

PAVA—The Director General’s letter of 23 June: A commentary

The Director General for Prisons, Phil Copple, has replied to our letter of 23 June, and we have [published his response on our website](#).

The letter contains no apology for the secretive way in which the public commitment given in mid-April to pause PAVA rollout for 3 months was broken the following month. It contains only the most general justification for that decision, even now, stating that the wider rollout was “to ensure that this capability was available at a time of heightened risk of disorder and depleted staffing levels”. We now know that almost all prisoners have spent all of the last 3 months locked in their cells for over 23 hours a day, and that staffing levels, thanks in part to a generous overtime scheme, have been more than adequate throughout. But perhaps more concerning is that this represents yet another subtle shift in the list of justifications for deployment of PAVA—which now apparently includes “restoring order”. That opens the possibility of indiscriminate use against a group of prisoners, more akin to the use of tear gas for riot control than to the closely defined purposes set out when the spray was first allowed in the four pilot prisons.

There is no commitment by commitment response in the letter. It still refuses to disclose the actual commitments given to the EHRC, yet asks us to trust that they have been met. Instead, it repeatedly emphasises that PAVA use is subject to “active monitoring” both “nationally and through the operational line”. But there is not a single number or other indicator in the letter derived from that national oversight. We still do not know when, why, on whom or by whom PAVA has been used. We still are not told if anyone, in two and a half years, has been subject to either investigation or disciplinary procedures following any deployment of PAVA. Yet all this information is presumably available to the “Executive Directors with responsibility for prisons” as part of their “close oversight”. Without it, it is hard to see what that oversight can amount to.

Much is made of the improved guidance and policy framework in preparation. But the criticism of PAVA deployment, and abuse of force more generally from PRT and others, including the Council of Europe Committee for the Prevention of Torture, has not been principally about the guidance to which staff are supposed to operate. The guidance for the use of PAVA in the original pilot was clear. The problem was, and is, that guidance is so often ignored.

On the issue of discrimination, the letter promises better data gathering, and improved training in the future, but without a timetable. However, the fact of discriminatory use of force, especially in relation to race, is already established and acknowledged by the Prison Service in its equality assessment. For the “action” in this area to be at some unspecified point in the future, two and a half years after PAVA was first deployed, and now after a decision to deploy it across the whole adult male closed estate without any of those actions completed, strongly suggests that the Prison Service has decided to avoid its statutory obligation. It could not be further from the Lammy principle of “explain or reform”.

Finally, the letter deals with the issue of inadequate or, for the bulk of the rollout, non-existent, readiness assessments. A readiness assessment, it now appears, is not an assessment of readiness at all. The process was apparently created only “in order to prepare establishments for the introduction of the new tools and training”. But on 9 May 2019, the then Lord Chancellor had written to say:

“As part of the roll out to all adult male estate, each establishment will undergo a thorough and robust readiness assessment before it can deploy PAVA.”

The same letter finishes with the statement:

“I fully agree that we do not want to destabilise efforts to improve safety already underway which is why PAVA will be introduced after a thorough readiness assessment and as part of a wider range of safety initiatives”

That all sounds like the readiness assessment was considered a vital safeguard. It appears not after all.

The Director General’s letter only reinforces the impression that PAVA deployment is out of control at the centre just as much as it has been in prisons. We are asked to trust central scrutiny despite the complete absence of any data to show that that scrutiny is occurring, still less that it is effective. We are invited to be reassured by processes which do not yet exist or have simply been abandoned in the rush to issue PAVA to prisons where no-one has been unlocked for most of the last three months.

The letter concludes by saying that the current roll out of PAVA is an “exceptional arrangement and one that we will keep under review”. It comes as no surprise that the timing or manner of such a review is not included.

PRT awaits the Minister’s response to our letter on the same subject before we decide how to pursue this further.