CPT/Inf (2006) 29

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

from 20 to 25 November 2005

The United Kingdom Government has requested the publication of this response. The report of the CPT on its November 2005 visit to the United Kingdom is set out in document CPT/Inf (2006) 28.

Strasbourg, 10 August 2006

RESPONSE BY THE UNITED KINGDOM GOVERNMENT TO THE REPORT OF THE EUROPEAN COMMITTEE FOR THE PREVENTION OF TORTURE FOLLOWING ITS VISIT TO THE UNITED KINGDOM FROM 20 TO 25 NOVEMBER 2005

INTRODUCTION

1. The Government of the United Kingdom is pleased to provide this response to the report of the European Committee for the Prevention of Torture and Inhuman or Degrading Treatment or Punishment (CPT) following the Committee's visit to the United Kingdom from 20 November to 25 November 2005.

2. The Government welcomes the report, and has considered the Committee's findings and recommendations with great seriousness and has responded comprehensively to its findings and recommendations.

3. This response follows in sequence the issues raised by the CPT. Extracts from the report relating to those issues are reproduced in bold typeface with paragraph references.

4. It is important to recognise the current circumstances facing the United Kingdom. The threat to the United Kingdom posed by terrorism is very real and serious as the events of 7 July 2005 tragically demonstrated. It is a fundamental responsibility of a Government to do everything it can to defend its citizens from terrorist attacks. The Government has acted to protect its citizens in the face of these threats and is satisfied that the anti-terrorism measures in place are a necessary and proportionate response to the threat faced by the country.

5. The Government believes that it has managed to respond to the very real threat to national security posed by terrorism, while respecting civil liberties and human rights. We abide by our human rights obligations under international law, including the United National Convention against Torture and Other Cruel, Inhuman or Degrading Treatment or Punishment, and the European Convention for the Protection of Human Rights and Fundamental Freedoms (ECHR). The United Kingdom has numerous safeguards in place to ensure that standards are maintained and due diligence is applied, including a number of independent bodies which provide regular scrutiny and accountability.

6. We respect and promote human rights not only because it is the correct thing to do but because it is one of the most effective ways to undermine terrorists. Equally, counter-terrorism measures are there to help us preserve a democratic and free society. Those people subject to control orders or deportation on national security grounds are affected as individuals by those laws because they pose a substantial threat to the safety of our society. At the most basic level, measures which protect innocent civilians from attack are supporting one of the most basic human rights of all – the right to be alive – and they protect all people's ability to enjoy their other rights.

CO-OPERATION BETWEEN THE CPT AND UNITED KINGDOM AUTHORITIES

7. The Government regrets that there was a delay in providing the CPT with custody records pertaining to three detainees held at Paddington Green station between 8 and 15 October 2005. The custody records, which were held in New Scotland Yard, have since been forwarded to the CPT.

ISSUES RAISED BY THE COMMITTEE

Letter to the United Kingdom authorities dated 21 October 2005, on the Memorandum of Understanding with Jordan

Paragraph 4
Request for information by the Committee

The CPT delegation which carried out the November 2005 visit held a preliminary discussion on this issue [memoranda of understanding with states from the Middle East and North Africa] with officials from the Home Office and Foreign and Commonwealth Office, it being understood that the United Kingdom authorities would, in due course, provide a full response to the letter of 21 October 2005.

The CPT requests the United Kingdom authorities to provide the above-mentioned response.

8. The United Kingdom authorities replied separately to the Committee on 2 August 2006.

A. Persons detained under the 1971 Immigration Act

Preliminary Remarks

Paragraph 8
Comment by the Committee

Of the ten persons arrested in August 2005… three… had been committed to Broadmoor High Secure Hospital as their mental and physical health had deteriorated and a fourth was bailed on house arrest for health reasons. The others all suffered, to a greater or lesser degree, deterioration in their mental health

9. The Government does not agree with the Committee that there has been deterioration in the mental health of the detainees, or that detention has led to mental disorders among them. The Government is concerned about the physical and mental well being of all detainees and takes seriously the CPT's evaluation of the detainees' physical and mental health. It will continue to keep the health of the detainees under review. Staff responsible for the management of the detainee unit at Long Lartin are trained in mental health and suicide awareness and are alert to any signs of possible self-harm, either by an individual or a group of individuals.

Full Sutton and Long Lartin Prisons

Paragraph 11
Comment by the Committee

…it was evident that neither [Full Sutton nor Long Lartin] prison was prepared to receive the detainees and ad hoc measures were taken to accommodate them…

10. The detainees were placed in the care of the Prison Service at short notice and allocated the same day to Full Sutton and Long Lartin prisons. Although it is fair to say that advanced arrangements for the creation of specific facilities to deal with such persons were not in place, staff took appropriate steps to ensure that all detainees were treated appropriately upon arrival and that their immediate needs received proper attention. This included making arrangements for the men to have immediate contact with their legal representatives both by telephone and through personal visits.

Paragraph 12
Comment by the Committee

In Full Sutton Prison… it was apparent that the staff had not received any special training in relation to caring for the detainees.

11. Staff are trained to deal with all those received into custody. Although it is again fair to say that staff had not received any specific training in advance of the arrival of the detainees, the general training available did enable them to deal with the immediate needs of the men.

Paragraph 16
Comment and request for information by the Committee

The SSU unit in Full Sutton is an inappropriate location for holding the detainees, a fact recognised by the prison management. The delegation was informed that G Wing (where the induction unit was located) would be closed in December 2005 and refurbished by March 2006, whereupon the detainees would be transferred to it.

The CPT would like to be informed whether the refurbishment has been completed and the detainees transferred to G Wing. Further, it would like to receive detailed information concerning the final renovations as well as the regime.

