implemented a new core day, which allows at least one hour's exercise per day for all prisoners who do not work out in the open air, subject to acceptable weather conditions.
80. Winchester: Prisoners are not locked up for 23 hours whatever the weather. They all have wing association during the day when not engaged in purposeful activity such as workshops, education, gym or the library.

Paragraph 34: Recommendation by the Committee

The CPT recommends that steps be taken to increase the number of prisoners taking part in purposeful activity outside their cells, as well as the amount of time prisoners spend on such activities. In this respect, particular efforts are required vis-à-vis remand and vulnerable prisoners.

81. In addition to the comments made above :
82. Liverpool: The average weekday out of cell time is 8.5 hours and average weekday out of cell time is 8 hours. The average time unlocked for remand prisoners is 6 hours a day and the average time unlocked for vulnerable prisoners is 10.25 hours a day. There are no restrictions to gym access.
83. Pentonville: The target time out of cell was and remains 7.5 hours a day during the week and 7 hours a day at weekends. The average figure for 2003/04 was 7.6. hours a day. Unconvicted prisoners generally have slightly longer out of cell than convicted.

84. The gym has been short staffed on occasion, but this has improved to the extent that each prisoner now has opportunities for two or three gym sessions a week, which is excellent for a population of more than 1200 prisoners.
85. Vulnerable prisoners have access to education.
86. Pentonville has one of the highest turnovers of prisoners in the prison estate. Despite this it has successfully maintained and improved its performance to second place on the weighted scorecard for the last two quarters and is on course to meet or exceed the majority of its targets.
87. Pentonville also received a 'Good' rating in its last Standards and Security Audit. Pentonville has low levels of adjudications, assaults, serious incidents, self-harm and suicide, which are all good indicators of a stable prison with an acceptable regime.
88. Winchester: Winchester's average weekly Purposeful Activity hours have been 20.16 hours for the main male prison, with the highest being 22.77 hours.
89. The average time out of cell at Winchester is still 9 hours a day. There are no restrictions to gym access, the gym is available to all prisoners including those in the care and supervision unit. The only bar to using the gym could be a prisoner's behaviour.

Paragraph 35: Recommendation by the Committee

The CPT has previously made it clear that it regards the entitlement of a least one hour of outdoor exercise per day as an essential requirement, a principle also laid down in Rule 86 of the European Prison Rules. The United Kingdom authorities have indicated in their response that "ideally time in the open air should be an hour a day, but not normally less than half an hour". During the 2003 visit, the delegation once again heard complaints that outdoor exercise could be limited to half an hour per day, especially at Pentonville.

The CPT reiterates its long-standing recommendation in this respect.

90. Her Majesty's Prison Service agrees that in ideal circumstances prisoners should be allowed in excess of one hour a day in the open air. Current guidance recommends that prisoners should have the opportunity to take at least one hour a day in the open air, but where this is not possible, the time should not be normally less than half an hour.
91. At Pentonville as already stated at paragraph 83, the target time out of cell was and remains 7.5 hours a day during the week and 7 hours a day at weekends. The average figure for 2003/04 was 7.6. hours a day. Unconvicted prisoners generally have slightly longer out of cell than convicted.

Paragraph 36: Request for information by the Committee

Inmates in all three establishments complained that the slots available for visits were insufficient for the number of prisoners. At Liverpool Prison, management was considering introducing evening visits to help address the problem.

The CPT would like to receive the authorities' comments on this point.

92. Liverpool: Evening visits have now been introduced at Liverpool on Tuesdays, Wednesdays and Thursdays between 1745 and 1845 hours.
93. Pentonville The visits hall is open for 30 hours a week. There are morning and afternoon visiting sessions from Monday to Saturday and on Sunday afternoon. 780 prisoners per week can be accommodated in these sessions. The manager responsible for the Visits Group cannot recall an occasion when full capacity has been reached.
94. In 2003, shortly before the ECPT visit, the visits procedure was rearranged in order to provide longer sessions. This also sought to re-balance the long-term problems caused by too many visitors seeking afternoon visits and too few seeking morning visits. This change, in common with any change to an established system, was initially unpopular with prisoners and visitors, but is now accepted and is seen as a fairer system. The number of formal complaints relating to visits is extremely low.
95. The Sunday afternoon visits were established as an additional session for those prisoners on the "Enhanced" level of the Incentives & Earned Privileges Scheme. They have been an added incentive to motivate and reward positive behaviour amongst prisoners.
96. Winchester: Two new visiting facilities are being built at Winchester. The building in the main Prison should be finished by the end of 2004. The second building is part of the enhancements for the additional places in the Ready To Use (prefabricated) Unit on the Westhill site. On completion there will be sufficient visiting facilities for all prisoners.

Paragraph 37, Part 1: Comment by the Committee

The high numbers of receptions were a source of concern for staff and management in all three establishments and despite the good intentions in evidence everywhere, reception procedures varied in quality. They worked well at Winchester. However, at Liverpool, and especially at Pentonville, pressures appeared to be such that not all first time prisoners went through the full induction.

97. Pentonville - A major restructuring of the Reception and Induction Process has taken place at Pentonville with effect from October 2004. That has transferred some of the Reception Process onto A Wing, which is now the First Night Centre and Induction Wing. This has had the effect of lowering the congestion in the Reception Building and has improved the flow and accuracy of Induction, which now takes place over two days.

98. Liverpool - There was a brief period, during intense population pressures, when levels of receptions led to some new prisoners being allocated temporarily on wings other than the induction unit; and this led to delays in induction. The Governor is now satisfied that this has now been addressed. In addition money has now been identified to develop a dedicated first night centre.

Paragraph 37, Part 2: Comment by the Committee

Further, overcrowding meant that prisoners were being allocated according to space available, rather than based on the most appropriate allocation for the inmates in question, having regard to their status or circumstances (e.g. remand, convicted, life-sentenced, undergoing detoxification).

99. The Government aims to ensure that prisoners are held in establishments that provide the degree of security they require; are suitable to their gender, age and legal status; provide special facilities appropriate to prisoner needs; and are near to their homes or the courts dealing with their cases. However, to meet the demand for places for those people sentenced into custody, it is necessary to accommodate them in all available accommodation.
100. The prime consideration for allocation is the Security Category of the prisoner, which is arrived at by a Standard Algorithm. Prisoners are not normally allocated outside their Security Category unless there are other considerations such as control problems. Generally the Categorisation is set at the lowest possible level. Obviously we can only transfer prisoners to where there is space for them, but a continual stream of transfers is necessary in order to provide space for prisoners arriving from the Courts. Remand prisoners are transferred according to the requirements of Courts.
101. Pentonville: At Pentonville prisoners undergoing detoxification are not transferred. It should be noted that Pentonville completes about 3000 full methadone detoxifications per year. Prisoners on Offending Behaviour Programmes are not transferred until they have completed the relevant programme, and generally educational courses are also completed before transfer.
102. Winchester: Unless immediate health care admission is merited, initially prisoners received into Winchester are located on A Wing for first night and induction. Subsequently they are moved on to the main wings according to status. When operational, the detox unit will also be located on A Wing. Difficulties in moving prisoners around due to lack of space can be an issue from time to time, but such is the turnover at the establishment that these can usually be resolved within 24 hours. Transfers of sentenced prisoners following observation, categorisation and allocation procedures are not normally difficult for lower security category C and D prisoners. Higher security category B prisoners, and prisoners on life sentences, are harder to place and at times it can take some months to move them on to suitable establishments.

Paragraph 38: Recommendation by the Committee

The number of general practitioners could be considered adequate at Winchester (2 full-time equivalent). However, it was scarcely sufficient at Pentonville (3.5 full-time equivalent) and clearly inadequate at Liverpool (2 full-time equivalent).

Despite the adequate number of general practitioners at Winchester, records showed that inmates could wait five to six days to be seen by a doctor, and on occasion considerably longer.

At Pentonville Prison, the delegation heard a few complaints about considerable delays in being seen by a general practitioner. The delegation observed that general practitioners at Pentonville were seeing more than 15 patients per hour during wing clinics. Evidence of overcharged wing clinics was also found at Liverpool. Moreover, the high turnover of health-care staff in that establishment (10 general practitioners had been employed in the course of one year to fill two posts) had rendered all the more difficult the provision of adequate health care.

The CPT recommends that the health-care services at Liverpool, Pentonville and Winchester Prisons be reviewed, in the light of the above remarks.

103. Winchester: The prison is currently the subject of a Performance Improvement Plan which addresses, amongst other things, the issues raised in the CPT's report. This is designed to deliver continuing improvements in policies, procedures, clinical services, management monitoring and physical facilities.
104. All patients will be encouraged to clean their cells every day. Those who are unable to do so on account of their mental state will be given assistance to maintain a good standard of hygiene. Patients must be offered daily exercise and records kept accordingly for the purpose of regime monitoring. A therapeutic regime for patients will be developed and published, compliance with which will be monitored.
105. A strategy for recording, monitoring and evaluating non-medical admissions to the health centre will be established. A clinical audit tool will be developed for monitoring the quality of records and the standards of record keeping on a bi-monthly basis. A system for ensuring effective discharge planning to the residential units will be developed, to include use of the multi-disciplinary team.
106. As regards the prison doctors, the establishment is developing a system with the local Primary Care Trust and a local GP practice to offer an effective primary care service. Although there may sometimes be delays in seeing a doctor in non-urgent cases, all urgent cases are either seen straightaway or referred to the Accident & Emergency department at the local hospital. A nurse triage system is being developed which will reduce the number of prisoners who need to see the doctor and thus reduce the waiting list.
107. Liverpool: In partnership with North Liverpool Primary Care Trust (PCT), the prison has appointed one more full-time General Practitioner (GP) and is continuing to advertise for another. The working arrangements of these GP posts are now comparable to those in the community (10 sessions covering Monday to Friday 8:30am–5:00pm). North Liverpool PCT has commissioned 'Primecare' to provide out of hours and emergency on-call services.

108. North Liverpool PCT and Prison Healthcare are working together to modernise primary care services at the establishment, including the development of nurse practitioner/prescriber posts, nurse triage and nurse-led clinics. The aim is to reduce patient waiting times and refocus the work of the GPs.
109. Pentonville: The number of doctors at Pentonville is 5.5 whole time equivalents, and not 3.5 as indicated in the CPT report. This does not include doctors covering evening duties performed between 18:00 and 20:00.
110. A review of medical services at Pentonville carried out in February and March 2002 recommended medical provision of 4.9 whole time equivalents – or 5.25 whole time equivalents if one NHS session a week for the four current medical officers is included
111. The wing clinics are scheduled to run for approximately 1.5 hours per day between 10:30 and 12:00, although they sometimes start late. The clinics will, in many cases, run over but this is subject to operational running considerations in the prison – e.g. availability of staff. If a prisoner is deemed by the medical, clinical or discipline staff to be in need of medical attention then, in all circumstances, arrangements will be made to make sure the prisoner gets it in good time. There may be occasions when a prisoner's appointment has to be rescheduled in non-emergency cases.
112. The figure of 15 prisoners per hour cited in the ECPT report is not, therefore, strictly accurate. There is no hard-and-fast rule on the amount of time that a doctor should spend with each patient but the average, as stated in the Islington PCT GP contract, is 8 minutes. Of the 15 prisoners scheduled to see the GP in the one-and-a-half hour session it is usual that only around half of them will present a new case requiring a full medical examination. The remainder will be seeing a doctor for repeat prescriptions, follow-up appointments or some other reason not requiring the full eight minutes and are commonly dealt with within the allotted time. There is, therefore, sufficient time available to see all the prisoners in most cases. In addition, the establishment is currently in the process of recruiting nurse practitioners in order to introduce nurse-led clinics. It is also intended to enhance the medical service by employing a permanent lead GP. The establishment has been trying to do this, without success, for over a year. It has advertised the post seven times and held interviews on five separate occasions but the applicants were not up to standard or there was some other issue.

Paragraph 39: Recommendation by the Committee

The CPT recommends that the situation of in-patients in the health-care centres at Liverpool and Winchester be reviewed.

113. Liverpool: At Liverpool all elements of prison functioning and prisoner access to services have recently been reviewed. The Review included prisoners' rights to meaningful occupation and time out of cell within the healthcare centre. An interim day facility was developed in healthcare during November 2003, to increase education and group work activity opportunities. The number of in-patient beds in the healthcare centre was reduced from 58 to 28 from April 2003. In October 2004, construction of a new healthcare centre is due to begin to replace the current health facility. This will comprise an in-patient facility, a day facility for prisoners with mental health problems and a primary care facility.

