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Dear Phil,

PAVA

Thank you for your letter of 6 February. As I said when we last met, I acknowledge the care you have gone to personally to secure a more transparent and helpful response to my many queries. While we may not agree about the wisdom of rolling out PAVA we are at one in a desire to see its use kept to a minimum.

I'm afraid I do have remaining questions, set out in the annex to this letter. Andy Rogers and I were due to meet to discuss them and I sent him an earlier draft of this letter to inform that discussion. Unfortunately, Covid-19 intervened, and we have never been able to find time for that discussion.

The general point I would make, and which I think should concern the HMPPS board, is that there appears to be a significant gap between the aspirations set out in the policy document/instruction that you sent me and what is happening on the ground. The monitoring and oversight mechanisms which should address that problem do not inspire confidence for reasons I set out in the annex—in particular, an inadequate readiness assessment in the one example we've seen, a worrying assessment by HMCIP following an inspection of Wealstun, repeated problems with the use of body worn cameras and availability of footage from them, centrally held figures on use against people with disabilities that seem to be incorrect, and a worrying cluster of complaints to our helpline about use of force, including PAVA, from Hull.

I'm grateful for the offer to be involved in the design of a monthly dataset for PAVA and will discuss this with Andy when we eventually meet, but there are transparency issues that go well beyond that and which are described in the annex. It was particularly disappointing to see the views of the External Advice and Scrutiny Panel on PAVA (on which a PRT colleague sits) misrepresented in the government's update on the Lammy review, so you will understand why my desire to be helpful is balanced against the reality that the majority of commitments HMPPS has given on PAVA remain undelivered. As your letter describes, with all the right information to hand, everyone affected by PAVA—not just PRT—can help hold prisons to account for their compliance with what you intend. But we are not there yet.

Of course, since you wrote to me, events have moved on. First, the report of the Council of Europe Committee for the Prevention of Torture published on 30 April was devastating in its criticism of the management and oversight of use of force. Everything we have been saying about the gap between good intentions and some very disturbing actual practice was borne out and minutely evidenced.

Secondly, after being told that in mid-April that the rollout of PAVA was to be paused for at least 3 months in the light of the outbreak of the pandemic, we became aware yesterday that PAVA is now being issued to all trained staff across the adult male closed estate. No justification has been given for that decision, which appears to be in breach of every undertaking given up to this point.

You have been admirably and impressively clear about the importance of maintaining the legitimacy of the service's response to the pandemic in the eyes of prisoners. It seems clear, not least from the inspection report on 3 local prisons published earlier this week, that prisoners have responded very constructively to that approach. Putting to one side the breach of faith that the decision to issue PAVA across the adult male estate represents, I am deeply troubled that it risks undermining the consent which the service's management of the crisis so far has worked so hard to establish.

For all of those reasons, I would urge an immediate reversal of the decision that has been taken.

I am publishing this letter on our website and sending a copy to the Equality and Human Rights Commission, given their previous and continuing interest in the matter.



Peter Dawson

Director
Prison Reform Trust

Annex A

PAVA—outstanding concerns

Transparency

- The undertakings given by HMPPS to the Divisional Court to settle the case brought by the EHRC have still not been disclosed, so we have no way of knowing whether the prison service is keeping to the promises it made. The only information we have is from the EHRC press release and is limited and not specific.
- The operational guidance issued on 20 June 2019 and disclosed with Phil Copple's letter of 6 February 2019 does not appear to have been subject to any consultation process outside HMPPS and is marked official-sensitive. Three issues arise:
 - We have concerns about some of the guidance it contains, which we think should be adjusted, and would be interested to know if a review is planned
 - It refers to other documents which are not attached, in particular a Good Governance toolkit and apparently separate guidance on governance and assurance on use of force to support rollout
 - Prisoners and their representatives should have access to this guidance to inform any complaint they may wish to make about the circumstances in which PAVA has been used.
- Phil's letter of 6 February refers to a Use of Force Scrutiny Panel. We are not aware of this panel, its membership, terms of reference or the status of its deliberations, in particular whether minutes of its meetings are made public. We have serious concerns about the adequacy of scrutiny, both within and outside prisons, beginning with the original pilot but exacerbated by what we have seen since. It would be helpful to know more about this panel in the light of those concerns, and whether it is likely to offer any prospect of securing an improvement in external scrutiny.
- Data on protected characteristics continues to be a cause for concern. Phil's letter says that establishment returns cover disability data, which surprised us given the work in hand to roll out a new system capable of gathering that data. But it goes on to say that there have been no reports of the use of PAVA on a person with a declared disability. Given that the judicial review concerned a prisoner with a disability and at least two cases have been brought to our attention of prisoners with a disability having had PAVA used against them, and the case studies in the report of the pilot, it is hard not to conclude that the central monitoring process is inadequately informed about the issue at the centre of the judicial review.
- It is disappointing that data on justifications for PAVA use is promised only "in due course". We were originally told in a previous letter that the data was not held centrally. It is a relief to discover that it is, after all, but it is so central to the question of whether PAVA is being used appropriately that we think a date should be set for its publication, and that it is highly relevant to the question of how any further rollout proceeds. It holds the key to the question of whether revised guidance is being observed.