12. Since the CPT's visit, the detention unit at Full Sutton has been closed. The Special Immigration Appeals Commission decided that, on 20 October 2005, four detainees should be released on bail, followed by one more on 21 December 2005, another on 4 January 2006, and two more on 17 January 2006. The releases removed the need for two separate units. Therefore, on 22 December 2005, the detention unit at Full Sutton was closed and all remaining detainees were moved to Long Lartin.

Paragraph 17
Request for information by the Committee

In Long Lartin, the management had received approval to upgrade the unit… The CPT would like to receive detailed information concerning the refurbishment.

13. Showers in the detainee unit have been refurbished, and work is in progress for the creation of a cell specially designed to minimise the risk of self-harm. Other planned work is out to tender for proposed completion by the close of the financial year.

Paragraph 18
Request for information by the Committee

The CPT would like to receive detailed information on the measures taken in both prisons concerning the activities offered to the detainees and the numbers involved.

14. The CPT had invited Full Sutton Prison to consider a programme of activities for detainees similar to that then being planned at Long Lartin. Following relocation to Long Lartin – which has adopted the planned programme of activities – all detainees now have access to association areas, cooking facilities, the gymnasium, exercise in open air, telephone facilities, library facilities, visits and group work. Further details on the new arrangements are given at paragraphs 17 to 24 below.

Paragraph 19
Comment and recommendation by the Committee

…the CPT's delegation shared its concerns with the United Kingdom authorities that serious mental disorders, coupled with the situation in which the detainees found themselves, increased the likelihood of a major crisis, including the possibility of multiple suicide. The delegation's findings suggested that such a scenario was real and should be addressed accordingly.

15. A full mental-health risk assessment is completed for all individuals on arrival at Long Lartin. Regular monitoring continues afterwards, and meetings are held with operational and health staff to identify any changes in patterns of behaviour that might indicate deterioration in mental health. In the event of a change in a detainee's mental health, a full risk assessment and a full mental health assessment are undertaken and the information is shared amongst the health care team with interventions being planned accordingly.

16. A Registered General Nurse attends the unit each day to offer support and advice. A General Medical Practitioner also attends the Unit twice a week, and a Registered Mental Health Nurse attends the unit as often as required to offer structured one-to-one support. Counselling services are available to detainees, and staff are trained to understand that detention in custody can be a stressful ordeal. If it is considered that a detainee needs access to medical services outside the prison, arrangements are made for that.

17. If any detainee appears to be at risk of self-harm, they will be supported through an individual care plan agreed between the detainee and the multi-disciplinary team at the prison. To date, the only instance of self-harm among the detainees has been a refusal of food by three detainees as a protest against deportation. In two cases this required support from prison medical staff and removal to Long Lartin Health Care Centre. No detainee is currently refusing food.

Paragraph 20
Comments and recommendation by the Committee

…it was evident to the CPT's delegation that the detainees did not sufficiently trust the health care staff and that they did not consider the health care service as being independent from the prison.

…medical examinations should take place in an atmosphere of confidentiality, out of hearing of a prison officer, and only within the latter's sight if so requested by the doctor…

…to address trust and respect in general, various measures – some of which were already being addressed – should be taken:

- **recruitment of a dedicated unit staff with a wide range of interpersonal skills, who understand the need to respect the cultural and religious customs of the detainees;**
- **introduction of a comprehensive induction programme, with a follow-up several weeks after admission;**
- **flexibility in the unit timetables in order to enable the detainees to take full advantage of the opportunities offered without having to forego their prayer time;**
- **adjustment of certain measures to the smaller numbers present in the detainee units: for example, prison officers do not need to shout out activities when only a few persons are concerned – the persons could be contacted individually;**

- **involvement of detainees in discussions and consultations concerning their treatment and conditions of detention should be encouraged and measures to address concerns communicated by the detainees should be acted upon promptly, and clear explanations provided;**
- **opportunities to associate outside the units should be provided to the detainees;**
- **measures to brighten up the units should be taken.**

The CPT recommends that the United Kingdom authorities take the appropriate measures in light of the above remarks.

18. The Government agrees with the Committee that the development of trust – especially between detainees and the medical staff – is a prerequisite for the effective clinical treatment of detainees. It is generally the case that in the first two weeks after admission to custody there is an initial lack of trust between detainees and medical staff. But after that, relationships generally improve. Nevertheless, Long Lartin has redeployed the female mental health nurse, replacing her with a male colleague who speaks French and Arabic. Relations between staff and detainees have improved considerably as a result.

19. A dedicated Detainee Unit team has been established at Long Lartin. It consists of a Wing Governor, a senior officer, and 18 other selected officers, who are undergoing specific training which aims to address the level of interaction between staff and detainees. Each detainee is allocated to an individual officer who meets the detainee personally once every fortnight. In addition, unit staff and detainees interact in the gymnasium during dedicated gym sessions held three times per week. The Wing Governor is addressing the points raised by the CPT through the creation of a 'Detainee Unit Development Action Plan'. This identifies shortfalls in any aspect of regime delivery, and sets appropriate action points to address such shortfalls. The Unit Governor and Head of Residence review the plan monthly. In addition, a management meeting, which detainees can attend, and of which a record is maintained, is held every month. This is complemented by an additional fortnightly meeting to address any health concerns.

20. A second induction session is now provided at Long Lartin. It focuses primarily on health provision, consolidates understanding of procedures explained at the first induction, and also attempts to resolve any outstanding issues from the initial reception. This proposal was explained to the CPT during its visit.

21. The current regime caters for Friday prayers, and timings are adjusted to accommodate the requirements of the Islamic religious calendar. The Unit has a dedicated multi-purpose room that has been used for prayer. Furthermore, in accordance with advice provided by the imam at Long Lartin, and with Prison Service policy, Muslim detainees are not required to attend other activities during Friday prayers or during a recognised religious festival.