114. Winchester: At Winchester, as part of the Performance Improvement Plan, the number of health care beds will be reduced to 22 and consideration will be given to removing those from the establishment's Certified Normal Accommodation (C.N.A). The beds in the small ward are to be removed and it will be converted into a small dining area/association area, which would enable association to take place when staff numbers are limited.

Paragraph 40: Recommendation by the Committee

... at Pentonville Prison new arrivals were not physically examined; the governor informed the delegation that the establishment was “de-medicalising” the screening of newly arrived prisoners in order to concentrate on identifying those at risk of suicide or self-harm. The CPT fully agrees that (identification of those at risk of suicide or self-harm) should be a priority; however, it should be complementary to, not at the expense of, proper medical screening. . .

The CPT recommends that the medical screening on admission at Pentonville include a physical examination by a doctor or by a nurse reporting to a doctor.

115. A doctor examines all new arrivals at Pentonville within 24 hours of their admission and records baseline observations. There are rare examples where some examinations have been missed but this is very much the exception. On some days there are too many new arrivals for all to be seen by a doctor the same evening. On those occasions a nurse will decide which prisoners must see the doctor that evening and which can wait until the following day. In any event, all are seen within 24 hours.
116. On the ‘de-medicalisation’ of the screening of newly arrived prisoners, research had indicated that the Prison Service’s reception screening processes were failing to identify up to 75% of prisoners who had a severe mental illness. To rectify this, new triage based reception screening arrangements were developed and piloted during 2001-2002 at 10 local prisons. These focus on identifying and managing a prisoner’s immediate and significant health needs on first reception into prison custody, so that more effective use can be made of staff resources and staff skill mix. This work has been closely linked to development of the Prison Service’s suicide prevention strategy and four of the screening pilots also formed part of the Prison Service’s “Safer Locals” Programme. Evaluation of experience at the pilot sites showed a substantial improvement in the identification of prisoners with a severe mental illness.
117. The new reception health screening system has already been introduced at 53 prison establishments in England, including Pentonville, and work is under way to ensure that it is in operation at the remainder of establishments that receive prisoners direct from court by April 2005. If a prisoner screens positive for one or more of four categories (mental health, suicide and self-harm, physical health, substance misuse), a further assessment, using evidence-based protocols, is carried out by an appropriate member of the establishment's primary care team. Plans are then drawn up for the prisoner's clinical management. Prisoners who do not screen positive for any of the four categories are offered the opportunity of more general health assessment which should preferably, be undertaken within a week of their first reception into custody.

Paragraph 41: Request for information by the Committee

The CPT would like to receive the authorities' comments on its view that health-care centre capacity should not be included in an establishment's C.N.A.

118. Health-care beds should be used primarily for prisoners with a clinical need for in-patient treatment in a prison health-care centre. It may sometimes be in the best interests of effective local management for beds that would otherwise be unoccupied to be used, as and when required, to cope with accommodation pressures. The Prison Service would not want to remove that flexibility where it can be of genuine benefit without undermining the delivery of health services. However, if health care beds are routinely used as overspill capacity, the prison should, as has already happened at a number of establishments, review its level of need for in-patient capacity and re-profile its accommodation accordingly.

SCOTLAND

POLICE ESTABLISHMENTS

Paragraph 43

...a few allegations were received of use of excessive force by police officers at the time of arrest, including rough treatment, punches and kicks. Some complaints were also heard about handcuffs being applied too tightly and about the inconsiderate manner in which transport vans had been driven by police officers.

119. For the purposes of effective restraint and control, all Scottish forces issue 'rigid' style handcuffs to operational officers along with detailed written policies on the appropriate use of such handcuffs. Such use includes occasions when it is thought that an escape may be attempted, where an attempt at rescue may be made or where the prisoner appears to be especially hostile or threatens violence. In some circumstances, the appropriate use of handcuffs can avoid the need for an officer to resort to a greater use of force.
120. Restraint and control handcuffs are effective only if officers are proficient and skilled in their proper use and all officers require initial and refresher training in this regard. Whilst handcuffs are an essential and fairly routinely used part of an officer's safety equipment, their use generates many complaints by persons subjected to the experience. Where this amounts to an allegation of assault, the complaint is referred to the Area Procurator Fiscal to enable him/her to consider, independently, the issue of criminal proceedings.

Paragraph 43

Further, information published in the context of the ongoing consultation and review process concerning the handling of complaints against the police suggests that about 40% of some 2,000 yearly complaints lodged against the police involve allegations of assault

121. Allegations of assault accounted for 40% of complaints against the police in Scotland during 1998/1999. By 2003/2004, although still the most common allegation made against the police, this had fallen to 24% of all complaints. After enquiry, only 0.4% of these were found to be substantiated.

Paragraph 44

The persistence of allegations of ill-treatment by police officers underlines the importance of the authorities at central level and senior police officers delivering the clear message that the ill-treatment of detained persons is not acceptable and will be the subject of severe sanctions if it occurs.

122. A police constable has power to use reasonable force, but may only do so where necessary, and to the extent necessary, while exercising his/her other powers. The force used should, however, be the least necessary in the circumstances. In no case must a person held in legal custody be harshly treated or have greater force used towards them than is absolutely necessary to restrain them. Unwarranted or unreasonable force may constitute assault.

123. Section 39 of the Police (Scotland) 1967 Act provide that Chief Constables are held liable for unlawful acts by constables. In consequence, if a police constable acts towards anyone with unnecessary force or harshness, the relevant Chief Constable may be held liable in damages to such a person.
124. The standards required of police officers in Scotland are embraced by the Association of Chief Police Officers in Scotland (ACPOS) within the “Statement of Ethical Principles”. The principles of Accountability and Responsibility are particularly relevant to the fair treatment of prisoners:

All officers of the Scottish Police Service observe and support the following principles:

Integrity - will discharge their duties with fairness and honesty and will ensure that they do not place themselves under any financial or other obligation which might influence the performance of their duties. They will declare any private interests which may conflict with their duties and take steps to avoid such conflict.

Transparency - will perform their duties in an open and transparent manner, submit their decisions and actions to appropriate scrutiny and will respond positively to criticism. They will give reasons for their decisions and restrict information only when the wider public interest demands. They will be open and truthful about their actions while maintaining the confidentiality of information entrusted to them in accordance with the law.

Accountability - will remain accountable before the law and accept responsibility for their decisions and actions. They will guard against the abuse of the powers which their office affords them and will oppose and draw attention to malpractice and wrongdoing by others.

Responsibility - will accept personal responsibility for their own actions and omissions and act with resolve, tolerance and restraint in the discharge of their duties. They will ensure that their actions are at all times lawful, reasonable and proportionate and take ownership of those actions and decisions made in the course of their duties. They will take responsibility for observance of these principles and promote them through leadership and personal example.

Impartiality - will act fairly and impartially, without prejudice and solely in terms of the public interest. They will discharge their duties with objectivity and without favour or malice.”

125. In addition, force policies address the fair treatment of prisoners and any allegation of assault is treated as a complaint against the police and referred to the Area Procurator Fiscal for the consideration of prosecution.

Paragraph 44

The CPT invites the authorities to remind police officers of these precepts[: that no more force than is strictly necessary should be used when effecting an arrest and that, once arrested persons have been brought under control, there can be no justification for their being struck by police officers].

126. Further to the answer given above, it should also be noted that police officers are not exempt from normal requirements in how they conduct themselves and must have regard to Police Conduct Regulations and Force Standing Orders. The Association of Chief Police Officers in Scotland (ACPOS) Professional Standards Standing Committee has also drawn up a Code of Ethical Practice which will provide further guidance to police officers on how they deal with the public.
127. Officer safety training is conducted at the Scottish Police College and at force level. Initial and refresher training provides instruction on the legitimate use of necessary, reasonable and minimal force. It is clear to participants that striking a person who had already been brought under control could constitute the crime of assault.

Paragraph 45

As the CPT indicated in the report on its 1997 visit to the United Kingdom, the existence of effective mechanisms to tackle police misconduct is an important safeguard against ill-treatment of persons deprived of their liberty. In those cases where evidence of wrongdoing emerges, the imposition of appropriate disciplinary and/or criminal penalties can have a powerful dissuasive effect on police officers who might otherwise be minded to engage in ill-treatment.

128. Police regulations and the criminal law provide a specific means of addressing complaints which allege crime or misconduct by one or more police officers. A wealth of legislation has grown in recent years as a variety of amendments to processes and procedures have been made to the legal framework that regulates police complaints and misconduct. In summary, the main pieces of relevant legislation are:

- Police (Scotland) Act 1967
- Police (Scotland) Regulations 1976
- Police and Magistrates Courts Act 1994
- Police Appeals Tribunals (Scotland) Rules 1996
- Police (Conduct) (Scotland) Regulations 1996
- Police Cadets (Scotland) Regulations 1968
- The Police (Special Constables) (Scotland) Regulations 1966
- Police (Conduct) (Scotland) Amendment Regulations 1999
- Police (Conduct) (Senior Officer) (Scotland) Regulations 1996
- Police (Conduct) (Senior Officer) (Scotland) Regulations 1999.

Paragraph 46

The CPT would like to receive confirmation that complaints of ill-treatment of detained persons by police officers are always construed as reasonably inferring that an officer may have committed a criminal offence and must therefore be systemically referred to the prosecution service.

129. Any element of criminality within a complaint of ill treatment must be referred to the Area Procurator Fiscal. For criminal cases, the Procurator Fiscal will examine the case and possibly interview the complainer and other witnesses. If the Procurator Fiscal decides the case should not proceed he will inform the complainer and the force concerned. If the Procurator Fiscal decides that there may be substance in the case, it will be referred to the Crown Office for consideration by Crown Counsel and possibly the Law Officers.
130. If an allegation infers that any crime has been committed, including any complaint of assault, then the matter is systematically reported to the Procurator Fiscal for consideration of prosecution. However, what some people may regard as ‘ill treatment’ may not amount to a crime in Scots law and therefore every complaint must be considered in the context of what has been alleged. As an example, a prisoner may assert that he has been ‘ill treated’ by being locked in a police cell pending their appearance in court. In these circumstances it would be treated as an allegation of professional misconduct against the officer who took the decision to detain him and would be dealt with through internal procedures.

Paragraph 47

The CPT would like to receive up to date statistics on complaints lodged of ill-treatment by police officers, disciplinary and/or criminal proceedings initiated as a result of such complaints, and the outcome of the proceedings.

131. In the fiscal year 2002/2003 there were 2823 complaints received by the police in Scotland. During the same period 4387 allegations were disposed of. Of these, 336 (7.7%) were substantiated. Allegations of assault were made in 1053 of complaints in 2002/3. Of these, 4 (0.4%) were substantiated.
132. For these purposes, a complaint is defined as “any complaint made by, or on behalf of, any person against one or more on duty members of a police force and from which it may be reasonably inferred that any act or omission which was made or committed by any individuals concerned amounts, or may amount to, a criminal offence or professional misconduct.” This definition was framed by the Association of Chief Police Officers in Scotland following consultation with key stakeholders, including the Crown Office and Procurator Fiscal Service and Audit Scotland.
133. The above now also includes all minor and trivial complaints, but excludes quality of service complaints. The total figures include complaints against all members of a police force. i.e. police officers, support staff and special constables.
134. Therefore, these are not restricted to complaints arising from custody handling etc. These figures cannot be separated out to that level of detail. It is also not possible to trace individual complaint allegations through to disciplinary and/or criminal proceedings and their outcomes.

135. In 2002/2003, the total number of complaint cases recorded by Scottish forces was the same as the previous year – 2,823 (see Appendix 1). This is equivalent to 12.3 complaints per 100 members of staff, including support staff and special constables. The proportion of allegations recorded as being resolved informally rose slightly from 24% to 25.8%. Substantiated allegations remained low at just under 8%.
136. Just over a third (34.7%) were referred to the Procurator Fiscal i.e. some form of criminal conduct was alleged. However, of these, a little over 1% were then taken to formal Proceedings. In only seven instances arising from an external complaint was misconduct proven or admitted to in a hearing. This is equivalent to 0.25 % of all complaint cases that were disposed of during the year. The table attached at Appendix 1 provides more detailed statistical information on analysis of disposals for complaint and misconduct cases across forces.

