



Questions Arising

**Response from the Government of Gibraltar
to report on treatment of detainees**

Re:

**European Committee for the Prevention of Torture and Inhuman or
Degrading Treatment or Punishment (CPT)
on its visit to Gibraltar from 13 to 17 November 2014**

Submitted to:
The Hon. Neil Costa, MP
Minister for Health, Care and Justice
09 November 2016

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The background:

Almost a year ago to the day, the following statement was published on the Council of Europe's official website at <http://www.cpt.coe.int/documents/gbr/2015-11-19-eng.htm> :

'Strasbourg, 19.11.2015 - The Council of Europe's Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) published today the [report](#) on its November 2014 visit to the British Overseas Territory of Gibraltar, together with the Government of Gibraltar's [response](#) as submitted by the Government of the United Kingdom.

In the visit report, the CPT assessed the conditions of detention and treatment of persons held in Windmill Hill Prison and looked at the safeguards in place for persons deprived of their liberty by the police. The CPT also examined conditions in court holding cells and certain establishments under the authority of the Gibraltar Customs' enforcement agency and the United Kingdom Ministry of Defence. Further, the CPT examined the situation of civil involuntary and forensic patients in King George V Psychiatric Hospital.

The main findings of the CPT are set out in the [Executive Summary](#).'

Introduction:

Two years after the initial visit by the Committee to Gibraltar, and practically a year on from the publication of its Report, Equality Rights Group (ERG) herein analyses the issues and questions arising, with particular attention given to responses provided by the Government of Gibraltar which were still to be followed-up or resolved. The visit of the Committee was rightly reflected with some attention by our media at the time. It falls on ERG, however, to remain on-topic even when the story is no longer fresh. The interim reporting delay on our part, therefore, has not been a consequence of chance, but rather of consideration; a prudent time for administrative digestion was fair and necessary. That time now expired, it is our duty to ask for clarification.

Conscious of the nature of the requests we present herein, we have attempted to lay out the below contents in such a manner as to facilitate the labours involved by providing, in as clear a format as design will allow, not only the original Committee questions/recommendations (taken from the document entitled '*Response from the Government of Gibraltar to report on treatment of detainees*' document reference CPT/Inf (2015) 41 available from the Committee's above-cited website) as a clear point of reference, but also the specific official written response provided to the CPT at the time by the Government of Gibraltar; and, finally our detailed request for clarification emanating from the subject matter highlighted.

With all this in mind, and in fulfillment of its obligations to the equality, human and civil rights of this community, ERG hereby submits its enquiries, requesting response and assistance of the Minister for Health, Care and Justice, the Hon. Neil Costa, MP, in providing further information.



Felix Alvarez OBE
Chairman

**Re. Response from the Government of Gibraltar
to report on treatment of detainees**

A. LAW ENFORCEMENT AGENCIES

1. DUTY SOLICITORS SCHEME:

‘Safeguards against ill-treatment 14. The CPT welcomes this initiative (Duty Solicitors Scheme) and recommends that the Gibraltar authorities pursue...with a view to ensuring that all persons arrested by the police are guaranteed an effective right to a lawyer as from the outset of their deprivation of liberty.’

GoG response: ‘HM Government of Gibraltar is discussing the introduction of the scheme in conjunction with the Bar Council.’

ERG Request: We should be grateful for information as to the status of this item.

2. ACCESS TO DOCTOR:

‘Further, detained persons should be expressly informed of their right of access to a doctor in all cases. The CPT recommends that the authorities guarantee the right of access to a doctor in law.’

GoG response: ‘This matter has been reviewed and incorporated into the standing procedures, Prisoners’ Rights and Custody Training as per the CPT recommendation.

HM Government of Gibraltar will consider the enshrining of this right in law.

ERG Request: We should be grateful for information as to the status of this item since it is unclear from the response whether the affirmation that ‘This matter has been... incorporated’ refers to the specific issue of detained persons being ‘expressly informed of their right of access to a doctor in all cases’ or to a previous issue in the preceding paragraph. Clarification would be appreciated.

Also, has GoG settled its view as to whether the right of access to a doctor by detainees should be enshrined in legislation? If so, please advise; if not, what rationale informs this decision?