22. The Government agrees that management practices appropriate to bigger units may be inapplicable in a smaller unit with fewer detainees. The Prison Service is committed to reviewing its management practices and will consider making changes when appropriate.

23. The Government agrees that it is important to involve detainees in consultation processes. The monthly management meeting – where issues can be raised in a supportive environment – provides detainees with such an opportunity to engage with management. In addition, detainees are also involved in prisoner discussion groups such as the Race Relations Management Meeting, and the Foreign Nationals and Prisoner Consultation group meetings.

24. The Government agrees that it is important to provide detainees with opportunities to associate outside the unit. Detainees can take part in activities outside the unit such as educational activities, use of the gymnasium and library, and work.

25. Measures to brighten the unit, along with extensive refurbishment of existing facilities, are planned – including the creation of a 'safer cell' for any detainee who may feel vulnerable to self harm, and a specially adapted cell that can cater for any detainee with a disability or health issue.

Paragraph 21
Recommendation by the Committee

The CPT recommends that steps be taken to ensure that all medical examinations of persons held in prison are conducted out of the hearing and – unless the doctor concerned requests otherwise in a particular case – out of the sight of prison officers.

26. The Government accepts the CPT's recommendation that all medical examinations should take place in an atmosphere of confidentiality. All medical examinations now take place in the health care department, behind a closed door, with only a health care professional present.

27. All detainees undergo a medical examination when entering Long Lartin. If strip-searching is deemed necessary, staff are mindful to avoid treatment that might be considered inhuman or degrading. Questions asked of incoming detainees have been amended to include direct questioning about physical injury or abuse. In addition, staff are aware of the need to report any injuries for further investigation.

Paragraph 22
Comment and recommendation by the Committee

The detainees arrested on 11 August 2005… were unable to exercise… expeditiously [the right of access to a lawyer from the outset of deprivation of their liberty].

The CPT recommends that in the case of further detentions of this nature pursuant to the 1971 Immigration Act, special measures are taken to ensure the right of access to a lawyer and the right to notify a third party of the fact of detentions are guaranteed as from the outset of deprivation of liberty.

28. The Government appreciates that the right to consult a solicitor is an important safeguard for detainees, and this right is only delayed in the exceptional circumstances set out in Schedule 8 to the Terrorism Act 2000. The Act states that where a person is detained, he must be allowed to exercise his rights within 48 hours from the time of arrest (or if he was being detained under Schedule 7 when arrested, from the time his examination under that Schedule began). The detainees arrested on 11 August 2005, were taken into police custody, and were allowed to exercise their right to consult a solicitor as set out in the Act.

Paragraph 23
Comment and recommendation by the Committee

Many detainees… complained about their transportation to Full Sutton and Long Lartin Prisons.

The CPT recommends that the UK authorities review the system of transportation of detained persons in light of the above comments; it would also like to be informed about the specific measures taken to ensure that the transportation of detained person is carried out under decent conditions.

29. Five detainees were transferred from Woodhill Prison to Long Lartin on 11 August 2005. Four detainees were transported in a Category A prison vehicle; the fifth, due to his disability, was transported by taxi.

30. While in the van, the men would have been handcuffed. This is a standard security procedure for the movement of Category A prisoners. The handcuffing of prisoners is always subject to an individual security assessment. The vehicles used contain private single cells (not metal cages). The construction of the vehicles is such that no prisoner can be seen by the others. If there is a need for a prisoner to urinate and it is not possible for the vehicle to be halted in a secure location then a receptacle would be provided.

31. There is no record of any of the four urinating in the course of the journey. For a person to be able to urinate in front of any other person, they would have to be released from the cellular accommodation and then do this in front of staff.

32. The journey from Woodhill prison is no more than 90 minutes. Where a journey is in excess of two hours, comfort breaks are scheduled if possible, although these have to be in secure accommodation (a secure prison or a secure police station – not a motorway café).

33. The journey time from Belmarsh to Full Sutton is approximately three hours. Due to the security classification of the individuals, any journey stop would have to be made in a secure location. On this occasion a stop was not scheduled. However, there is no record that any of the men moved to Full Sutton on 11 August 2005 requested a toilet stop.

34. The prison service vehicle used for the journey to Full Sutton was no different to that used on the journey to Long Lartin. No prisoner would have witnessed any other prison urinating at any time.

b. Broadmoor High Secure Hospital

Paragraph 25 and 26
Comments and recommendation by the Committee

The delegation met with B, who had been (re-)transferred to Broadmoor High Secure Hospital (a psychiatric hospital) from Long Lartin Prison on 8 September 2005.

…no doctor-patient relationship was in evidence, and B seemed to have developed a mistrust of the treating staff…

35. 'B' is under the care of a Clinical Team led by Dr. Andrew Payne. Dr Payne is an experienced Consultant Psychiatrist who knows 'B' from his previous admissions to Broadmoor Hospital. 'B' is housed in Luton Ward, a 16-bed male admission ward.

36. Dr. Payne reports that 'B' has intentionally distanced himself for reasons relating to the terms of his detention, and not because of any dissatisfaction with his clinical care.

…it was clear from discussions with the staff that they saw their role as mainly custodial and only marginally therapeutic, if at all. For example, staff continued to shine their torches into B's room at night despite being aware that it caused him distress and to re-experience previous traumas.

37. Broadmoor Hospital is a high security hospital that provides care and treatment to detained mentally disordered offenders. Broadmoor aims to provide individualised assessment and treatment for all patients which actively engages the patient in treating their mental illness and focuses on risk reduction.

38. Staff employed at the hospital come from a range of healthcare disciplines. Staff training emphasises a therapeutic approach, but it is recognised that on occasions staff can get the balance wrong between ensuring a therapeutic environment and maintaining security. That is addressed with individual members of staff when it arises.