Paragraph 48

The CPT considers that an investigation into possible ill-treatment by police officers should offer guarantees of effectiveness, promptness and expeditiousness.

137. On making a complaint against the police a complainant is provided with a ‘Complaints Against the Police’ leaflet produced by the Scottish Executive. This leaflet outlines the complaints procedure and the role of HMIC in reviewing how forces have dealt with individual cases. HM Inspectors consider whether the complaint has been dealt with in a timely manner, and whether the correct manner of response has been provided. In making such determination, particular issues raised by the member of the public are considered and documents are reviewed objectively and in accordance with the relevant law governing the manner in which complaints should be dealt with.

Paragraph 51

The Committee also made clear that any ... exceptions [to the right to notification of custody] should be clearly defined, accompanied by appropriate safeguards and strictly limited in time, [and] that a delay in the exercise of this right should require the approval of a senior police officer unconnected with the case at hand or a prosecutor.

138. If either a lawyer or suspect requests access to one another, this should be allowed, unless there is good reason to deny such access e.g. in the interests of the investigation, the prevention of crime or the apprehension of offenders. The reporting officer remains the best judge regarding the extent of access and will have to consider the matter carefully before reaching a decision. A denial of access should be recorded giving full explanation of the reasoning behind such a decision, in line with the current legislation
139. In accordance with the terms of Section 15 of the Criminal Procedure (Scotland) Act 1995 arrested persons are informed of their rights to have a solicitor and a reasonably named person informed of their detention. An *arrested* person is entitled to a private interview with a solicitor prior to their first appearance in court. Where a person has been *detained* as a suspect, rather than *arrested*, they are also permitted access to a solicitor unless there are justifiable reasons to deny access. These circumstances would routinely attract independent scrutiny and be recorded. Their status as a detainee would expire after a maximum of 6 hours and they would have to be arrested or released.

Paragraph 51

The CPT looks forward to receiving information on to the outcome of court procedures concerning the use of the power to restrict the right to notification of custody.

140. The right to notification of custody is protected under section 15 of the Criminal Justice (Scotland) Act 1995, which states that anyone detained by the police has the right for notification of their detention to be sent to a solicitor and one other person reasonably named by him “without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary”.

Paragraph 53

The right of access to a lawyer should include the right to contact and to be visited by the lawyer from the very outset of their deprivation of liberty (in both cases under conditions guaranteeing the confidentiality of their discussions), and in principle, the right of the person concerned to have the lawyer present during police interviews.

141. The Scottish Executive accepts in principle that if a detained person requests access to a lawyer, or *vice versa*, this should be allowed, unless there is good reason to deny such access e.g. in the interests of the investigation, the prevention of crime or the apprehension of offenders. The extent of access should remain a matter for the professional judgement of the police who will have to consider the matter carefully before reaching a decision.

Paragraph 54

The Committee looks forward to receiving information on the legal/administrative basis for ensuring the prompt attendance of another solicitor when access to a specific solicitor is delayed.

142. Sections 15 and 17 of the Criminal Procedure (Scotland) Act 1995 (Rights of person arrested or detained) and (Rights of accused to have access to solicitor) provide the legal base for intimations to solicitors.
143. Section 15 states that any person “...detained under section 14 of this Act and has been taken to a police station or other premises or place, shall be entitled to have intimation of his detention and of the police station or other premises or place sent to a solicitor and to one other person reasonably named by him... without delay or, where some delay is necessary in the interest of the investigation or the prevention of crime or the apprehension of offenders, with no more delay than is so necessary.”
144. Section 17 of the Act (Right of accused to have access to a solicitor) states that that accused and the solicitor are entitled to a private interview before examination or, as the case may be, first appearance in court.”

Paragraph 57

The CPT recommends that the right to access to a doctor be given a firm legal footing, having regard to the remarks made in Paragraph 295 of the 1994 visit's report. The rights of access to a doctor of the detained person's own choice should be enjoyed by all categories of persons in police custody.

145. The attendance of medical practitioners to examine prisoners is governed by advice contained in local force procedures which address prisoner welfare, care and security. Every person in police custody has the right to see a doctor on request. Moreover, the forensic medical examiner or police surgeon must be contacted in any instance where there is doubt about the fitness of a prisoner to be detained, or if approval or prescription of medication is needed.

Paragraph 59

[The CPT] encourages the authorities [to introduce the audio recording of all police interviews at the earliest opportunity.]

146. The Scottish Executive consider that existing practices with regard to the tape recording of interviews should continue to be observed. A tape recorded interview is a corroborating factor in establishing whether an interview was conducted fairly. In potentially serious enquiries suspects are routinely interviewed on tape and in all cases investigated by specialist units such as the Criminal Investigation Department.
147. All interviews conducted with suspects which are not tape recorded are fully documented in an official police notebook including the time of commencement, time of breaks, time of conclusion, persons present, questions asked, answers given, demeanour of accused and any other relevant information.

Paragraph 60

The CPT would welcome further developments [towards closed circuit television monitoring, with image and audio recording, in all police detention facilities in Scotland.]

148. Her Majesty's Inspectorate of Constabulary for Scotland (HMIC) confirms that all 8 Scottish forces now have an installation programme in place and virtually all main holding stations throughout Scotland now have CCTV. Where programmes are not complete there is evidence that continued development will take place over varying periods of time.
149. HMIC can also confirm that some forces are considering or have installed next generation digital technology. Two forces are currently trialling CCTV technology within police vehicles used to transport persons in legal custody. Installation of CCTV in all such vehicles will be considered. HMIC will continue to monitor policy, practice and developments in this area during primary and review inspections. Primary inspection of each force is conducted at 5 year intervals, with 2 interim reviews in between.

Paragraph 62

The CPT invites the authorities to explore the possibility of offering outdoor exercise every day to all detained persons who remain in custody at Helen Street Police Station for an extended period (24 hours or more) and to inform persons in custody that they can use the shower facilities.

150. The exercise yard at Helen Street Police Station was designed specifically for counter-terrorist holding and to comply with legislation, which allows for prisoners to be offered two periods of 20 minutes exercise per day. Consideration will be given to extending this exercise facility to accused persons commensurate with their time in custody. In respect of the shower facilities, prisoners at Helen Street are routinely offered showering facilities prior to going to court. Details of prisoners' use of showering facilities, including refusal when the opportunity is offered, are noted in the Custody Record Book.
151. The exercise yard at Helen St police office is within a sterile and secure area which is not accessible to prisoners held for other matters. Permitting other prisoners to enter the sterile area could compromise its integrity and potentially render it unusable at a time when it is required for its intended purpose.

Paragraph 63

Although the cell layout and equipment was comparable to that observed at Helen Street Police Station, the situation at Lanark Police Station was less favourable.

The delegation was informed that cells, measuring 7 to 8 m² and equipped with only one plinth, could be used to accommodate three or more persons. In the CPT's opinion, cells of such a size should preferably only be used to accommodate one person overnight; this is all the more important as regards the cells at Lanark Police Station given that in-cell lavatories had no partitioning.

On the whole, the cells were clean and in a reasonable state of repair. However, ventilation was very poor, resulting in significant humidity and condensation on the walls and floor. In this connection, the practice of making detained persons leave their shoes outside their cells was a source of discomfort for them and of potentially unhealthy conditions.

It should also be noted that the detention facility of Lanark Police Station had no showers or outdoor exercise area for use by detained persons.

The CPT recommends that conditions of detention at Lanark Police Station be reviewed.

152. The cells are normally used for the detention of one person only. Where the cell capacity in a police office within Strathclyde is exceeded by the number of prisoners in custody, the force may place 3 or more (but not 2) prisoners in the same accommodation. For the personal protection of individual prisoners, force policy prohibits 2 prisoners being placed in a single cell.
153. Shoes, or pieces of metal broken from shoes, can be used by prisoners to harm themselves or others. In Strathclyde prisoners' shoes are routinely removed prior to them being placed in a cell for their protection and that of fellow prisoners and staff.
154. Strathclyde Police is acutely aware of all issues in respect of prisoner holding and endeavour at all times to ensure that the welfare of prisoners is given top priority. As such, the force is currently reviewing custody holding across the force area with a project focusing on reducing the number of holding areas and the modernisation and building of new facilities, all of which will comply with European Directives in respect of prisoner holding. It is anticipated that this large and complex custody project will take 3-5 years to complete.

SCOTLAND

PRISONS

Preliminary remarks

Paragraph 64

According to information provided to the CPT's delegation, as at 9 May 2003, the Scottish Prison Service (SPS) was catering for 6,240 prisoners i.e. an occupancy level 9% above its available cellular capacity of 5,822 places... Of the 16 prison establishments in service in Scotland, only six were operating within their capacities; five establishments had occupancy levels 10% or above their cellular capacities, and three of these more than 30%.

155. As of 16 April 2004, the Scottish Prison Service (SPS) was accommodating 6,950 prisoners with an available capacity of 6,186 cells. The SPS is therefore operating at 112 % of its capacity. Operating over capacity is likely to persist until the two new prisons (at Low Moss and Addiewell) will be opened, giving an additional 1400 modern places. The timing of this will depend on a number of factors including the granting of planning permission. The SPS is taking a number of measures in the interim to effectively manage high prisoner numbers. The Minister for Justice set out the Scottish Executive's plans to reduce overcrowding and improve conditions in prison in answer to a question in the Scottish Parliament on 12 May (Copy attached as Appendix 2). Plans include an ambitious development programme, which will provide additional modern accommodation at Edinburgh, Glenochil and Perth prisons. Changes to the role of Barlinnie will make the regime less complex and more suited to the needs of its population. Changes in the management of sentences will mean that more long-term prisoners will be able to progress towards less secure and open prisons more quickly, easing the overcrowding burden in local establishments.

Paragraph 64

At the time of the visit, about 21 % of Scotland's prison population were not guaranteed ready access to a lavatory (particularly at night) ... and, as a consequence, many prisoners had to discharge human waste in a chamber pot or bucket and to slop out. As the CPT has already had the opportunity to point out, such a situation, when combined with overcrowding, a very poor regime and little out-of-cell time (cf. also Paragraphs 78, 79 and 84), amounts, in its view, to inhuman and degrading treatment.

156. The Minister for Justice set out the Executive's plans to modernise the prison estate (including action to end slopping out) on 12 May 2004 (as mentioned above). The Executive estimates that slopping out will end about a year after the second of the two new prisons opens.

Footnote 53 at page 28 of CPT report

The CPT understands that a Scottish Judge has upheld a prisoner's claim that his conditions of detention (two to a cell without integral sanitation and the ensuing slopping out process, coupled with an impoverished regime) amounted to degrading treatment, in violation of Article 3 of the Human Rights Act 1998 and of the European Convention on Human Rights, and ordered that the situation be remedied. At the time of the visit, the matter was apparently pending an appeal by the Scottish Authorities.

157. The case referred to is *Napier v Scottish Ministers* in which Mr Napier alleged that the conditions in which he was detained in HM Prison Barlinnie in 2001, in particular the practice of "slopping out", were inhuman and degrading and so contrary to Articles 3 and 8 of the European Convention on Human Rights. In his judgement in April 2004 Lord Bonomy held that the conditions in which Mr Napier were held were "capable of attaining the minimum level of severity necessary to constitute degrading treatment and thus to infringe Article 3". He found that Mr Napier's personal experience, in particular a recurrence of eczema while in prison, resulted in actual breach in his case. Lord Bonomy awarded damages of £2000 plus interest for common law fault. No damages were awarded for the breach of Article 3. The Executive lodged an appeal against Lord Bonomy's judgement in June 2004, the outcome of which is awaited.
158. Scottish Ministers have consistently been of the view that slopping-out is undesirable, and that the right way to end it is through comprehensive modernisation of the prison estate. Ministers' investment decisions have always been taken in good faith and with that aim in mind.
159. In 2000 the Executive instigated a major review of the prison estate to decide future estate requirements and priorities for investment. That review had a very broad remit and included consideration of whether existing prisons from the Victorian era should be retained and refurbished, new prisons built, or a combination of these approaches. While the future of Barlinnie was under fundamental review in this way, Ministers decided it would not be an effective use of public funds to invest in refurbishment at that time.
160. SPS is investing at a rate of £1m a week to improve conditions in Scotland's prisons. C Hall in Barlinnie, where Mr Napier was held, has been modernised and toilets fitted in cells.