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3. COMPLAINTS PROCEDURES:

‘The CPT recommends that information about the complaints procedures and mechanisms available should be included in the initial written information given to detained persons on arrival; and the provision of a locked complaints box with relevant confidential complaints forms should be available and emptied regularly by an independent police body.’

GoG response: ‘This matter has been reviewed and incorporated into the standing procedures, Prisoners’ Rights and Custody Training as per the CPT recommendation. No locked complaint box has been implemented as we were unaware of this requirement. We will look into this.’

ERG Request: We should be grateful for information as to the status of this item regarding the installation of a locked complaints box to be regularly emptied by an independent police body.

4. NEW POLICE HEADQUARTERS:

‘The CPT recommends that the Gibraltar authorities take the necessary steps to remedy these deficiencies (regarding material conditions in New Mole House police station).

GoG response: (This reply is long. The following salient quotations are therefore extracted for attention):

- ‘When the Royal Gibraltar Police headquarters were relocated to New Mole House, the custody cells were built to UK Home Office standards. There are plans underway to relocate the Police headquarters to a new location...’
- ‘In the interim period, even though there is no drinking water or call bell within the cells at New Mole House, there is a water fountain in the Custody Suite, which is used to provide detainees with fresh water upon request and at every meal time.’
- ‘The above comments are also relevant to the point made about structural modifications to cells in order to gain access to natural light.’

ERG request: In view of the various important admitted deficits of material conditions for detainees (no in-cell drinking water, call bell, natural light or space for daily outdoor exercise) provided by facilities at New Mole House, is GoG currently actively engaged in plans for either a) the building of a new facility to serve the same purpose as New Mole House or b) to refurbish existing premises to this end? If GoG is currently proceeding with either of these two options, what is the expected completion date for transfer of the RGP to the new location?

5. MENTALLY ILL DETAINEES:

‘The CPT recommends that every effort be made to avoid detaining mentally ill persons in New Mole House Police Station. Further, police officers should be provided with basic training on how to care for mentally ill persons’

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GoG response: ‘We agree with this recommendation....the reality is that it [New Mole House] is wholly inadequate for these purposes. The new facilities at Ocean Views have minimised this risk although this may require new legislation’

ERG request: Since the opening of the Ocean Views facilities, a) what arrangements are now in place for the detention of mentally ill individuals not at New Mole House but in the new facility? b) are there any circumstances in which mentally ill individuals might still be detained at New Mole House? And c) has the licensing of Ocean Views as a detention facility been incorporated into current legislative provisions; if so, could we be provided with the due reference?

B. CUSTOMS:

6. DETENTION FACILITY

‘The CPT would like to receive more information about any pending amendments to the legislation and the envisaged timeframe that would authorize customs officials to detain persons in a holding room, designated as a place of custody.’

GoG response: ‘the detention facilities available to Customs [have] not been used since the introduction of the Criminal Procedure and Evidence Act...because the rooms do not comply with the requirement of the Act. No decision has yet been taken as to whether Customs will have its own designated station...if so, it will not be in this ‘holding room’ but rather in a new facility’

ERG request: We should be grateful for information as to the status of a) the use of said ‘holding room’ in terms of its usage or non-usage currently and b) GoG’s plans in respect of providing a new facility for Customs to be able to detain individuals.

We understand from reading further within the Report that the detention of ‘stuffers’ and ‘packers’ (persons who conceal substances within their bodies in order to illegally import into Gibraltar) is presently accommodated via New Mole House. However, specialist toilet facilities for such individuals are only available at the Customs facility, requiring the transportation of the individual(s) concerned back and forth. Given the possible medical crisis characteristics of this scenario, what further provisions are made to meet such emergencies?

C. WINDMILL HILL PRISON

7. ILL TREATMENT:

‘The CPT recommends that clear written procedures be put in place to address and prevent inter-prisoner violence and intimidation.’

GoG response: ‘The Management accepts that there is a need for a more robust anti-bullying policy and is looking at what is required to make the necessary improvements.’

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ERG request: We would be grateful for information as to what steps have been taken in order to effect the required improvements.