39. As part of the hospital's policy, staff have a responsibility to observe and check the well being of patients regularly. Night-time can present difficulties. Following discussion with B, staff had been advised to switch the light on rather than use a torch. On occasions, when different staff were deployed on the ward, this did not happen and torches were used.

…B requires a therapeutic approach. This necessitates placing him in a less oppressive environment conducive to establishing a proper doctor-patient relationship and to implementing an appropriate treatment plan for him…

40. B's admission was directed by the Home Office. In the Hospital's view, it would have been more appropriate for B to receive treatment in a less secure hospital or in the community. He was returned to Long Lartin in February 2006, and readmitted to Broadmoor on the direction of the Home Office in April 2006. He was granted bail in principle by SIAC on 11 April 06. He remains in Broadmoor as no agreement has been reached between the Home Office and his local services at the Royal Free Hospital in London to facilitate his move to a more appropriate therapeutic placement. In the meantime Broadmoor continues to offer him appropriate psychiatric treatment. However, the hospital is still having difficulty in persuading B to co-operate with any therapeutic intervention.

41. The ward is staffed by two consultant psychiatrists, two junior doctors, and a full multi-disciplinary team composed of psychologists, occupational therapists, social workers, twenty-five qualified mental health nurses, and twenty-five unqualified healthcare assistants. This extensive team has sole responsibility for the assessment, care and treatment of patients on the Ward. Patients and staff in the ward have access to a comprehensive range of primary health care facilities within the wider hospital – access to a General Practitioner, Dentist, Opticians, Chiropodist, Physiotherapist and Dieticians. The Clinical Team meets weekly to ensure that the treatment plan for each patient is consistent with their individual needs. The agreed care plan is overseen by nursing staff on the ward, and they are supported by other professional staff who have input into the programme provided for the patient. In addition, a Primary Nurse from the Clinical Team sees individual patients daily and there is also a daily meeting amongst nursing staff, at which each patient is discussed. Specific issues are raised and communicated to the wider Clinical Team and Service Managers as required. A senior Service Manager visits the ward daily to address any particular issues of concern. His findings are shared with management within the hospital at a weekly management team meeting.

    (Footnote 14)
    All medication was abruptly halted when he [B] was taken from Royal Free Hospital to Long Lartin Prison and had not been reinstated when he was transferred to Broadmoor High Secure Hospital.

42. B discontinued his medication voluntarily when he was taken to Long Lartin. On his return to Broadmoor, the Broadmoor Clinical Team reviewed his medication needs at their weekly meeting and felt that there was no clinical indication to restart his medication. Prescribing medication is only one of a range of interventions available to clinicians. The Clinical Team did not regard this as a preferred treatment in B's case.

    (Footnote 15)
    B's request to be transferred to a medium security ward was being held up as apparently the medical records from Long Lartin Prison were requested in order for his doctor to write up a feasibility report.

43. Patients are moved from the admissions ward when the clinical team has completed its assessment and determined the best placement within the high secure hospital – either in a high dependency ward or in an assertive rehabilitation ward. Such moves are not dependent on the availability of a patient's notes from another establishment.

    The CPT recommends that the UK authorities take the necessary steps to review the treatment and conditions of detention for this patient, in the light of the above remarks.

44. B's situation was reviewed in a bail hearing on 11 April 2006, and it was decided to grant him bail in principle. His solicitors are considering appropriate bail addresses. Notwithstanding that, serious consideration has been given to the comments raised in the Committee's report, and B continues to receive treatment as detailed in paragraphs 40 to 43 above.

B. Persons detained by the police pursuant to the Terrorism Act 2000

Paragraph 29(a)
Comment by the Committee

…one person, detained between 8 and 15 October 2005 under the TACT and subsequently, from 15 to 17 October 2005 under the Immigration Act, alleged that he had been ill-treated both at the time of his arrest and during the time he was formally in custody in Paddington Green Police Station (but not while on its premises)…

45. The UK Government, the Police Service and the Home Office would deplore the use of any physical violence by police officers against any detainee, whatever the reason for their arrest. The Police and Criminal Evidence Act 1984 (PACE) and the Police Reform Act 2002 are designed to prevent such actions, but in the extremely unlikely event of such behaviour occurring, the Acts provide specific measures for the detainee to make an official complaint.

46. Following the CPT's complaint to the Metropolitan Police Service (MPS) on behalf of an individual arrested under the Terrorism Act and taken to Paddington Green Station that he had been seriously ill-treated while in custody, the MPS referred the matter to the Independent Police Complaints Commission (IPCC), as required under the Police Reform Act 2002.

47. The IPCC is an independent body set up following calls from police, campaign groups and families for a more robust element in the police complaints system. It has its own investigators to conduct or manage enquiries into allegations of police misconduct. It can also supervise police investigations into allegations.

48. The IPCC began an investigation into the allegations of ill-treatment at Paddington Green Station. These fell into two parts: (i) an allegation that during his detention the individual was removed from the police station, handed over to 'civilians' at another address, and suffered ill-treatment; (ii) an allegation that excessive force was used during the arrest. The IPCC has determined that the first part of the allegations, those relating to torture, cannot be true. This follows a review of closed circuit TV evidence that shows that the complainant did not leave Paddington Green Station during the period of his custody there. The second allegation, relating to excessive use of force, is still being investigated under the supervision of the IPCC. This will include a scrutiny of the medical evidence. If the investigation uncovers material that suggests a possible criminal charge, then the matter will be passed to the Crown Prosecution Service to decide whether to prosecute.