Paragraph 66

The CPT would like to receive clarification as regards steps taken to ensure that prisoners are never held three to a cell measuring 8m square.

161. No prisoners in Barlinnie have been placed 3 to a cell in recent years. However it does happen on occasion elsewhere in the Scottish Prison Service. Such occasions tend to be infrequent and when they do occur, are of short duration. Current policy is that larger cells, usually in excess of 8m square, will be used first. Other cells will be used only when the larger ones are filled. There is constant review of the need for prisoners to be kept in such conditions, and as numbers fall appropriate adjustments are made. Accommodation is constantly reviewed to ensure maximum utilisation, and to keep overcrowding and the need for 3 to share a cell to the absolute minimum.

Paragraph 66

The CPT recommends that the highest priority be given to bringing available prison places into line with the inmate population.

162. Planning permission has been sought for two new prisons at Low Moss and Addiewell. The two prisons will be added to the prison estate providing 1400 new places. New replacement accommodation has recently opened at HMYOI Polmont and HMP Edinburgh, with further replacement accommodation currently being constructed at HMP Edinburgh and HMP Glenochil. In addition, accommodation has recently been upgraded at HMP Barlinnie and further work is in progress.
163. The Committee's prediction at Paragraph 66 that "*it is envisaged that by 2006-2007 the Scottish Prison Service's cellular capacity will reach some 7,000 places*" is misinformed: there is no specific date for this. It is anticipated that this level of capacity will be achieved when the two new prisons referred to above are opened, but the timing of that is dependent on factors not entirely within the SPS's control – such as granting of planning permission.

Paragraph 66

The CPT has now been informed that it is intended that slopping out will be eradicated by 2007-2008. The continuing delay in meeting this basic requirement is highly unsatisfactory. The CPT calls upon the authorities to redouble their efforts with a view to eradicating slopping out within the next two years (i.e. by the end of 2005).

164. The Scottish Executive regrets to say that it is not possible to eradicate slopping-out within 2 years. New prisons are being added to the estate and existing accommodation upgraded to provide sufficient operational needs and end slopping out. Neither the SPS nor Ministers have ever said that slopping out would be eradicated by 2007-2008. No such fixed deadline has been set. Rather, it is currently anticipated that slopping out will end around one year after the two new prisons open. The timing of that will be determined by the need to secure planning permission for the new prisons.

BARLINNIE

Paragraph 67

At the time of the 2003 visit, one of the detention units, E Hall, was unoccupied. As a result, the prison had an available capacity of 843, based on one prisoner per cell. It was holding 1,157 inmates, of whom 508 were untried inmates and 83 young offenders (i.e. under 21 years old) ... in the medium term, it is intended that Barlinnie be transformed into a 530-place remand prison

165. As a short term establishment receiving prisoners from the Courts, Barlinnie has limited control over its prisoner numbers. Barlinnie's population is also dependent on available capacity throughout the SPS estate, and the ability of those prisons with spaces to accept transfers from Barlinnie prison.
166. It is not correct that "it is intended that Barlinnie be transformed into a 530-place remand prison". Although the SPS proposes to reduce Barlinnie to 530 places, it has never said that it would house only remand prisoners there.

ILL-TREATMENT

Paragraph 69

The CPT met one prisoner who, through his lawyer, had complained to the prison's management that, the previous day, he had been ill-treated by a prison officer outside a holding room next to the visiting area. He alleged that his head had been banged several times against the wall.

The complaint had been promptly referred to the police, while interviewing the prisoner (in the presence of the delegation), a police officer noted that the inmate in question displayed a 3-4 cm lump, 2 to 3 mm high in the lower back of the head.

167. The matter was fully investigated by Strathclyde Police. A report was forwarded to the Procurator Fiscal who ruled that there should be no criminal proceedings in connection with this complaint. All matters are simultaneously investigated through the SPS Code of Conduct, as well as the Police. There was an internal investigation in relation to this incident, however, there was no case to answer and as a result no disciplinary action was taken.

Paragraph 70

Information provided to the delegation shows that a number of prisoners had lodged complaints of assault by staff in recent times at Barlinnie (5 complaints between Jan and March 2003, and 26 in 2002), including one case of sexual assault.

In a further case in February 2003, a nurse had drawn the attention of the establishment's management to the rough manner in which an inmate had apparently been treated by a prison officer.

168. This incident is alleged to have taken place in a ward in the Glasgow Royal Infirmary. It was investigated by Police, and internally through the SPS Code of Conduct by a senior manager. The outcome of the Police investigation concluded that no further action was required. The SPS internal investigation found no evidence to support the allegation.

Paragraph 71

The CPT recommends that the authorities at both central and local level reiterate the message [that abuses of authority by prison officers are not acceptable and will be dealt with severely] in an appropriate manner vis-à-vis staff at Barlinnie Prison.

169. Standards of behaviour for prison staff are set and covered by the Employee Code of Conduct (revised Sept 2000) and the Values statement of the SPS. The independent investigation process in place at Barlinnie shows the importance placed in ensuring staff are aware of the seriousness of any abuse of their authority.
170. Investigation of complaints within the establishment is currently dealt with under a prompt, robust and independent reporting system. This system will be further strengthened by new guidelines between the establishment and the Police. Under those guidelines, all cases involving assault or other criminal conduct by prison officers against prisoners will be investigated by a supervisory Police Officer who will ascertain if there is any substance in the complaint and, without delay, submit a report to the Senior Procurator Fiscal Depute at the "Complaints against the Police" (CAP) Unit.

Paragraph 72

The CPT recommends that prison officers at Barlinnie prison be reminded that force used to control violent prisoners should be no more than is strictly necessary and that, once prisoners have been brought under control, there can be no justification for their being struck.

171. All aspects of Control & Restraint (C&R) phase 1 and 2 training, including annual mandatory assessments, emphasise the necessity to use only minimum force and only as a last resort. C&R removals are carried out under direction of a competent first line manager. All allegations by prisoners of assault before and during the removal process are reported immediately to, and independently investigated by the Police.

Paragraph 74

The CPT would like to receive the following information for 2002 and 2003: The number of complaints lodged concerning ill-treatment by prison officers in Scotland and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints; an account of the latter complaints and the outcome of the proceedings (allegations, brief descriptions of the findings of the relevant court or body, verdict, sentence/sanction imposed).

172. All investigations under the Employee Code of Conduct (revised Sept 2000) run in tandem with the police investigation. Internal investigations cannot be concluded until the outcome of the criminal procedure is known.
173. Across the Scottish Prison estate, in the period April 2002 to March 2003; 74 complaints were lodged concerning ill treatment by prison officers, with 28 of these complaints resulting in disciplinary and/or criminal proceedings.

Establishment	Number of Complaints concerning ill treatment	Comments
Barlinnie	22	11 were identified from fact-finding or disciplinary investigation procedures. 20 of the alleged incidents took place during control and removal. All complaints were referred to the police. At Feb 2004 there were 4 cases outstanding, in which internal investigations showed no evidence to support the assault allegations.
Greenock	17	1 Officer investigated under Code of Conduct, but it was found that there was no case to answer. Majority of complaints related to the way a prisoner felt he had been spoken to by an officer. There were no complaints of physical ill treatment.
Glenochil	28	5 related to alleged staff assaults on prisoners. 2 complaints led to gross misconduct investigations, with 1 still ongoing. 1 complaint led to a fact finding investigation, which established that no officer had a case to answer. All 5 complaints were reported to police as a matter of procedure and are waiting to be dealt with by the Procurator Fiscal.
Polmont	4	All complaints related to allegations that prisoners had been assaulted by staff using Control and Restraint techniques. All were investigated fully and in all cases individuals concerned had no case to answer.
Low Moss	3	All complaints were withdrawn by prisoner. In 1 case, a prisoner was charged with wasting police time. No disciplinary or criminal proceeding arose from these complaints.

174. All other establishments within the prison estate reported that there had been no complaints of ill treatment against prison officers within this period.

Paragraph 77

The delegation was informed that there had been a threefold increase in the number of inter-prisoner assaults at Barlinnie Prison in the last two years; there were 28 such incidents in the period April 2002 to March 2003, as compared to 9 during the preceding twelve months. The CPT has noted that the establishment's management had decided to step up anti-violence strategies. The CPT recommends that the anti-violence strategies at Barlinnie Prison are vigorously pursued and that means of rendering them more effective is explored.

175. The Anti-Violence Group, which consists of the Operations & Security Manager, Security First Line Manager, Security Intelligence Manager, Security Intelligence Analysts and a number of Unit Managers, meets on a fortnightly basis and the anti-violence strategy remains a high priority on the performance agenda. Specific placement of the CCTV cameras located where there have been alleged incidents, has reduced the number of allegations e.g. the visits search area. In addition, the Group also reviews incidents via the CCTV footage, together to a range of other measures (such as intelligence and profiling of prisoners), Consideration is being given to the introduction of Response Teams.
176. The following table summarises the incidence of allegations of assaults over the last two years

		Key Performance Indicators (KPI) Target	Actual
Prisoner on Staff Assaults	April 2002 - Mar 2003	1	4
	April 2003 - Jan 2004	1	1
Prisoner on Prisoner Assaults	April 2002 - Mar 2003	11	7
	April 2003 - Jan 2004	11	28

177. The majority of prisoner on prisoner assaults are drug related. This reflects the trends in the community where drug-related violence is increasingly a problem. Many of these problems along with violence are then brought into the prison environment. However, reduction in levels of violence remains a constant priority for SPS. We do not accept that violence is inevitable, although we are realistic that, given the violent nature of many prisoners and the complex issues involved in their lives, interpersonal violence is likely to occur on occasion. A Workshop was held at the Prisons Directorate Business meeting in July 2004 to discuss the issue with Governors and look for areas of best practice/common themes to inform action plans.

Paragraph 78

About half of the establishment's inmate population, i.e. some 600 prisoners, were accommodated two to a cell [measuring 8.5m²]. As the CPT has already made clear, cells measuring 8.5m² provide only cramped accommodation for two persons.

178. The establishment endeavours to house prisoners in single cell accommodation wherever possible. Protocols are in place to try to ensure only one prisoner to a cell within A Hall. The Minister for Justice set out the Scottish Executive's plans to reduce overcrowding and improve conditions in prison in answer to a question in the Scottish Parliament on 12 May (Copy attached as Appendix 2)

Paragraph 79

...the level of partitioning of in-cell lavatories was insufficient and, for many prisoners, overcrowding rendered conditions less [than] satisfactory

179. In all cells with in-cell sanitation, the lavatories are within full size privacy cubicles fitted with a door with magnetic locks. The cubicles meet all planning and health and safety requirements. The measures been taken to alleviate overcrowding are detailed in the response to paragraph 64.

Paragraph 79

The situation was far from ideal in Letham Hall, where cells had no integral sanitation and it was simply unacceptable in the unrenovated A Hall, where the lack of access to sanitary facilities at all times was compounded by very limited out of cell time. Management and staff stated that prisoners held in those parts of the prison were allowed out of their cells during the day to use the sanitary facilities upon request; however, inmates, particularly in A Hall, complained that these arrangements were not effective. Further, in A Hall, inmates could not use electrical appliances in their cells.

180. Since March 2004, a further 75 prisoners located in Letham Hall have had access to toilets and showers. The prisoners who did not have access to an enhanced regime were relocated to cells with sanitation. All prisoners in Letham Hall now have full access to toilet facilities, including night sanitation.
181. In the unrenovated hall (which was "E" Hall, not "A" Hall), new procedures for toileting have been introduced and a strict infection control policy implemented. All cells within "E" hall have modesty panels fitted. The new regime allows prisoners a longer period of time for slopping out, showering and cell cleaning. This is achieved by prisoners attending work only in the afternoon. In addition, all prisoners are given anti-bacterial hand-wipes, toilet rolls and access to cleaning materials. Bars of soap have been removed and replaced by liquid soap dispensers. There are towels for drying hands and appropriate bins for disposal of towels.

182. An audit carried out by the Scottish Prison Service infection control advisor stated that all areas visited in general were clean, particularly “E” hall, and showed that the Action Plans had been implemented to an acceptable standard. A copy of the Audit Report is attached as Appendix 3 to this response. The Action Plans were to achieve what has been outlined above in response to para 21. “A” Hall was refurbished in the summer of 2004 to include in-cell sanitation and power for 197 cells.