8. CELL SIZE & LEVELS OF OCCUPANCY:

‘The CPT recommends that the Gibraltar authorities take the necessary steps to remedy...that no more than one prisoner is accommodated in a cell of less than 8M²’

GoG response: ‘Prison cells cannot be used for the confinement of prisoners unless their size (among other parameters) is certified as adequate by the Chief Environmental Health Officer under Section 23 of the Prison Act 2011. As far as prison authorities are aware there is no provision for a particular size that cells must conform to.

Aside from 2011 and 2012, when the prison population peaked, average population figures have remained at around half occupancy or less.

ERG request: With regards to the information given vis-à-vis low occupancy at Windmill Hill Prison, it is clear the authorities have a justifiable rationale with regards to questions posed by the CPT in respect of accommodation of prisoners, and the daily regime of movement within the facilities for same. However, it remains unclear as to why it was the CPT were able to observe two prisoners occupying a space of only 8M². This seems inconsistent with the scenario of a prison facility where occupancy is low and, consequently, space availability poses few if no problems. We would welcome the clarification.

9. ACTIVITIES REGIME:

‘The CPT recommends that the Gibraltar authorities continue to expand the range of – and opportunities for – prisoner activities, with a view to ensuring that all prisoners spend a large part of the day engaged in purposeful activity of a varied nature.’

GoG response: ‘Prison management is actively considering ways and means of enhancing the range of activities available for prisoners.....The prison is also in the advanced stages of a resources review. Once this is completed it may provide further opportunities to enhance the availability and quality of activities available to prisoners.’

ERG request: We should appreciate advice as to whether the resources review was completed; and what, if any, adjustments have been made to the range of activities available for prisoners.

10. SENTENCE PLANNING:

‘The CPT invites the Gibraltar authorities to ensure the proactive involvement of prison officers in drawing up and implementing sentence plans.’

GoG response: ‘Sentence planning for every prisoner was introduced some years ago by the Probation Service...Unfortunately, this service was withdrawn...some time ago due to resource issues. Prison management accepts that this is necessary, particularly for long sentence prisoners. *We will consider what changes could be put in place.*’ (Our italics)

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ERG request: In view of the concerns expressed both by the CPT and Prison Management in respect of the importance of sentence planning, will GoG consider reintroducing this service? What, if any, further considerations have arisen as a result of the above-stated commitment?

11. JUVENILE PRISONERS:

- a. *'The CPT recommends that staff working with juveniles receive the appropriate training and supervision.'*
- b. *'The CPT recommends that the Gibraltarian authorities draw up specific regulations for the discipline and security of juveniles in prison.'*
- c. *'As long as juveniles are kept in Windmill Hill Prison, the CPT recommends that additional efforts must be made to provide them with a full range of purposeful activities and socioeducative support.'*

GoG response a & b above: 'Prison management is happy to discuss this with the Minister for Justice.'

GoG response c above: 'Prison management agrees. Further efforts should be made to secure services from local agencies to enhance the juveniles' regime. A full time teacher for juveniles should be available and also greater involvement from social services professionals.'

ERG request: We would appreciate advice as to what, if any, plans or actions have materialised as a result of recommendations a and b above, and the intention of holding discussions with the Minister for Justice.

In respect of recommendation c above, what steps if any have been taken to enhance the juveniles' regime as recommended both by the CPT and the Prison Management?

12. PRISON HEALTH CARE SERVICES:

- d. *'The CPT recommends that the authorities completely review the provision of healthcare at Windmill Hill Prison with a view to assessing the somatic, psychiatric, dental and health-care needs of the prison.'*
- e. *'Gibraltarian authorities should progressively abolish the practice of involving 'hospital officers' in the performance of health-care duties at Windmill Hill Prison.'*
- f. *CPT 'recommends that an additional room should be made available for the purpose of undertaking health-care consultations'*

GoG response to d & e above: 'Prison management has taken note of CPT's comments in this respect. Meetings have been set up with the pertinent authorities to discuss potential improvements to the provision of healthcare and to address the CPT's concerns.'

GoG response to f above: 'While prisoners are given as much privacy as possible during health-care consultations, the physical design of the prison estate unfortunately does not allow us to allocate a separate room specifically for this purpose.'