Paragraph 29(b)
Comment by the Committee

…two persons who had been arrested in the early hours of 8 October 2005… alleged that, at the time of their arrest, they had been kicked and beaten with hard objects by the arresting officers while lying on the floor…

49. Following a review of the documentation covering the circumstances of the arrest, and an interview with the custody officer involved, the MPS has concluded that there is no evidence to support these allegations.

Paragraph 31
Recommendation by the Committee

…no more force than is strictly necessary should be used when effecting an arrest. Furthermore, once arrested persons have been brought under control, there can be no justification for their being struck by police officers. The CPT recommends the UK authorities to remind police officers once again of these precepts.

50. Police officers should use no more force than is reasonably necessary in the circumstances to effect an arrest. Individual officers risk criminal prosecution or disciplinary action if they use excessive force or act outside the powers they are given by law. Similarly, chief officers may face civil proceedings if their officers act unlawfully or inappropriately.

51. Police officers are trained in a number of unarmed or empty hand restraint methods and in the use of a number of items of defensive equipment, including batons, CS spray and handcuffs. Officers are taught the medical implications of strikes to different areas of the human body and how to provide appropriate aftercare. Instruction and guidance on the law in relation to the use of force and, the fact that this should be used as the basis for operational decision making, also forms an important part of the training. The training also includes use of communication skills to avoid conflict and confrontation.

52. Since the business of policing is so diverse, it will never be possible to train a police officer precisely how to deal with every situation they are likely to come across. It is therefore inevitable that occasions will arise where individual officers act otherwise than in accordance with their training. In such cases, provided the officer has acted reasonably and within the law their actions they should be supported. The Association of Police Chief Officers (ACPO) has responsibility for providing the guidance, which is reviewed and updated each year, and training to officers on the use of these techniques.

Paragraph 31
Recommendation by the Committee

…the CPT recommends the UK authorities verify the circumstances of the arrest of the two persons referred to in para (29)(b) and inform the Committee of any report thereon.

53. This matter is subject to a public complaint which is being investigated by the MPS Directorate of Professional Standards (DPS) under the supervision of the IPCC. Before the investigation can be concluded, further information is required from the persons who were detained. The DPS has made a number of requests for assistance and is currently awaiting a response.

Paragraph 33
Recommendation by the Committee

The CPT reiterates its recommendation that steps be taken to ensure that persons detained under terrorism legislation are always physically brought before the judge responsible for deciding the question of an extension of police custody.

54. Schedule 8 to the Terrorism Act 2000 (TACT) includes procedures for granting warrants for extension of detention. For security reasons, hearings may be conducted via video link between the court and the place of detention.

55. A judicial authority may grant a warrant of further or extended detention only if satisfied that detention continues to be necessary to obtain or preserve relevant evidence, and that the investigation is being conducted diligently and expeditiously. Detainees have a right of access to free legal advice during their detention and may raise any issues concerning their care or treatment at any time.

56. A detainee may make oral or written representations to the judicial authority about any application for extended detention, and they are entitled to be legally represented at the hearing. Such representations are subject to no restriction and may therefore include complaints about treatment in custody. If there are concerns regarding the detention of a suspect, a solicitor can also make this known to the judicial authority, who has ultimate responsibility for deciding whether the physical presence of a detainee at a hearing is necessary.

57. As the Government said in its response to the CPT's report on its July 2005 visit, it believes that robust and appropriate safeguards are in place to protect the rights of individuals detained under TACT.

58. Those arrested under section 41 of TACT are detained under the provisions of Schedule 8 to TACT, which provides for the treatment and detention of terrorist suspects. The wider provisions of the Police and Criminal Evidence Act 1984 (PACE) Code C on the detention, treatment and questioning by police officers also apply to those arrested under section 41.

59. A separate Code of Practice for the detention of terrorist suspects has been produced. The Code expands on the provisions of PACE Code C for the purposes of terrorist detentions and includes various safeguards against the mistreatment of detainees.

Paragraph 34
Recommendation by the Committee

…if the police do currently have authority to deny access to any lawyer for up to 48 hours, the CPT recommends that the UK authorities amend the relevant legal provisions so as to remove that authority and ensure that all persons arrested have the right of access to a lawyer from the outset of their deprivation of liberty.

60. The provisions of paragraph 8(1)(b) of Schedule 8 to the Terrorism Act 2000 allow a superintendent to authorise a delay of the detainee's right to consult a solicitor if he has reasonable grounds for believing that the exercise of that right would have one of the consequences set out at Paragraph 8(4) or (5). These include interference with, or physical injury to, any person; interference with the gathering of information about the commission, preparation or instigation of acts of terrorism; and the alerting of a person thereby making it more difficult to prevent an act of terrorism. Although exceptional, this envisages that such a period of delay may be necessary.

61. It is normal practice that where such an authorisation is made, the detainee will be offered another solicitor. However, there is no onus on the detainee to accept that offer. Paragraph 8(8) of Schedule 8 states that where the reasons for authorising a delay cease to subsist, the detainee must be allowed to exercise their right to consult a solicitor. The Act states that where a person is detained, he must be allowed to exercise his rights within 48 hours from the time of arrest (or if he was being detained under Schedule 7 when arrested, from the time his examination under that Schedule began).

62. The Government appreciates that the right to consult a solicitor is an important safeguard for detainees, and this right is only delayed in the exceptional circumstances set out by the Act. However, Schedule 8 to the 2000 Act and the PACE Code of Practice provide various other safeguards against ill-treatment as referred to in paragraph 57 and 58 above.

63. There are further procedures in place for independent monitoring of detainees, including from health care professionals and members of Independent Custody Visiting Schemes. The Government believes that in circumstances where the right to consult a solicitor has been delayed, these are effective safeguards against ill-treatment.