Paragraph 79

In all, about 350 inmates, of whom some 200 were in shared cells, were being held in cells without integral sanitation, and were not guaranteed ready access to a lavatory.

183. As a result of the programme of refurbishment, slopping out at Barlinnie ceased in July 2004.

Paragraph 79

Wire mesh had been placed over the windows in order to curb prisoners’ insalubrious practice of removing solid human waste via the window; faced with this situation, many prisoners had now chosen to pack the waste in any material available to them and dispose of it at slop-out times.

184. This is something prisoners did many years ago, but has not been the practice for a long time. With prisoners using chamber pots and allowed to slop out 5 times a day, there would be no need for this in 2003. Slopping out in Barlinnie has now ceased, and therefore this is no longer relevant.

Paragraph 80

The CPT recommends that Prison Officers at Barlinnie Prison (as well as at any other establishment where slopping out remains) receive clear instructions to the effect, that when a prisoner held in a cell without integral sanitation requests to be released from his cell for the purpose of using a toilet facility, that request is granted without delay, including at night unless overriding security considerations exceptionally require otherwise.

185. Slopping out at Barlinnie ended in July 2004. Before then, security and safety considerations do not allow for toilet requests at night (after establishment lock up) to be granted. Access to toilet facilities has priority during the day. Where slopping out was the only toileting option an infection control policy was in place. The policy was to give as much access to toilet facilities as practicable during the hours the prison was operating a normal regime.
186. The Scottish Prison Service is reviewing all the regimes across the prison estate where slopping out takes place, to ensure that prisoners have adequate opportunity to use the toilet during the course of the day.

Paragraph 80

The CPT recommends that at Barlinnie:

a very high priority be given to plans to refurbish A and E Halls;

continued efforts to be made to reduce overcrowding;

more specifically, cells measuring 8.5 metres square or less should be used to accommodate no more than one prisoner (save in exceptional cases when it would be advisable for a prisoner to be left alone);

the level of partitioning of lavatories in renovated cells to be reviewed

187. 'A' Hall refurbishment will be complete by end of July 2004. The plans for the refurbishment of E Hall currently being discussed.
188. The Minister for Justice set out the Scottish Executive's plans to reduce overcrowding and improve conditions in prison in answer to a question in the Scottish Parliament on 12 May (Copy attached as [Appendix 2](#)).
189. Prisoners will continue to share cells until the new prisoner places are created
190. See response to paragraph 79: the level of partitioning of lavatories in renovated cells will not be reviewed as this meets all statutory requirements. The establishment makes all efforts to ensure that remand prisoners are located, as far as possible, in the best of available facilities. At present, no remand prisoners are accommodated in areas where there is no in-cell sanitation.

Paragraph 81

In the report on the 1994 visit the CPT criticised the cupboard-like structures measuring about 1 m², known as dog-boxes, used for holding prisoners in the reception unit at Barlinnie. It indicated that "to subject a newly-arrived prisoner to three successive spells in [them] is unlikely to alleviate the feelings of anxiety and/or depression that he might well be experiencing. Many must find the process extremely humiliating." At the time of the 2003 visit, those facilities remained in use, unchanged.

...in view of their size alone, the above-mentioned cubicles are not suitable for detention purposes; the CPT calls upon the authorities to replace the existing cubicles in the reception area by larger holding facilities without further delay.

191. The holding cells used in the Reception area have been painted recently, and are used to hold a prisoner for a relatively short period of time. Plans for the redevelopment of Barlinnie Prison are ongoing, which include a new communal Reception facility. It is not possible to refurbish the current Reception facility alone, as the costs are prohibitive, estimated to be in the region of £600K.
192. Consideration is being to possible renovation of the reception area, including the removal of cubicles to be replaced by holding areas. The Estates Management Group is considering the redevelopment of Barlinnie Prison which includes a new communal Reception facility.

Paragraph 83

... sentenced prisoners who did not work or participate in learning activities only spent 3-4 hours per day outside their cells.

193. There are opportunities for all convicted prisoners to take part in employment and learning activities. Some prisoners choose not to take up these opportunities. Prisoners who choose not to work or participate in learning activities now spend 4-5 hours outside their cells. There are now 16 physical education training sessions on offer per week and there is increased access to education. It is up to prisoners to take up the opportunities offered to them to increase their out-of-cell time.

Paragraph 84

The vast majority of remand prisoners were offered nothing remotely resembling a regime. They had an average of about two hours out of cell time per day, something which, according to staff spoken to, could be improved with less overcrowding. For most, remand detention at Barlinnie only lasted a few weeks; despite this, the situation of this category of prisoners was unacceptable.

194. The opportunity for out of cell time for untried prisoners has been increased. A project team is currently in place to improve the regime for remand prisoners, including recreation, physical education and education. The out-of-cell time has been increased to between 5 and 9.5 hours depending on what activities each prisoner wishes to participate in. This has been achieved despite continued overcrowding. However, more out-of-cell time for all prisoners could be achieved with less overcrowding.

Paragraph 84

The deleterious effects of the enforced idleness of those held in A Hall and albeit to a lesser extent in Letham Hall, was exacerbated by poor material conditions.

195. All convicted prisoners have the opportunity to work half a day. In 'A' Hall, prisoners spend the morning on cleaning regimes within the Hall. In the afternoon they are allowed to work. In Letham Hall, prisoners have the opportunity to work all day. Therefore the Scottish Prison Service does not consider that those held in 'A' Hall are having to endure enforced idleness.

Paragraph 85

The CPT recommends that continued efforts are made to develop the programmes of activities for inmates at Barlinnie Prison, including remand prisoners ... The objective should be to ensure that remand prisoners should spend a reasonable part of the day (8 hours or more) outside their cells, engaged in purposeful activity of a varied nature (work, preferably with vocational value; education; sport; recreation/association).

196. The opportunity for time out of cell has been increased to between 5 and 9.5 hours for untried prisoners depending on what activities each prisoner wishes to participate in. At present it is not possible to ensure that all remand prisoners have 8 hours out-of-cell time per day. Prisoners who choose to take part in activities can have up to 9.5 hours out-of-cell time. They have access to recreation, physical education and education. The remand regime is under continual review: a project team is currently in place to improve the regime for remand prisoners.

HEALTH CARE SERVICES

Paragraph 88

... the delegation heard accounts (from prison staff) to the effect that the service was not fully reliable, as doctors' actual attendance was on occasion haphazard, leading to the cancellation of appointments and, on occasion, delays in seeing patients. The CPT would like to receive the comments of the authorities on this point.

197. Medacs (the contractors who supply prison medical services to the Scottish Prison Service) and the Scottish Prison Service (SPS) have worked hard to achieve increased number of GPs and greater continuity in service provision. Of 17 clinics per week in Jan and Feb 2004 no cancellations were recorded. Only one doctor's clinic was cancelled in the first half of 2004.

Paragraph 89

The CPT invites the authorities to fill the vacant nursing posts at Barlinnie Prison.

198. The issue of recruitment and nursing cover remains a priority for Barlinnie management and the Scottish Prison Service (SPS). The recruitment position has improved with a greater proportion of nurse posts filled. Barlinnie management has achieved this through several initiatives nationally and locally, with specific marketing drives, pay incentives and changes in skill mix for nurses and care assistants in the prison.

Paragraph 90

In the CPT's opinion, an establishment with Barlinnie's inmate population and turnover requires the equivalent of a full-time dentist; The CPT recommends that the provision of dental care at Barlinnie prison be reviewed.

199. As a matter of good practice, SPS replicated a national community review of dental practices with a particular emphasis on decontamination of instruments. SPS await the report on this exercise, which will inform a service-wide review of dental provision in 2005.

Paragraph 91

The CPT felt that the attendance of psychiatrists at Barlinnie Prison appeared to be somewhat modest.

200. The prison is awaiting completion of a new contract arrangement with the Greater Glasgow Health Board Primary Care Trust that should increase service provision. This will be completed in 2005.

Paragraph 91

... the social workers complained that, due to lack of appropriate facilities, they had to conduct individual sessions in glass-walled booths in the wings, an arrangement that did not provide sufficient privacy.

201. The booths were not designed to be used for lengthy sessions conducted by Social Workers. Social Workers have appropriate facilities for their sessions available to them. The booths were designed for Cranstoun Drug Workers to meet with a prisoner for no longer than 15 minutes. Cranstoun Drug Workers do not wish the windows on the booths to be covered up, as this would compromise their security.

OTHER ISSUES**Paragraph 99**

The CPT recommends that the plans to develop further the care offered to prisoners with drug-related problems at Barlinnie Prison to be implemented at the earliest opportunity.

202. Daily Methadone dispensing units have been located closer to residential halls to allow dispensing to take place simultaneously in C & D Halls. This initiative should mean increased staff resources available to provide interventions and support. Opportunities for one to one counselling will be available when the addiction nurse complement is up to strength. Nursing Assistants have been recruited to support the addictions work. There are now 270 prisoners who are in receipt of a methadone programme located throughout the establishment who receive support and are offered the opportunity to take part in programmes. There is currently a review on the use of accommodation being undertaken. It is hoped that methadone dispensing will take place within the halls with the prisoner client group. It is hoped that addiction support areas will be available to convicted prisoners by the end of July.

Paragraph 99

The CPT has noted that there are plans to develop further the care offered to prisoners with drug-related problems, including by accommodating those receiving substitution treatment in a specific unit offering adequate programmes. The CPT recommends that those plans be implemented at the earliest opportunity.

203. The needs of this prisoner client group will be considered in line with the revised addictions policy. The Barlinnie local strategy on addictions will reflect the corporate approach as outlined in the SPS inclusion manual (January 2004), which covers social care policy, learning policy and addictions policy. A national implementation group has been established to take forward these three strategy areas but it is not possible at present to say when this will be done.

Paragraph 99

More generally, [the CPT] recommends that the management of drug-related problems in Barlinnie be reviewed, in the light of the above remarks.

204. SPS Inclusion Policy which comprises Addictions, Learning Skills & Employability and Social Care was launched in January 2004. A national implementation group has been established to take forward these three strategy areas.
205. Barlinnie is represented on this group which will look at both local and national initiatives for implementation. The most recent development being the introduction of a national Harm Reduction Awareness Session for all prisoners on admission.

Paragraph 100

... although some information aimed at the reduction of harm was provided to prisoners with drug problems (e.g. as regards disease transmission and methods of prevention) and bleach was available to inmates, condoms were not made available, and no information was provided concerning the precautions to be adopted in the context of the taking of certain drugs (e.g. as regards the cleaning of needles/syringes). The CPT would like to receive the authorities' comments on this issue.

206. Condoms are not currently available to prisoners in any prison for use in the prison setting. They are offered to prisoners nearing the end of their sentence who are participating in the home leave scheme. The practice in Barlinnie is that every prisoner is issued with condoms prior to release and given information on the availability of local health and drug services. However, in future, following the publication of the Scottish Executive's strategy for sexual health in January 2005, condoms will be available to prisoners within the prison setting. SPS will conduct a pilot exercise in 2005 to assess the most appropriate method of distribution before the programme is rolled out across all prison establishments.

207. The needs of prisoners who misuse drugs will be considered in line with the revised addictions policy. As to the availability of information, it has been the practice at Barlinnie for the past 18 months that either within a group or individually, prisoners are given a wide range of leaflets and information at induction on harm reduction. Issues such as tolerance, information on addictions support and how to access these, treatment and co-morbidity are all discussed during the induction session. An SPS leaflet on the use of sterilisation tablets was widely used and available at the time of the visit. This leaflet included information on cleaning injecting paraphernalia. Sterilising tablets (reference to bleach) are also widely available in all residential areas. These were introduced 6 years ago as a harm reduction measure at a time when zero tolerance to substance misuse was the stance taken in SPS.

PSYCHIATRIC ESTABLISHMENTS

Paragraphs 112 and 113

The level of partitioning of lavatories on occasion left something to be desired (e.g. in the ward for women). Further, rooms in the older, unrenovated wards were small (about 6 metres square). The latter did not have sanitation, but the delegation was told that, in many cases, patients in those wards were not locked in during the night and, in all cases, patients were given immediate access to sanitary facilities on request.

However, in some of the older wards, day rooms were rather cramped. The delegation also observed that some items of furniture (e.g. chairs and armchairs, including in staff offices) were in need of repair/replacement.