ERG request: Further to the commitment to organise consultation with pertinent authorities re an assessment of the provision of healthcare along the CPT's suggestions (recommendation d above), what if any plans or actions have resulted?

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Re. Recommendation e above: if our reading of this item is correctly founded, there appears to be an implication that unsuitably qualified prison officers are designated as ‘Hospital Officers’ (note the CPT’s strong recommendation to entirely eliminate this function). We would request clarification on this concerning point in terms of the specific duties assigned to said ‘Hospital Officers’ in relation to their qualifications and training. Additionally, does GoG intend to adopt CPT’s recommendations to eliminate this function, and what actions have been taken to remedy this situation?

Re. Recommendation f above: GoG’s response with regards to occupancy levels (commented under our earlier above section dealing with ‘Cell size and Occupancy’) stated:

‘Aside from 2011 and 2012, when the prison population peaked, average population figures have remained at around half occupancy or less.’

This being the case, GoG’s response as to the reasons why space cannot be allocated to provide prisoner privacy for medical consultations seems inconsistent (‘unfortunately does not allow us to allocate a separate room specifically for this purpose’). It is clear that, certainly since 2012, the space available at the Prison facility is above that presently required. We would appreciate understanding what the impediment in acceding to the CPT’s request is based upon.

13. PRISONER INJURIES & ILL TREATMENT:

This was an area the Committee were insistent and detailed about in their concerns. Below are highlighted excerpts of their main points:

- g. ‘The CPT recommends that the authorities review the existing procedures in order to ensure that whenever injuries are recorded which are consistent with allegations of ill treatment made by a prisoner (or which, even in the absence of allegations, are indicative of ill treatment) the report is immediately and systematically brought to the attention of the competent authorities... regardless of the wishes of the prisoner. The results of the examination should also be made available to the prisoner concerned and to his or her lawyer*
- h. The Committee also wishes to recall that any record drawn up after such an examination should contain i. an account of statements made by the person.....ii. a full account of objective medical findings*
- i. ‘The record should also contain the results of additional examinations performed, detailed conclusions of any specialized consultations and an account of treatment given for injuries and of any further procedures conducted.’*
- j. The recording of the medical examination in cases of traumatic injuries should be made on a special form provided for this purpose’*

GoG response: Prison management agrees with the observations made in this respect and will review its procedures in respect of injury and ill-treatment allegations policy accordingly.

ERG request: We should be grateful for information as to whether the above review has occurred, and to what effect specific to highlighted points g. to j. above.

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14. DEATHS IN CUSTODY:

'The CPT recommends that the Gibraltar authorities institute a practice of carrying out thorough autopsies and inquiries into all deaths in custody....If necessary, the legislation should be amended accordingly

GoG response: A copy of the judgment and findings of the Coroner's inquest into the death in custody of female prisoner was provided to the CPT during its visit to HMP Windmill Hill.

ERG request: While this section talks of 'deaths in custody' in the plural, reference in GoG's response speaks only of one such death. We would be grateful for information as to how many deaths in custody have occurred since the opening of the Windmill Hill Prison facility.

Additionally, GoG's response does not address the recommendation of the Committee in respect of the carrying out of 'thorough autopsies and inquiries', and we would request information re Government's thinking and plans on this matter.

15. SUICIDE PREVENTION & SCREENING:

'The CPT recommends that the Gibraltar authorities take the necessary steps to ensure that an adequate screening algorithm be introduced to assess the risk of suicide and self-harm in the prison. It also recommends that drug and/or alcohol dependence are adequately taken into account in the screening process as factors potentially heightening the risk of suicide.'

GoG response: Prison management will look into this.

ERG request: Has Prison Management conducted the above-promised review on this matter? If so, what, if any, steps have been taken to implement the CPT's recommendations?

It is to be noted that recommendations and proposals under the 'Connected Health' Report previously submitted jointly by ERG and Stay Clean to Government coincide strongly with the Committee's concerns in the matter of procedures and methodologies for dealing with prisoners with addiction problems. ERG thus underlines the importance of the specific mention made by the CPT in its above recommendations for point-of-entry screening.