Paragraph 35
Comment by the Committee

Given the current recording system of examinations, upon carbon copies, whereby the custody officer counter-signs the medical form (thus permitting the doctor to be paid for the visit), many doctors are opposed, on ethical grounds, to recording in extenso their findings. The delegation was informed that doctors adopted different subjective criteria for carrying out their examinations and recording their findings.

64. The General Medical Council's guidance *Good Medical Practice: 3rd Edition May 2001* sets out the ethical standards that all doctors should follow in their work. At Paragraph 51, it advises: "You must be honest and trustworthy when writing reports, completing or signing forms, or providing evidence in litigation or other formal inquiries. This means that you must take reasonable steps to verify any statement before you sign a document. You must not write or sign documents which are false or misleading because they omit relevant information."

65. Specific guidance on standards and procedures for doctors carrying out medical examinations on detainees is set out in "Healthcare of detainees in police stations" published jointly for the Association of Forensic Physicians and the British Medical Association, which was annexed to the United Kingdom's response to the Committee's report of its July 2005 visit.

Paragraph 36
Comment and recommendations by the Committee

The [current] system [for recording examinations] is clearly not functioning effectively. It would be more appropriate, for example, if two forms were to exist: one would be a simple checklist for the doctor to complete, in order to permit detention and interviews to take place, which could be added to the detainee's custody record and viewed by the police officers; the other would be a medical record based upon a thorough medical examination…

The CPT recommends that the UK authorities review the current system of recording medical examinations in police custody suites in the light of the above remarks.

66. The Association of Chief Police Officers and the Home Office jointly commissioned the National Centre for Policing Excellence (NCPE) to produce Guidance on 'The Safer Detention and Handling of Persons in Police Custody'. This definitive guidance on custodial care was launched on 8 February 2006. The Home Office is working closely with ACPO and NCPE to support its implementation. The key focus throughout the guidance is risk assessment at all stages of the custodial process to ensure the safety of the suspect, of other detainees, of police and police staff and others who come into the custody suite. The management issues set out in the Guidance include recommendations about the use of the detainee medical form and the detained persons medication form.

67. The Police and Criminal Evidence Act 1984 Codes of Practice make it a requirement that a full record is kept of the reasons why a health practitioner was called to see a detainee and any clinical directions and advice given.

68. Following the examination of a detainee, the healthcare professional should record any clinical findings and directions in the custody record, unless there is information that must remain confidential and is not relevant to the effective ongoing care and well being of the detainee. In such cases, an entry must be made in the custody record indicating where the clinical findings are recorded.

69. The custody officer must ensure that all relevant information is made available to the healthcare professional, and that the healthcare professional makes available all relevant information to the custody officer. Medical notes are not part of the custody record, and care must be taken to ensure they are not disclosed to solicitors and Independent Custody Visitors (ICVs) while they are examining a custody record.

70. Paragraph 9.16 of PACE Code C goes on to say: "If a health care professional does not record their clinical findings in the custody record, the record must show where they are recorded. However, information which is necessary to custody staff to ensure the effective ongoing care and well being of the detainee must be recorded openly in the custody record". Paragraph 9.16 does not require a doctor to record in the custody record any information about the cause of any injury, ailment or condition if that appears capable of providing evidence that the detainee had committed an offence.

71. The Government does not see the necessity for a review at this time. It believes that the current system provides the ability for a healthcare professional to provide relevant information to the custody officer, confidential information for use by other healthcare professionals only, and the requirement to produce a care plan on the care of the suspect whilst in police custody.

Paragraph 37
Recommendation by the Committee

The CPT recommends that appropriate measures be taken to ensure that all medical examinations of persons in police custody are conducted out of the hearing of police officers and, unless the doctor concerned requests otherwise in a particular case, out of the sight of such officials.

72. The Government agrees that information about the health of detainees must be kept confidential and only disclosed with their consent, or in accordance with clinical advice when it is necessary to protect a detainee's health or that of others who come into contact with them. There is no provision to say that a police officer must be in attendance when a detainee is examined by a medical practitioner.

73. Custody suites should normally have a separate medical room for assessments and examinations of detainees by healthcare professionals, in accordance with recommendation 38 of the Report of the Home Office Working Group on Police Surgeons in April 2001. Section 12.6.5 of the *Guidance on the Safer Detention and Handling of Persons in Police Custody (February 2006)* also contains recommendations on how to ensure the safety of healthcare professionals without infringing the privacy of consultations.

74. Medical rooms are used solely for medical purposes and rooms are fitted with emergency call systems in case a healthcare professional feels in danger or requires assistance for some other reason. A police officer is permitted to be to be present in the event of a threat to healthcare professionals. Total exclusion of a constable in every situation could result in a violent detainee not receiving medical attention owing to the assessed risk. That would frustrate the Government's duty of care.

Paragraph 38
Comment and recommendation by the Committee

…examination of custody records revealed that they were not always filled in accurately…

The CPT recommends that the UK authorities ensure that custody records are filled out comprehensively and accurately.

75. Custody officer training modules place additional emphasis on the importance of the custody record. The 1984 Act and PACE Code C place a specific statutory requirement on the custody officer to ensure that the custody record is accurate and complete, and that the custody record provides a complete record of the person's stay in custody. Failure to comply with these provisions does not in itself render an officer subject to any criminal or civil proceedings. However, the officer will be liable to disciplinary proceedings for failure to comply with the Code and, in the event that the case comes to court, any evidence gathered whilst a breach has occurred may be subject to adverse comment during those proceedings.

Paragraph 39
Comment and recommendation by the Committee

…at Paddington Green Police Station, outside exercise was still not systematically offered every day and, when it did take place, it was limited to some 20 minutes and took place under unsatisfactory conditions. The norm should be that all persons held in detention for more than 24 hours are offered the opportunity to take outdoor exercise every day. The CPT recommends the necessary measures be taken to this effect.