208. Work on a business case for a major re-provision of wards on the site is in progress. The Scottish Executive expects to receive the business case from the State Hospital in May 2004. It would be unreasonable to expect the Hospital to carry out significant upgrading of the older wards that are to be replaced, although in 2003/04, it spent nearly 0.5m on replacement beds and furnishings for all wards and on redecoration of most of the wards. Alexandra Ward (the women's ward) will be upgraded and refurbished in 2004. The Hospital will also continue its programme of providing secure gardens for each of the wards, so that all patients can get out into the fresh air each day, even if they do not enjoy access to the general grounds. This will help address a concern which the Committee had about the difficulty patients experienced in getting sufficient opportunity to get out into the fresh air. It will also help to address some of the concerns about the cramped conditions in some of the older day rooms.

Paragraph 114

The CPT recommends that plans to renovate or rebuild older wards [at Carstairs State Hospital] be pursued and that the partitioning of lavatories in patients' rooms be reviewed.

209. The State Hospital has been developing a Business Case that will provide for the re-provision of most of the wards on the estate. The Scottish Executive has recently approved the Outline Business Case and has advised the Hospital that it may proceed to Full Business Case.

210. Issues of improved privacy for patients will be a significant element of this.

Paragraph 114

The CPT recommends that continued attention to be paid to the state of repair of all the buildings at the State Hospital; worn out furniture should be repaired or replaced.

211. As part of our current capital plans, a rolling 5 year programme of refurbishment and redecoration for all areas of the Hospital has been developed. In 2003/04 and as part of that programme the Hospital spent nearly £0.5m on replacement beds and furnishings for all wards and on the redecoration of most.

Paragraph 116

The CPT would like to receive clarification as to whether the assessment in the context of the renewal of placements requires the opinion of a psychiatrist independent of the psychiatric hospital in question.

212. In line with the specific requirements of the current Mental Health Act, annual renewals of detention are authorised after the Responsible Medical Officer) has consulted named 'significant others' (usually the Clinical Team) regarding the patient's need for future detention. This consultation is supplemented by annual reviews by the Mental Welfare Commission. No opinion is currently sought from an independent psychiatrist from another organisation. The patient has a right of appeal to the Sheriff.

213. The introduction of the new Mental Health Act will strengthen patients' rights to seek a review of their detention. The Act will introduce Mental Health Tribunals which will have the power to ensure all patients have a review of their detention by the Tribunal at least once every two years.

Paragraph 118

... the CPT has misgivings about the continued detention in psychiatric establishments for potentially long periods of persons whose involuntary placement is not, or is no longer, justified on medical or assessment grounds. The CPT would like to receive the authorities' comments on this subject.

214. The State Hospital clinicians continue to work proactively with other service providers to develop discharge plans for patients. They continue to record, monitor and review the number of delayed discharges in tandem with the Scottish Executive. This contributes to the development of a national network of forensic services which will ultimately ensure that patients are cared for in the right place at the right time.

215. The Scottish Executive policy for the care and treatment of Mentally Disordered Offenders was clearly set out in January 1999 and provided a template for service delivery. The template provided for services to be developed that:

- had regard to quality of care and gave proper attention to the needs of individuals;
 - are as far as possible delivered from community rather than institutional settings under conditions of appropriate security; and
 - are designed to promote maximum rehabilitation and offer the greatest opportunity for the individual's chance of an independent life.
216. Significant progress has been made in implementing the policy with the opening of a new 50 bed unit, the Orchard Clinic, in Edinburgh early in 2001. Work is progressing with the development of a new 74 bed unit in Glasgow and the other West of Scotland Boards have recently committed to the development of a 32 bed unit at Dykebar in Paisley. A decision on the way forward for the north and north-east is expected later this year. In the meantime the majority of patients accepted for transfer from the State Hospital move on with the minimum of delay with each year around 50 patients being transferred on or discharged. However, the Scottish Executive is not complacent and it is recognised that at any given time there will be a small number who may be experiencing a lengthier delay because of the difficulties in securing an alternative service. All of the partners including the State Hospital, the NHS Boards and the Scottish Executive are working closely together to try to minimise these delays. The development of the Managed Care Network will help formalise these partnership arrangements. Further leverage is also being provided through the new Mental Health (Care and Treatment) Act 2003 which provides patients with a right of appeal against excessive security.

Paragraph 120

... the delegation was informed that, in October 2002, a patient had been handcuffed for seven hours to members of staff while at the local hospital without a proper assessment or authorisation. Following this incident, the hospital's management had initiated a review of procedures concerning the use of handcuffs; the CPT would like to receive information on the outcome of this review.

217. The hospital regrets the incident quoted by the Committee, and believes that lessons have been learned from it.
218. The outcome of the review of the procedures, policy and documentation regarding the use of handcuffs within the service has led to changes in :

The approach to staff education and awareness regarding their use - use of handcuffs is now an integral part of staff induction programmes, and regular security seminars. Staff are also briefed on use immediately prior to any outing on which handcuffs are required.

Levels of authorisation - particularly 'out of hours'. During office hours (Monday – Friday 9am – 5pm), use of handcuffs must be authorised by two Directors. Out of hours authorisation is only approved by relevant "on call" senior clinical and security staff.

Improved systems of record keeping and information sharing

Paragraph 122

... the delegation heard of “time out” measures [being] perceived by the patients concerned as involuntary segregation or seclusion. In one case, the patient in question had allegedly remained in a locked room for several hours, apparently without supervision. The CPT recommends that steps are taken to ensure that there is no confusion between seclusion and ‘time out’ and that in all cases, the rules concerning supervision are systematically applied.

219. It is not unusual for patient to request, and be granted, time to spend alone in their room so long as their mental state allows for this. Even in such circumstances an agreed minimal frequency of observation/supervision will be in place.
220. During 2005, a small multi-professional group of clinicians will be developing a number of policies within the theme of ‘Prevention and Management of Imminent Violence’. This will include revised policies on seclusion and time out. The launch of these policies will include training and awareness raising for staff.

Paragraph 124

The CPT recommends that efforts should continue to be made to ensure that enhanced levels of observation are only applied when, and for as long as, appropriate and that they are not overly intrusive.

221. The State Hospital has developed a forensic observation policy that mirrors best practice principles and clinical standards recommended by the Clinical Resource and Audit Group (CRAG)⁵, in its document, ‘Observation of People with Acute Mental Health Problems’. The policy and its application in practice will remain under constant review.

Paragraph 127

... it would appear that complaints addressed by [patients] to outside bodies (e.g. the police) had to be transmitted through, or with the consent of, the establishment’s management. The CPT has misgiving about this approach; specific arrangements should exist enabling patients to lodge formal complaints with appropriate authorities outside the establishment and to communicate with such authorities on a confidential basis. It recommends that current practice in this respect be reviewed, in the light of the above remarks.

222. The State Hospital will ensure it complies with the letter, and the spirit, of the new Mental Health Act and the NHS Complaints Procedure regarding patients’ rights to address complaints to relevant and appropriate external bodies. The Police have already been consulted on the establishment of appropriate local procedures.
223. Patients can confidentially correspond with Solicitors, Advocacy, Mental Welfare Commission, MPs, MSPs, Chief Executive etc, without consent of Hospital Managers.

⁵ Now NHS Quality Improvement Scotland – an organisation established to improve the quality of healthcare across Scotland by working with NHS professionals and the public in developing and putting into practice a national strategy.

224. Direct phone lines are also available for patients to call the Mental Welfare Commission and Advocacy Service.

DETENTION FACILITIES FOR CHILDREN

Paragraph 137

[The CPT] would like to be informed whether control and restraint techniques (i.e. manual control) are authorised for use [at St Mary's Kenmure Secure Accommodation] when non-physical means have failed and if staff deployed in detention facilities for children in Scotland are offered training in such techniques.

225. The Regulation of Care (Requirements as to Care services) (Scotland) Regulations 2002 Section 4c, Welfare of users sets out the Scottish position on the use of restraint. "Providers shall ensure that no service user is subject to restraint unless it is the only practicable means of securing the welfare of that or any other service user and there are exceptional circumstances.
226. In addition, Scottish Ministers have endorsed National Care Standards relating to care homes, a copy of which can be found at <http://www.scotland.gov.uk/library3/health/pmhp-00.asp>. On the issue of restraint, the standards read: "you can be sure that the care home has a written policy and procedures on the conditions where restraint may be used. Staff are fully trained and supported in the use of restraint. If it is necessary to restrain you at any time it is written in your care plan. Records are kept of any incident involving your restraint. You can expect to be supported after any episode of restraint and you know that staff members use restraint only where there is likely to be harm or damage. Staff members are trained to anticipate and calm down possibly dangerous situations. And you can be confident that staff are skilled in helping you to change your behaviour where this is harmful to you..."
227. The Scottish Executive does not endorse any particular method of restraint. Recognising the care and control of young people in difficulty is not easy or straightforward. The Social Work Services Inspectorate (SWSI) commissioned guidance in Feb 2004 from the Scottish Institute of residential childcare, a draft of which will be available in Autumn 2004.

Paragraph 143

The CPT would like to receive further particulars concerning the role [of the Commissioner for Children and Young People] vis-à-vis children deprived of their liberty.

228. It is for the Children's Commissioner to determine her role with reference to children deprived of their liberty within the context of her functions, as set out in the Commissioner for Children and Young People in Scotland Act 2003. The Commissioner is appointed on the recommendation of the Scottish Parliament and is independent of the Scottish Executive and Scottish Ministers. The Commissioner's general function is to promote and protect the welfare and rights of children and young people, with specific reference to the provisions within the United Nations Convention on the Rights of the Child. She must take account of the views of children and young people in determining her activities, in particular those children who face difficulties in having their views heard. She can initiate and undertake formal investigations into issues relevant to children and young people, but not into the cases of individual children or on matters which are outwith the devolved responsibility of the Scottish Parliament. Any investigation by the Commissioner should not duplicate the work that is properly the function of another person or body.

ISLE OF MAN

POLICE ESTABLISHMENTS

Ill Treatment

Paragraph 148

The CPT reiterates its recommendation that police officers be reminded that no more force than is strictly necessary should be used when effecting an arrest and that, once arrested persons have been brought under control, there can be no justification for striking them. The message that the ill-treatment of detained persons is not acceptable- and will be the subject of severe sanctions - should also be delivered to police officers in an appropriate manner at regular intervals.

229. All operational officers are fully trained in the use of batons, cuffs and CS spray. Such training includes an awareness of Force Policy, which draws attention to the use of force. All officers, who qualify, following training, are subjected to refresher training as required at regular intervals. The Chief Inspector, Professional Standards, regularly provides input to training courses in relation to Force Policy and Procedures and the Police Discipline Code.

Paragraph 150

The CPT would like to receive the following information in respect of 2002 and 2003:

the number of complaints of ill-treatment by police officers lodged and the number of disciplinary and/or criminal proceedings initiated as a result of those complaints;

an account of the latter complaints and the outcome of the proceedings (allegations, brief description of the findings of the relevant court or body, verdict, sentence/sanction imposed).

230. In 2002, nine complaints were made alleging excessive use of force by Police Officers during arrest/detention. Of those, two were withdrawn, two were resolved by means of the Informal Resolution Process with the consent of the Complainants and five were 'Not Substantiated' following formal investigation. Two similar complaints were made in 2003. One was 'Not Substantiated' following a formal investigation and the other is currently the subject of a formal investigation.

Paragraph 150

The CPT has been informed that the Isle of Man Constabulary and the island's authorities were due to discuss implementation in the Isle of Man of police disciplinary procedures similar to those adopted by the United Kingdom in 1999, under which suitably qualified persons would preside with police officers on misconduct hearings. The CPT would like to receive further information on this issue.

231. The introduction of the Police (Conduct) Regulations 1999 and the Police (Senior Officers) (Conduct) Regulations 1999 is presently being considered by the Department of Home Affairs.

Paragraph 153

... a certain number [of people who had recently been in police custody] complained that notification [of their situation] had been delayed by the police. However, in the custody records reviewed by the delegation, delays were indicated only very rarely. The CPT would like to receive the comments of the Manx authorities on this matter.

232. It is very difficult to comment on this without more detailed evidence. Custody Officers are very aware of their responsibilities to inform a third person and the entitlement is requested 'on camera' in a charge office.

Paragraph 154

The CPT suggests that consideration should be given to extending the Duty Advocate Scheme so as to provide continuous cover every day of the week.