16. DISCIPLINARY - SOLITARY CONFINEMENT:

'The CPT wishes to recall that in its view a punishment of solitary confinement for a disciplinary offence should not exceed 14 days and it recommends that the Gibraltar authorities amend the legislation accordingly.'

GoG response: This recommendation has been noted.

ERG request: We would welcome being advised as to a) whether the punishment of solitary confinement in Gibraltar falls within the maximum recommended duration of 14 days or not and b) where legislative provisions fall outside the Committee's recommendations, whether Government plans to amend existing legislation in respect of solitary confinement in adoption of the Committee's recommendation.

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17. PRISONER CONTACT WITH THE OUTSIDE WORLD:

‘By communication of 2 February 2015, the Gibraltarian authorities informed the CPT that Windmill Hill Prison offers evening visits to cater for those prisoners with children of school age or working relatives and visitation time is available to both male and female inmates. The CPT welcomes this information and recommends that prisoners be clearly informed about this possibility.’

GoG response: This recommendation has been noted and we will action it.

ERG request: We would appreciate confirmation that a) the evening visits regime is fully instituted and b) that prisoners have been duly informed of the availability of the above-mentioned evening visits regime.

18. COMPLAINTS PROCEDURES:

‘The CPT recommends that the authorities review the internal complaints procedures in Windmill Hill Prison’

GoG response: ‘Management agrees that the internal complaints procedure needs to be improved. This is being investigated and a new system will be implemented shortly.’

ERG request: We would welcome information as to a) what, if any, changes have been effected in the Complaints Procedure, b) what the new Complaints Procedure consists of.

19. INDEPENDENT INSPECTION:

The CPT ‘would like to be informed whether the Gibraltarian authorities intend to invite Her Majesty’s Inspectorate of Prisons or other similar independent bodies from the United Kingdom to carry out periodic inspections.’

GoG response: ‘HM Government of Gibraltar will consider this recommendation.’

ERG request: We should appreciate information as to whether Government has made a decision on this matter. If so, by what date will the first independent inspection have taken place? If not, what is GoG’s reasoning for not adopting this recommendation?

20. JUVENILE PRISONERS REQUIRING IN-PATIENT PSYCHIATRIC TREATMENT:

‘The CPT would like to be informed about the current policy regarding juveniles who require in-patient psychiatric treatment.’

GoG response: ‘At present juveniles under the age of 16 yrs requiring admission are either nursed in accommodation provided by social services or in our pediatric ward. Patients between the ages of 16-18 yrs are nursed in a self-contained multifunctional suite in Ocean Views mental health facility. All the above listed options are used only as a provisional placement to ensure the patients’ safety whilst a more appropriate long-term placement in a specialized unit is organised if required.’

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ERG request: We would welcome being advised as to what facilities GoG consider ‘appropriate long-term placement in a specialized unit’, and whether these would be facilities in Gibraltar or elsewhere (e.g. in the United Kingdom?)

D. OCEAN VIEWS FACILITY:

21. REHABILITATION WARD & GARDEN AREA ACCESS:

‘The CPT would like to be informed about the range of treatment now offered to patients at the new facility, and the amount of time they are allowed in the garden areas every day.’

GoG response: (The detailed response in this section is broken down into the below succinct highlights:)

- i. ‘one of the more visible changes has been the introduction of a rehabilitation ward...’
- ii. ‘since May we have been operating an open door policy in both the acute and rehabilitation wards, which has meant that patients have free and uncontrolled access to all garden and recreational areas throughout the day until 10.30pm when the doors are locked for the night. Due to the nature of the client group in the Enduring Mental Illness ward this area continues to operate a locked door policy, patients in this area are escorted throughout the day to the garden areas. An average of two hours daily are spent in the garden areas with organised activities.’

ERG request: In respect of the ‘rehabilitation ward’ mentioned in point i. above, we would welcome clarification as to what type/s of rehabilitation symptoms and treatments are catered for in this ward.

In respect of point ii. above: what safety procedures are in place to avert the possibility of a patient being inadvertently locked out of the facility after 10.30pm when doors are locked for the night?

22. ELECTROCONVULSIVE THERAPY (ECT):

‘The CPT recommends that a central register be introduced for the administration of ECT.’