76. Section 8.7.of Code C, of the PACE Codes of Practice, provides that detainees are entitled to brief daily outdoor exercise where practicable. The Metropolitan Police has set Standard Operating Procedures for all events and contingencies. Whenever operationally possible all prisoners will receive adequate exercise (20 minutes is the norm) under the following guidelines:

- Only one detainee will be exercised at a time and at least two officers will escort them. In addition, officers will guard all access points.

- Outside exercise outside will be within the perimeter of the yard or in the enclosed yard area dependent on:
  - the detainee's wishes;
  - a risk assessment that outside exercise is appropriate;
  - the clemency of the weather;
  - sufficient staff to safely facilitate outside exercise;
  - other operational activities that might prevent the use of the yard; and
  - the stage of the investigation.

- The security of prisoners is paramount, and any exercise must not compromise it.

77. Outdoor exercise is manpower-intensive to arrange, and where there are several prisoners the procedure is time consuming. Paddington is an operational police station, and exercising any prisoners has implications for the running of the rest of the station.

78. Exercising prisoners is considered on a daily basis. If not granted, the rationale for refusal is detailed on the individual custody record. In addition to this exercise in the yard, detainees are able to spend some time on short breaks in another secure area within Paddington Green Police Station.

Paragraph 39
Comment by the Committee

The CPT must reiterate that the present conditions at Paddington Green are not adequate for prolonged periods of detention.

79. The Government has produced a separate Code of Practice on the detention of individuals under section 41 of, and Schedule 8 to, the Terrorism Act 2000. One of the key changes included in the Code is for detainees to be transferred to a prison once a warrant has been obtained that would take the period of detention beyond 14 days. This is to ensure that detainees have access to the facilities of an institution equipped for longer periods of detention.

C. Control orders

Preliminary remarks

Paragraph 41
Comment by the Committee

…in the Committee's view it cannot be ruled out that the cumulative effect of the obligations imposed by such a control order on a given individual might in certain circumstances be considered as a deprivation of liberty…

80. The UK provided a full explanation of the control order system in its response to the Committee's report of its visit to the UK of 14 to 19 March 2004. In summary, the Prevention of Terrorism Act 2005 provides for the making of control orders against individuals whom the Secretary of State has reasonable grounds for suspecting are involved in terrorism-related activity. These measures can be applied to any individual, irrespective of nationality, and whatever the nature of the perceived terrorist cause.

81. Control orders are preventative orders which place one or more obligations upon an individual which are designed to prevent, restrict or disrupt his or her involvement in terrorism-related activity. These obligations are based on a range of options that can be employed to tackle particular terrorist activity on a case by case basis. These could include, for example, measures ranging from a ban on the use of communications equipment to a restriction on an individual's movement.

82. In his quarterly report to Parliament on the operation of the control order powers of 12 June 2006, the Home Secretary reported that there were 14 control orders in force. With the exception of the orders made in respect of the individuals formerly detained under Part 4 of the Anti-Terrorism, Crime and Security Act 2001, all of the control orders currently in force have been made with the permission of the High Court. To date, the Government has not sought derogation from Article 5 of the ECHR.

83. It is the Government's firm belief that the 2005 Act is fully compliant with the European Convention on Human Rights (ECHR) and contains rigorous safeguards to protect the rights of the individual, including judicial oversight and reporting and renewing requirements. This view was endorsed by the Court of Appeal on 1 August 2006, which overturned the High Court ruling of 12 April 2006 that declared the legislation incompatible with Article 6 of the ECHR. Further, the Government does not accept a subsequent High Court ruling that six of the control orders made under the Act have imposed obligations that are incompatible with the right to liberty under Article 5 of the ECHR. The Committee will be aware that this ruling was upheld by the Court of Appeal on 1 August 2006.

Practical application of the control orders

Paragraph 42
Comment and recommendation by the Committee

The control orders were served with no accompanying warning or explanation as to how they should function and there was an apparent lack of any uniform interpretation of what was, and what was not, permitted by the orders. The result was confusion, uncertainty and even anguish on the part of those detained under the ATCSA and subsequently issued with a control order…

…The CPT recognises that teething problems are inevitable when a novel mechanism of control is introduced in a short space of time. However, the CPT recommends that the United Kingdom authorities take the relevant steps to avoid a repetition of a similar situation.

84. The Government disagrees with the CPT's view that control orders carry "no accompanying warning or explanation as to how they should function". Each order is, in itself, a legal document specifying certain obligations under which the individual has been placed. The obligations themselves are clear on what is permitted, and what is not.

85. Where any uncertainty arises, the individual subject to the order is entitled to enquire, either through legal representatives or through the Home Office Control Order Contact Officer, whether an obligation means that they are entitled to take a specific course of action. There has been frequent correspondence between the Home Office and all individuals subject to control orders, clearly indicating that they are aware of this channel of communication and are willing to use it.

86. The Government welcomes the CPT's recognition that any new procedures will inevitably involve teething problems. Where uncertainty has emerged in respect of any obligations contained in a control order, the Home Office has taken the opportunity both to clarify the wording of obligations in future orders, and to explain its interpretation of existing wording through correspondence with those subject to orders in force. A recent example involved the Home Office clarifying that the obligation to hold no more than one "account" with a financial institution included both bank accounts and credit card accounts.

87. The Police have taken a pragmatic interpretation of any minor infractions of obligations, in line with the requirement that any successful prosecution requires an assessment by the court that the individual in question did not have a reasonable excuse for breach. No prosecutions have been initiated for minor infractions of orders in the early stages of monitoring.

Paragraph 43
Comment by the Committee

The control orders placed a restriction on movement, confining each person to his home between the hours of 7 pm to 7 am, and imposed a raft of other measures which made leading a normal life difficult not only for the persons concerned, but also for their families.