233. The Police support the suggestion that the Duty Advocate Scheme should be extended so as to provide continuous cover every day of the week. The present Duty Advocate Scheme is poorly supported by local advocates and is barely holding together for the period 7 p.m. to 7 a.m. It is always very difficult to obtain the services of Advocates during daytime (office hours). Custody officers frequently have to make large number of telephone calls, which often end with a negative response or delayed visit.

Paragraph 155

Following the 1997 visit, the CPT recommended that the right of a person detained by the police in the Isle of Man to have access to another advocate when access to a specific advocate is delayed be the subject of a legally binding provision.

It is stated in the Notes for guidance to Annex B of Code of Practice C to the Police Powers and Procedures Act 1998 that access to a specific advocate may only be delayed on clearly defined grounds, and that “in these circumstances, the officer in question should offer the detained person access to an advocate [...] on the Duty Advocate Scheme”. However, the Notes are not legally binding upon police officers. The CPT recommends that the Manx authorities upgrade the Notes for guidance on this subject to a full provision of Code of Practice C to the Police Powers and Procedures Act 1998.

234. The Police are unaware of any occasion when the right of a detained person to consult an advocate has been delayed. The Inspector authorising any delay would have to suspect that the Advocate would interfere with the investigation or alert other persons involved in the crime. The recommended change to Annex A of Code C would essentially put the Isle of Man out of step with the U.K. The U.K. Police and Criminal Evidence Act (P.A.C.E) and Codes of Practice have not been amended as recommended.

Paragraph 156

The CPT recommends that steps be taken to ensure that the requirements of medical confidentiality are respected as regards persons detained by the police.

235. The Police have a duty under Article 2 of the European Convention on Human Rights to protect life. Whilst in Custody, it is essential that all papers relating to the detained person, including medical reports, are retained with the Custody Record. This enables the Custody Officer to maintain a continuous risk assessment in relation to the detained person. The Police fully accept and comply with the requirements of medical confidentiality in that medical records are available only to those persons who need to see them – for example, Custody Officers and Reviewing Officers. Advocates visiting to view Custody Records are not shown medical reports.

Paragraph 159

... information gathered during the visit suggests that outdoor exercise was not being provided, despite the fact that Douglas Police Headquarters had at its disposal spacious outdoor facilities. The CPT wishes to recall that persons held in police custody for an extended period (24 hrs or more) should, as far as possible, be offered outdoor exercise every day.

236. The meaning of the CPT’s reference to ‘spacious outdoor facilities’ at Douglas Police Headquarters is not clear. There is no specific secure ‘exercise area’ at Douglas Police Headquarters. Where it is practicable, and adequate resources are available, outdoor exercise is offered every day to persons detained for more than 24 hours.

ISLE OF MAN PRISON

Preliminary Remarks

Paragraph 161

The CPT recommends that the Manx's authorities pursue without delay the implementation of their strategy for the Isle of Man Prison.

237. The project to construct the new Prison is currently programmed for commencement on site in October 2004, subject to receipt of planning approval, with a proposed delivery date for the project of November 2006.

Conditions of Detention

Paragraph 166

The cells in Wings A and B had been renovated in 1999. However, by the time of the 2003 visit, they were already rather run down and dirty and, in some cases, affected by rising damp. The CPT recommends that steps be taken to improve conditions in these cells.

238. The problem was not that of rising damp, but water seepage into the walls from the roof, which has since been repaired. Since the ECPT visit, B wing and the A wing dormitory have been redecorated. The redecoration programme will shortly reach A wing general cells.

Paragraph 166

In the context of the construction of a new prison, the CPT trusts that the broad policy objective of one prisoner per cell will be maintained; it wishes to reiterate that 9m square can be considered as a good size for a single cell.

239. The policy of the Isle of Man Government has always been one prisoner per cell, and there is no suggestion that it should change. The cells in the new prison will be 7m square in size, in accordance with European standards.

Paragraph 167

The delegation which carried out the 2003 visit was informed that, in view of the fact that the current premises were likely to be in use for some time yet, the authorities had decided to take steps to facilitate prisoners' access to sanitary facilities during the night by recruiting up to ten additional prison officers. The new arrangements were expected to come into operation in September 2003. The CPT would like to receive confirmation that these measures have been implemented.

240. The Isle of Man Government is pleased to confirm that slopping out ceased on 4th January 2004.

Paragraph 167

In the context of the construction of a new prison, the Committee also trusts that the general policy of providing integral sanitation for all cells will be maintained.

241. This has always been the policy and there is no suggestion that it should change.

Paragraph 172

... it remained the case that only a very small number of inmates in the Isle of Man Prison were being offered an adequate regime. The regime in E Wing was particularly underdeveloped. The CPT recommends that a high priority continue to be given to the provision of work and other purposeful activities to prisoners in the Isle of Man Prison.

242. Efforts will continue to be made to increase purposeful activity for detainees generally. With regard to E wing it is difficult to envisage what regime developments can be provided for a mixed population of male and female prisoners on remand on homicide charges.

Paragraph 173

The CPT has noted that an application for funding has been put forward with a view to bringing back into service the - much larger - former A and B Wing exercise yard. The CPT urges the Isle of Man authorities to continue to pursue this matter.

243. This recommendation is not accepted. The costs of bringing this yard into commission are considered excessive given the short operational lifespan remaining of this prison.

Paragraph 173

The CPT trusts that steps will be taken to remove the prohibition on prisoners running in the exercise yard.

244. The Isle of Man authorities have decided to maintain the prohibition, which was introduced as a health and safety measure on the advice of government insurers following an accident.

Paragraph 174

... the delegation was informed that no sentence planning was carried out, even for prisoners serving long sentences in the establishment. The CPT would like to receive the authorities' comments on this issue.

245. The personal officer scheme, long-term reviews, and the parole process are all currently part of a simple sentence planning process. However, it is acknowledged that this area of work should be expanded into a more sophisticated resettlement programme, which starts with assessment of prisoners' needs on sentence. A dedicated multi-disciplinary group of staff will be taking this work forward in the near future.

HEALTH CARE SERVICES

Paragraph 176

Following the 1997 visit, the CPT recommended that someone qualified to provide first aid, preferably with a recognised nursing qualification, always be present in the prison. During the 2003 visit, the delegation was informed that the nursing complement had been increased to the equivalent of 5.5 full-time posts in order to ensure the presence of a nurse at night; however, due to recruitment difficulties, such a presence was not yet being guaranteed. The CPT recommends that further efforts be made to fill the posts in question.

246. The CPT may have misunderstood the position with regard to the current nursing complement. Due to the inability to recruit nurses into the service, a departmental decision was made in 2000 to convert 2.5 of the nursing posts into prison officer posts and to increase night time manning levels. The agreed complement of nursing posts is now filled.

Paragraph 177

Consideration should be given to strengthening the psychological services provided to inmates, in particular psychotherapy.

247. The matter will be brought to the attention of the relevant authorities, i.e. the Department of Health and Social Security.

Paragraph 179

... the delegation's findings show that the records concerning medical examinations of newly-arrived prisoners left something to be desired. For example, the delegation's doctor examined a recently arrived inmate who displayed injuries on his back and hip; the injuries, which had clearly been sustained before his arrival in prison, had not been recorded by the prison doctor. The CPT recommends that the medical screening on admission include a physical examination by the doctor and that the records drawn up after the examination contain a description of injuries observed, any relevant statements made by the prisoner concerned (and, in particular, any allegations of ill-treatment made by him) and the doctor's conclusions.

248. All detainees are medically screened on admission. With regard to the case cited, this man's injuries had been recorded and photographed, and were available in the general custody record.

DETENTION FACILITIES FOR CHILDREN

Paragraph 180

The CPT would like to be informed of the precise powers of the Department of Health and Social Security review panel in respect of placements in secure accommodation.

249. Under the Secure Accommodation Regulations 2002, when looking after a child in secure accommodation, the Department of Health and Social Security has to appoint a panel of at least three persons, (at least one of whom is not an officer of, or employed by, the Department) to review the keeping of the child in such accommodation, for the purpose of securing the child's welfare. The current panel has two members who are independent of the Department.
250. The panel is required to review cases not more than one month after placement, and at intervals not exceeding 3 months thereafter while the young person remains in secure accommodation. When carrying out a review the panel needs to be satisfied: whether or not the criteria for keeping the child in secure accommodation continue to apply; whether it is necessary that the child should continue to be kept in secure accommodation; and whether any other form of accommodation would be appropriate for the child's welfare.
251. During the review the panel should as far as possible, ascertain and take into account the wishes and feelings of the child; any parent of the child, or any person with parental responsibility; or any carer of the child whose views the panel consider to be relevant; and the child's independent visitor if one has been appointed (usually when a child has no obvious parent or carer).

Paragraph 181

The CPT's delegation understood from its discussions with the Isle of Man authorities that any children deprived of their liberty, including in the context of criminal proceedings, would henceforth be placed in the White Hoe Secure Care Home. The CPT would like to receive confirmation that this is the case.

252. The Isle of Man authorities can confirm that children and young persons under detention are now placed at White Hoe. In addition, young people detained under Police Powers and Procedures Act, who in the past would have been held in the cells at Police Headquarters, are now transferred to White Hoe and detained there whilst they await their court appearance which is usually the same day.

Paragraph 188

The delegation was informed that a nurse would usually attend when a new resident arrived. However, three days or longer could elapse before new arrivals were examined by the nurse. The CPT recommends that all residents at White Hoe be screened by the nurse as soon as possible, preferably on the day of admission.

253. Social Services agree. Usually, residents are screened within 24 hours, although weekend admissions are sometimes a problem as the nurse is not available on Saturdays and Sundays. The GP contract is currently under review and Social Services are lobbying the Health Services to provide a full time nurse for Looked After Children, the current post being only part time.

Paragraph 189

The CPT is ... concerned to note that there was no psychologist attached to the health-care team at White Hoe Secure Care Home. It recommends that this shortcoming be remedied. Consideration should also be given to establishing regular attendance by a psychiatrist.

254. Social Services Division has for some time been working on a proposal to provide a full time child psychologist for Looked After Children, including those placed within the Secure Care Home. This exercise has been undertaken in conjunction with Service Providers and the Child and Adolescent Mental Health Service (CAMHS). The proposal is now contained within the CAMHS Business plan for the current financial year.
255. The Consultant Child Psychiatrist, Dr Warren Lavine, visits the unit regularly to provide services to children and consultancy to the staff team. He has been actively involved in several of the young people's care and treatment plans.

Paragraph 191

Section 39 of the Secure Home Custody Rules 2002 does not stipulate the maximum period for which a resident may be removed from association. The CPT would like to receive the authorities' comments on this point.

256. Nugent Care has developed policies and procedure in this area which are based on its experience of managing a Secure Care Home in the UK. These policies and procedures follow what is considered to be "best practice" in the Social Services Inspectorate (UK)
257. Any young person removed from association in this way will be monitored at 5 minute intervals, up to a maximum period of half an hour. If the young person does not calm down within that time, and there are still concerns about their behaviour, safety and welfare, then the Senior Manager on duty is called to review the situation. Throughout the period a continuous risk assessment of the possibility of harm to self or others is undertaken.

Paragraph 192

... the size of the establishment, combined with the fact that activities for children were unit based, might in fact lead to residents being held without contact with other children. The CPT would like to receive the authorities' comments on this point.

258. Contact with other children within the Secure Care Home is encouraged and managed through a process of risk assessment. There may be occasions when an individual child presents a serious risk to other children as a result of their behaviour, or nature of their offending and this is managed by the process mentioned earlier.
259. It is accepted that the size of this establishment, which serves a relatively small community, may result in there being only one resident at particular times. However, the care planning process for each child does encourage and promote contact with friends, relatives, and significant adults where this is deemed to be in the interest of the child - although current legislation is a little restrictive for those young people placed in criminal proceedings. This issue will be subject to review. It is the Departments' intention to review the operation of the Secure Care Home on a regular basis – probably annually – in order to look at issues like family contact, peer contact, residents contact with other residents indeed, the whole practice surrounding the operation of the Secure Care Home.

Paragraph 193

... the room used for visits (and for new admissions) was small, windowless and unwelcoming. The CPT recommends that steps be taken to remedy these shortcomings.