GoG response: ‘This recommendation has been noted and we will consider its implementation.’

ERG request: We would welcome being advised on whether this recommendation has now been considered and implemented, or not. If not, we would appreciate advice on the rationale for not doing so.

23. INJURIES TO PATIENTS:

‘The CPT recommends that steps be taken to ensure that there is a clear policy for documenting, recording and reporting injuries to patients, and that staff are fully aware of its existence.’

GoG response: ‘Although at present there is a clear process for documenting, recording and reporting injuries to patients, and the staff are fully aware of this, work is still on-going on this and other policies.’

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ERG request: We understand from GoG's response above that, at the time of the CPT's recommendation, policies were being worked on and finalised. Consequently, we would appreciate information as to whether the CPT's recommendations above are now fully adopted and implemented.

24. RESIDENT PSYCHIATRIST:

'The CPT wishes to receive confirmation that the psychiatrists are now based permanently in the new hospital...'

GoG response: 'At present there are no permanently based psychiatrists in the new facility.'

ERG request: Does GoG have any plans for a permanently based psychiatrist at Ocean Views?

25. MEANS OF RESTRAINT:

'The CPT recommends that a specific register be established to record all instances of recourse to means of restraint (including rapid tranquillisation) and seclusion. This would be in addition to the records contained within the patient's personal medical file.'

GoG response: 'Although all the above information is presently captured within our existing documentation, a specific register is still to be developed. Our restraint policy is currently in draft format awaiting final amendments and approval.'

ERG request: We would welcome being advised as to the current status of the facility's Restraint Policy. Has it now been amended and approved; and does it fully adopt the above recommendations of the CPT? If not, which aspects of the CPT's recommendations have not been adopted?

26. INVOLUNTARY PLACEMENT:

'The CPT would also like to receive information on the number of applications made to the Mental Health Review Tribunal in 2013 and 2014 in relation to patients challenging their involuntary placement and the outcome of such applications.'

GoG response: 'From 1st May 2014 to 1st May 2015 there were 14 appeal applications, 3 subsequently rescinded, 11 were unsuccessful.'

ERG request: In the period quoted, 21% of patient appeals were upheld as wrongly placed without their consent. Whilst naturally welcoming a robust appeals mechanism in the service of patients, ERG notes the high incidence of successful appeals against erroneous involuntary placement of individuals into psychiatric care. While requesting GoG's analysis as to the cause for

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such a high statistic on this count, *we would caution extra vigilance on the part of the authorities on this matter* and, in the interim, would appreciate feedback on whether GoG considers the above percentage incidence statistically of concern or not; and if so, what remedies are proposed in alleviation?

Additionally, can GoG confirm whether legal assistance is provided to individuals challenging involuntary placement into psychiatric care?

27. CONSENT TO INVOLUNTARY PLACEMENT:

‘The CPT recommends that the Mental Health Bill 2014 be amended to reflect the right to free and informed consent’

GoG response: ‘It is also the Government’s intention to publish a code of practice which will set out in more detailed terms what consent means, the information that needs to be provided to the patient and other guidelines for the use of the Mental Health professionals.’

ERG request: We would be grateful for information as to whether the referred consent ‘code of practice’ has now been approved and published. If so, is said document available for public consultation and can ERG be provided with a copy?

28. PATIENT INFORMATION:

‘The CPT would like to receive a copy of the information booklet prepared for patients placed at the new mental health facility.’

GoG response: ‘The information booklets for the new facility are still being produced, a copy will be sent upon completion.’

ERG request: Have said booklets now been produced? If so, would it be possible for ERG to receive a copy?

29. INDEPENDENT INSPECTION:

‘The CPT recommends that a regular system of independent inspections be put in place; this may require inviting a health-care oversight body from the United Kingdom on a periodic basis.’

GoG response: ‘The need for regular independent inspections of the service has been highlighted recently during discussions around the introduction of our newly reviewed Mental Health Act. This will need to be reviewed and addressed shortly.’

ERG request: We would appreciate information as to whether the referred review has taken place. Furthermore, is it GoG’s intention to adopt the Committee’s recommendation for periodic independent inspections? If so, by which independent body; and when will these come into force and practice?