…taking part in educational or exercise classes required the Home Office to verify the activity and to screen all the other participants.

88. It is not the case that control orders by their nature involve a curfew from 7 p.m. to 7 a.m. – and indeed there are currently five control orders in force which do not impose any curfew. The inclusion of a curfew in any individual's obligations may be part of the specific tailoring of any order to address the individual's terrorism-related activity, which the order is intended to disrupt. Furthermore, in each case, the individual's circumstances – including an assessment of their domestic arrangements, and any family they are living with – are taken into consideration when the package of obligations is drawn up.

89. It is also not the case that attendance at educational or exercise classes is prohibited unless full screening of all other participants takes place. Where an individual makes a request to attend any specific meeting, reasonable steps are taken to ensure that acceding to such a request would not allow the individual to continue the terrorism-related activity the control order is designed to address. In the case of attendance at a particular college, this may include ensuring that the subject does not have access to items that their control order restricts them from using or having in their possession, such as mobile telephones or computers with access to the internet.

90. As the Government has consistently made clear, the obligations in each control order are carefully designed to address the particular behaviour displayed by the individual.

Paragraph 44
Comment and request for information by the Committee

It appeared that quite frequently during the night, when the persons concerned and their families were asleep, the tagging devices became faulty; the consequence was that the police would arrive and insist on searching the whole premises, even after ascertaining the presence of the person under control orders.

The CPT would like to receive the comments of the United Kingdom authorities as regards the reliability of the monitoring equipment and the related interventions by the police.

91. Tagging is not solely used in control order cases, but has many applications in the criminal justice system in the UK. However, with respect to their use in conjunction with control orders, the CPT correctly observed, "teething problems are inevitable when a novel mechanism of control is introduced". Prior to service of a control order an assessment of the proposed accommodation takes place to ensure that the tagging mechanism will carry sufficient power to ensure that there is no unnecessary interruption to the signal. If there is any weakness in mobile signal a dedicated landline is promptly installed so that there is no other interference with the monitoring system. In addition, in the event of radio frequency (RF) 'black spots' (where the RF signal fails due to metal structures such as metal baths etc) additional antennae are installed within the premises to extend the RF range.

92. Individuals subject to control orders that require the wearing of an electronic tag are fully briefed about the operation of monitoring equipment. This includes provision of a booklet with further information, and the use of an interpreter where necessary.

93. Difficulties encountered with monitoring equipment are uncommon. The tagging system rarely malfunctions due to equipment failure, and where malfunctions do occur, the equipment is replaced. A recent independent inspection by the National Audit Office reported that the equipment was robust and reliable. The full report is available online at http://www.nao.org.uk/publications/nao_reports/05-06/0506800.pdf .

94. Where a breach of a subject's obligations is suspected, the Police will investigate thoroughly, which may involve a search of the premises. Clearly, ensuring compliance with an obligation to remain inside the residence during set hours is critical to managing the threat to national security posed by the individual.

Paragraph 46
Comment and recommendation by the Committee

When interviewed by the delegation's psychiatrist on 22 November 2005 in Long Lartin Prison, P was severely depressed and his symptoms of PTSD had increased since the previous interview in July 2005, and a sense of apathy and hopelessness had taken over. The risk of suicide was higher.

The CPT recommends that the United Kingdom authorities make every effort to ensure that P is provided with proper treatment in a conducive environment.

95. Whether P is in custody, in detention, or at liberty, it is the duty of the local National Health Service Primary Care Trust to provide for his physical and mental health care. As with all controlled individuals, P has access to the physical and mental health care provided by his local Primary Care Trust.

96. The Government does not accept that P's mental health problems could not be treated while he was subject to a control order. Furthermore, mental health issues do not prevent an individual from posing a threat to national security.

Paragraph 47
Comment and request by the Committee

…the control order [on X] had imposed a regime which is not compatible with his existing state of health… his withdrawal (evident in his apathy, emotional numbness and sense of hopelessness) was symptomatic of someone with a serious depression.

The CPT requests that the United Kingdom authorities review the conditions of his control order in the light of the above remarks.

97. The control order imposed on X has been kept under regular review. For example, the requirement for him to wear an electronic tag was withdrawn following his successful challenge to the High Court. Instead, on the instruction of the Court, he is required to phone the electronic monitoring company twice during the curfew period. Again, following a request for a variation of the conditions of the control order, the Home Secretary has agreed to alter those call times in accordance with the Islamic prayer calendar. X's control order was renewed in March 2006. Each renewal requires the Home Secretary to review whether it is necessary, for purposes connected with protecting members of the public from a risk of terrorism, for an order imposing obligations to continue in force, as well as whether the obligations that an individual is placed under are necessary in order to prevent or restrict involvement by that person in terrorism-related activity.

98. Regular internal reviews of control order obligations have taken place since the first control order was served in March 2005. However, on the recommendation of Lord Carlile, the independent reviewer of the legislation, the Government has established a Control Order Review Group to keep all control orders under review on a quarterly basis to ensure that the obligations remain necessary and proportionate to the threat the individual subject to the order poses.

Paragraph 48
Request by the Committee

The CPT requests the United Kingdom authorities to ensure that the physical and psychological needs of each person subject to a control order are adequately catered for.

99. Control orders do not restrict an individual from attending to their own physical or psychological needs. The Government considers that all the individuals currently subject to control orders have sufficient freedom to be able to take advantage of health and psychiatric facilities made available to all members of the community. Where an individual is in distress, they may attend their General Practitioner's surgery, or a local hospital, and seek a referral. In addition, where individuals are subject to electronic monitoring, equipment provided is specifically designed to enable an individual to make calls to the emergency services. The Government would never seek to restrict an individual's access to emergency medical support.