

Lucy Frazer QC MP
Ministry of Justice
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15 January 2021

Dear Minister

PAVA

I wrote to you on this subject on 1 July last year. I have not received a reply but in the light of litigation which covered much of the same ground, I understand why that will have been the case. I am grateful for the disclosure of documents to PRT at the conclusion of that litigation, and for the regular reports we now receive concerning PAVA use. I welcome the fact that the department has given significant public undertakings as a consequence of the litigation. We have also been consulted about the revision of use of force policy and instructions generally.

All of this is welcome, but the majority of the requests for information made in my letter of 1 July remain unmet. I hope they might now be answered, but also that in the interests of bringing this correspondence to a close you might consider the scope for greater transparency in the central governance arrangements for PAVA and for use of force.

The questions that remain unanswered are:

- The national and local breakdown of different justifications for the use of force. For example, it would be helpful to know whether PAVA is used in circumstances where the person at risk is another prisoner, a member of staff, any other person, or the prisoner themselves, and whether physical harm has only been anticipated or has actually occurred
- The number of occasions on which central scrutiny has resulted in a concern being identified and raised with local management
- The outcome of those challenges
- The number of complaints received about PAVA use locally, and their outcome
- The number of investigations commissioned and completed following PAVA use
- The outcome of those investigations
- The proportion of staff who have undertaken mandatory training in unconscious bias.

Given the undertakings given at the conclusion of the recent litigation (reported in the EHRC's summary published shortly before Christmas), it would also be helpful to know:

- The number of incident forms so far returned to establishments as inadequate

- The status of work to improve the recording of disability generally
- Whether the digital tool for use of force recording has been rolled out by the end of 2020 as anticipated in correspondence during the recent litigation
- How assurance is obtained that individual prisoners affected by PAVA deployment are being engaged with as the instruction requires
- How many individuals showing any signs or symptoms of COVID-19 infection or influenza-like illness, for example flu, have been affected by PAVA use
- How many prisons to which PAVA has been deployed have now passed assessment demonstrating they are ready for PAVA use, and completed a programme of staff training and briefing to prisoners, and how many have not
- What assessment has been made of the current adequacy of local use of force governance in each of the prisons to which PAVA has been deployed
- The current status of revised guidance on PAVA. Whilst we were pleased to be consulted on draft use of force policy documents and that several of our suggestions were adopted in some areas, we were disappointed that none of our detailed suggestions were taken up in relation to PAVA specifically.

I recognise the steps that have been taken to increase transparency in this area. The data we now receive regularly is helpful. But of course it raises questions. What we have been shown suggests that our fear that PAVA would be used disproportionately against people with protected characteristics is being borne out in some respects. It appears also to show that PAVA is often being deployed despite the presence of multiple staff on the scene (contrary to the expectation created when the decision to make PAVA available was originally taken). The absence of information which is collected but which we are not shown – for example in relation to the availability of fixed or body worn camera evidence – inevitably creates suspicion about why it is not shared.

During the litigation, it was made clear that the national use of force committee, which had been suspended during the pandemic, had resumed, and the department continues to express the hope that national use of force data might be published. We also made a series of suggestions for ways in which the national governance of use of force might be improved in a way that would build confidence in this crucial aspect of how prisons operate. I attach a summary of those suggestions. Given the progress that has been made on supporting scrutiny with better data collection, but also the distance still to travel to meet the undertakings reported in the EHRC's summary, I hope you might agree that those suggestions have merit and would welcome your response to them.

Yours sincerely



Peter Dawson
Director
Prison Reform Trust

Possible PAVA governance safeguards

Data

Crucial that this data is published, quarterly, both aggregated and for each individual prison, and includes:

- Number of occasions on which PAVA is a) drawn and b) used, split by
 - Justification
 - Prisoners subject to use, showing:
 - Ethnicity
 - Age
 - Disability
 - Religion
- Proportion of incidents for which use of force forms completed:
 - On time
 - Inadequately (for example, because no F213 has been completed to show what medical attention has been given to the prisoner)
 - At all
- Number and proportion of incidents which are locally determined to be outwith guidelines, split by ethnicity, age, disability and religion
- Number of investigations commissioned, split by ethnicity, age, disability and religion
- Number of investigations completed --- “ ---
- Outcomes for completed investigations ---“-----
- Complaints received about PAVA use ----“-----
- Complaints responded to ---“-----
- Outcome of complaints (proportion upheld) ----“-----
- Proportion of incidents for which video footage from either body worn cameras or fixed cameras is available -----“-----
- Number of occasions on which failure to wear or activate body worn camera has led to disciplinary proceedings
- Outcome of those proceedings
- Number of staff who have drawn or used PAVA on more than one occasion in previous 12 months
- Proportion of staff trained in keyworking
- Proportion of profiled keyworker hours delivered

Accountability mechanisms

Locally (i.e. each prison):

- Use of Force committee meeting regularly, with prisoner and external representation
- Required to examine every PAVA use, including viewing of video footage
- Also required to investigate circumstances leading to each use, beyond the moments leading up to it, as an exercise in identifying original source of conflict that eventually precipitated violence and the reasons such conflicts were not resolved

- And to interrogate prisoner perceptions of impact of PAVA use on relationships between prisoners and staff
- Has in place tests to assess the presence and efficacy of reasonable adjustments in preventing unnecessary use of PAVA
- Required to examine the handling of all incidents which were investigated as possibly outwith guidelines.

Centrally (HMPPS HQ)

Existing quarterly Use of Force committee to be reconstituted as follows:

- Prison and Probation Ombudsman as permanent member
- Independent Advisory Panel on deaths in custody as permanent member
- External representation capable of representing a prisoner perspective
- Examines the data outlined above prior to publication
- Commissions “dip test” sampling of local video footage, complaints responses, local governance and prisoner opinion
- Commissions independent evaluation, paid for by HMPPS and to be complete by July 2021, of impact of PAVA on equal treatment, violence, safety and relationships
- Identifies prisons where there is inappropriate or apparently disproportionate use and satisfies itself that those establishments have put in place valid steps to remedy the inequality
- Empowered to require withdrawal of PAVA from a particular prison pending satisfactory completion of remedial measures
- Publishes minutes.

Review and response

- Published annual Use of Force review, including PAVA data and evidence from “dip testing”
- Commitment to complete and publish review of PAVA policy nationally by December 2021 in light of independent evaluation.