260. Social Services accept the Committee's concerns but hold the view that young people require some privacy upon admission which can be a very intimate time – searches need to be carried out, and issues of personal hygiene, bathing etc need to be dealt with.
261. The room will be re-decorated to attempt to create a more “welcoming” feeling. An alternative room will be used for family visits. The conference room – which has its own kitchen, lots of windows, and is much more spacious and airy – could be used. Some visits will also be managed within the unit itself, although this depends upon how busy the project is and how many young people are resident.

Paragraph 195

The CPT recommends that an independent inspection mechanism covering residents placed by the Social Services be set up, or that the Board of Visitors' mandate be extended accordingly.

262. Social Services have looked at this issue on several levels. Negotiations have taken place with the Social Services Inspectorate (SSI) in the UK to undertake inspections in the Isle of Man. Legislative changes will allow this to happen in the future.

263. In the meantime, contact has been made with an ex-SSI officer (who has expertise in the area and now acts as a private consultant), to undertake an inspection. In reviewing whether the criteria for security are still met for each child, the Criteria Review Panel (which has independent representation amongst its membership) oversees placements made by Social Services. The Review Panel will visit each child placed in residence by Social Services.
264. Furthermore, the Social Services Division are about to establish an “arms length” inspection team who will help in this area. The team will be totally separate and independent from the operational side of Social Services Core Business.

APPENDIX 1**Complaint cases and allegations against the Police in Scotland 2001 to 2003 – Analysis of disposals**

Source: Annual Report of Her Majesty's Chief Inspector of Constabulary for Scotland 2002/03

	Central		Dumfries & Galloway		Fife		Grampian		Lothian & Borders		Northern		Strathclyde		Tayside		Scotland	
	01/02	02/03	01/02	02/03	01/02	02/03	01/02	02/03	01/02	02/03	01/02	02/03	01/02	02/03	01/02	02/03	01/02	02/03
Complaint cases outstanding at beginning of year	63	57	11	16	18	47	48	36	122	189	35	47	244	379	53	78	594	849
Complaint cases received during year	156	167	51	32	240	218	123	332	726	651	101	137	1173	999	253	287	2823	2823
Complaint cases disposed of during year	160	100	46	39	211	230	132	253	660	676	89	97	1051	1002	322	307	2671	2704
Complaint cases standing over at end of year	57	124	16	9	47	35	39	115	188	164	47	87	366	376	79	58	839	968
Complaint allegations disposed of during year	197	113	58	45	235	248	225	385	1077	1147	98	122	1856	1933	380	394	4126	4387
Allegations withdrawn by complainer	20	3	4	9	4	12	23	39	22	27	14	6	162	200	18	28	267	324
Allegations abandoned due to non-cooperation of complainer	5	0	1	4	10	14	5	10	32	63	0	1	25	20	21	16	99	128
Allegations found to be unsubstantiated	17	14	19	2	82	86	69	128	298	284	0	14	586	633	59	35	1130	1196
Allegations resolved by conciliation or explanation	30	28	1	10	49	57	24	135	408	395	13	25	335	343	140	140	1000	1133
Allegations leading to criminal proceedings	2	2	0	0	0	0	4	2	0	11	0	0	6	4	1	1	13	20
Allegations leading to "no proceedings" decision by Procurator Fiscal	96	36	29	13	41	43	85	45	225	240	65	68	653	676	113	139	1307	1260
Allegations leading to criminal convictions	1	0	0	2	0	0	0	1	0	3	0	0	0	0	1	0	2	5
Allegations resulting in misconduct hearings	1	1	1	0	0	8	0	0	0	5	0	0	0	1	0	1	2	16
Allegations resulting in formal warnings in terms of disciplinary/misconduct regulations	5	2	1	4	12	8	4	3	7	30	2	0	4	8	5	4	40	59
Allegations resulting in corrective advice to officers	21	27	2	1	37	20	11	23	85	92	4	8	85	48	23	30	268	249

APPENDIX 2

Scottish Parliament – Written Answers – 12 May 2004

Prison Service

Pauline McNeill (Glasgow Kelvin) (Lab): To ask the Scottish Executive what action it now proposes to take in light of Lord Bonyon's judgment in the Napier case. (S2W-8152)

Cathy Jamieson: Scotland has unacceptably high rates of imprisonment and reoffending. As part of our reform of the criminal justice system we are determined to reduce reoffending and invest to modernise the prison estate. This will reduce overcrowding and improve conditions in prisons.

Our prison reforms have already resulted in real changes:

We have improved the basic conditions in which we expect offenders to tackle offending behaviour.

The Scottish Prison Service (SPS) has moved some long-term prisoners out of Barlinnie to reduce overcrowding.

Accommodation for male Young Offenders has been consolidated in improved conditions at Polmont.

For those who still have to sleep out at Barlinnie and Polmont, we have provided more time and better facilities to do so.

A new open prison unit for female offenders has been created at Cornton Vale.

We have improved the prison regime and we are working to maintain these improvements at a time of record prisoner numbers, for example through:

- increased time out of cell at Barlinnie;
- improved medical care across the board, and
- improved and expanded drug treatment services.

The SPS has delivered increased numbers of programmes and approved activities to address offending behaviour, prepare for release and reduce reoffending.

Education provision has been improved and expanded across the board with the emphasis on literacy, numeracy and employability including acquiring recognised qualifications.

We have invested to improve the fabric of the prison estate we inherited:

This has allowed SPS to refurbish two halls at Barlinnie, including the provision of toilets and power in cells, with another hall due to reopen later this year.

Conditions in parts of Low Moss have been improved by installing cubicles in some dormitory accommodation.

Electric power has been installed in cells in Peterhead, Perth and Polmont.

SPS has demolished very poor accommodation at Glenochil.
The National Induction Centre for long-term prisoners based at Shotts has doubled in size.

Also at Shotts, A Hall has been refurbished.

We have embarked on a major programme to modernise the prison estate:

The SPS has created about 500 modern places in two new houseblocks at Edinburgh and Polmont, investments totalling £35 million brought in on time and to budget.

Work is under way on similar new houseblocks at Edinburgh and Glenochil, a total investment of £50 million.

We are committed to securing 1,400 modern places in two new prisons.

The SPS has acquired land for these two new prisons and has already secured planning permission for one of them.

We are committed to comprehensive redevelopment of four key sites, effectively creating four new prisons at Edinburgh, Glenochil, Perth, Polmont.

Through these investments, we are making real progress in ending slopping out:

In 2000, there were 1,900 slopping out places,

Now there are 700 fewer.

By the end of this year, we plan to eliminate, a further 200.

I am determined to carry through this reform programme so that Scotland has modern prisons where staff can work with prisoners to reduce reoffending. I am therefore announcing today a package of measures to accelerate our reforms to improve prison conditions and make more effective use of custody:

We now plan to remove a further 550 slopping-out places by 2006.

We will create 200 new places by using rapid-build units on existing sites where the land and infrastructure can best support the additional numbers.

We will use electronic tagging to reduce the number of accused persons remanded in custody.

We will enhance the arrangements for home leave for long-term prisoners at the end of their sentences to reintegrate them better into society.

We shall seek early introduction of legislation to allow for home detention curfews under electronic monitoring for prisoners nearing the end of their sentences.

These measures are consistent with our overall vision for the criminal justice service in Scotland which deals fairly and effectively with offenders and reduces reoffending by providing robust and effective penalties, including community sentences.

I have also instructed the SPS to update its estates strategy to take account of our existing plans for creating new and fully modernised prisons, the impact of the measures I am announcing today and our wider reforms.

Having examined Lord Bonyon's judgement in Napier against this background, we believe there are grounds for appealing his conclusions. We shall therefore do so.

APPENDIX 3

FINDINGS AND RECOMMENDATIONS

2. HMP BARLINNIE

Date of visit: 24/3/04; Areas visited: E Hall, C Hall, D Hall and Letham Hall.

2.1 Summary

All areas visited in general were clean, particularly E Hall and showed that the action plans had been implemented to an acceptable standard.

The main issues arising are:

- the wrong use of mops in inappropriate areas, and we also noted that storage of these mops is not being properly managed in some areas;
- there is a recurring issue throughout the Establishment of cleaners not having clean clothes to change into once they have completed their duties; and
- there are no logs in place to evidence who has cleaned an area and which member of staff has inspected the area.

2.2 Development and progression of Establishment Action Plan

Action Plans submitted were accurate and honest. Areas of non-compliance with GiC Circular 89/03 were identified and some had already been addressed by the time of the audit.

Findings and Recommendations

2.3 E Hall

2.3.1 General comments

The population of this hall have recently moved from A Hall whilst it is being refurbished. This is a temporary arrangement expected to last until August when the refurbishment will be completed.

We visited E Hall at approximately 8:00hrs when the first slop out of the day had just been concluded; slopping out can now be managed at a more leisurely pace due to the movement of the work regime to the afternoon, reducing the time pressure in the slopping out process. This also allows adequate time to access hand-washing facilities following disposal of the waste products. Prisoners stated they are able to access the toilets during the day by pressing their cell bell and showers are also available on request; prisoners also have sufficient time to wash their hands when going to pick up their meals.

The cleanliness level throughout the hall was of a very high standard. Passmen were trained by the Industrial Cleaning Officer and were aware of all issues regarding colour coding of mops.

2.3.2 Procedures document

We examined the E-Hall slop out procedures document this is a comprehensive and complete guide for staff detailing all processes relating to personal hygiene, slopping out and health and safety. We commend this example of good practice.

2.3.3 Findings

- All prisoners had access to bacterial hand wipes in their cells for use after using their chamber pot;
- there was an issue with dirty water seeping through the ceilings in the ablutions areas; this was being addressed by the Estates Management Unit at the time of our visit;
- the high standard of cleanliness was evident in the ablutions area. The only issue was the lack of hand washing signs in the wash hand basin area and was the case on all flats. Liquid soap dispensers were in place and paper towels were available for hand drying;
- mops and buckets were stored in areas adjacent to the ablutions and were secured to the wall as per the BICS standards. Colour coding for mops and buckets was evident throughout the hall;
- there were no logs in place to record who had cleaned each area on the day, and no staff logs to indicate the areas had been inspected; and
- modesty screens were in place in some cells where more than one prisoner was located. There were however several cells on the 3rd flat where the screens had been damaged and removed.

2.4 C Hall

2.4.1 General comments

We briefly visited C Hall to ascertain if all remand prisoners were given the opportunity to have a shower before departing for court. All staff and prisoners interviewed confirmed this to be the case every day.

In general, the hall and showering areas were cleaned to a high standard. All cells that were checked were clean and well maintained.

2.4.2 Procedures document

No documents were available apart from the hall action plan to indicate how processes are communicated to prisoners.

2.4.3 Findings

- A check of the areas used to store mops and buckets highlighted that all mops, regardless of colour, were stored together with no separation as required in the BICS manual;
- there were no logs available to evidence who had cleaned a specific area, when they had cleaned it and no indication of staff inspecting any areas; and
- prisoners are taken to the reception in-groups of around 14 and are given the opportunity to shower before departing.

2.5 D Hall

2.5.1 General comments

A brief visit to D Hall initially to check on the conditions of a particular prisoner's cell.

2.5.2 Procedures document

No documents were available apart from the hall action plan to indicate how processes are communicated to prisoners

2.5.3 Findings

- The communal shower and washing area on the bottom flat also has a toilet in this area;
- part of this area has been identified as suitable for yellow mops and part for red;
- there are mops and buckets are not stored in accordance with the BICS manual; and
- there are some passmen employed as cleaners who are also being used for hotplate duties.
-

2.6 Letham Hall

2.6.1 General comments

A brief visit to Letham Hall indicated a high level of cleanliness throughout the hall. Cells, communal areas and ablutions areas were all cleaned and maintained to a high standard. Mops and buckets were all stored in the manner prescribed in the BICS manual. One section has access to toilets via a night sanitation system recently introduced and it is proposed to eventually extend this facility throughout the Hall.

Ref.	Hall	Recommendation	Management Response and Implementation date
1	B, C, D	Residential areas require to introduce a colour coding system for mops and buckets, in accordance with the BICS manual.	Implemented in all areas April 2004
2	All	All areas require to introduce a log for cleaning and inspection of areas cleaned.	Implemented in all areas May 2004
3	All	Prisoners employed on cleaning duties must be provided with a complete change of clothes once they have completed their duties.	Implemented in all areas April 2004
4	All	Staff awareness of the SPS Infection Control Manual should be introduced.	Implemented in all areas May 2004

Stephen Leslie

Heather Gourlay

Operational Audit Team

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