Readiness assessments

- We were grateful to see the Hindley readiness assessment, but, frankly, shocked by it. The criteria listed fall a long way short of the various public commitments HMPPS has made (leaving to one side the so far undisclosed commitments that were made to the divisional court). We have made a full list of those public commitments, attached at **Annex B**. However, even of the criteria that are listed in the readiness

assessment, the information provided in support of a conclusion that the prison is “ready” is often poor. For example:

- **“Body worn cameras in full use”**—the evidence is simply a number of cameras “in use”. But that does not tell us whether they are turned on when they should be, nor what proportion the number represents of the total that should be “in use”. There is no evidence about the availability of camera evidence for reviews, adjudications or investigations, despite the evidence from inspections and PPO investigations that BWCs are often either not turned on when they should be, or footage is “lost”.
 - **“OMiC key worker implementation”**—Readiness is assumed because it has been “signed off” despite the fact that there has since been “slippage”. On the face of it, a key test is not being met. (We now also know that two prisons using PAVA have not passed this test but are being allowed to continue regardless.)
 - **Training**—there is a good deal of information about promised training, but none about its actual delivery.
 - **Use of force**—there is evidence of a meeting taking place with data presented, but nothing about whether trends have been understood or action taken in response, a key public undertaking.
 - **Engagement with healthcare provider**—a “good relationship” is claimed, but no evidence on the specific elements of preparation and training required by the operational instruction, nor on staffing levels
- The assessment is not signed or dated and has no commentary. We are not aware what instructions have been given to PDGs in making their assessment nor what criteria for central moderation is applied. If this is the only evidence for considering that a prison is ready to use PAVA, the assurances given about the readiness assessment process count for very little. Phil’s letter implies that there is more to it, but it is not clear what form that takes, and in the specific case of Hindley, what challenge there was to the apparent inadequacy of the document we have seen.
 - We remain unclear about the process for ensuring that action is taken if a prison drops below what is required to deploy PAVA safely. I understand why HMPPS would be very reluctant to remove PAVA, but it must be a necessary implication of a process that determines “readiness” that such a step is possible.

Disciplinary outcomes

Phil’s letter does not tell us how many disciplinary investigations there have been concerning PAVA, only how many since the revised guidance was issued. I’m not clear why we should only be offered a partial answer. The reason for the question, of course, is that an adequate disciplinary response to misuse is an essential safeguard – regardless of the outcomes of investigations undertaken. If there has really only been one disciplinary investigation concerning the use of PAVA in two and a half years, it would be reasonable to conclude that that safeguard is ineffective given what the pilot showed, cases that have come to our attention since, and the wide disparity in use between prisons.

Discrimination

You will be aware that the government misrepresented the views of the External Advice and Scrutiny Panel (EASP) in its recent report on Lammy implementation and was forced to publish a retraction as a result. As **Annex B** shows, the service has made a range of commitments in relation to preventing discriminatory practice in the use of PAVA. So far as

we can see, most of those commitments remain unmet. That includes a lack of evidence that use of force committees are effectively engaging with prisoners with protected characteristics (as opposed to HMPPS having issued guidance that they should do so).

HMP Wealstun

According to HMCIP in his most recent inspection at HMP Wealstun:

“body worn cameras were rarely used and...in the incidents we reviewed, the use of PAVA had not always been necessary”

He also found *“incidents where the use of PAVA had been excessive but no action had been taken”*, and that there was no refresher training available.

You will have been as concerned as us by these findings, not least because they suggest that the checks that should be operating in the prison, in the PDG’s office and in headquarters were failing to pick up a pattern of non-compliance both in the use of BWCs and in the deployment of PAVA.

We are concerned on both counts—that PAVA should not be in use at Wealstun, and that multiple layers of internal HMPPS assurance have failed.

HMP Hull

Since January this year, we have received three separate and unrelated complaints through our advice service about use of force at HMP Hull, two of which involve PAVA. One involves a prisoner with a severe learning disability being sprayed by an officer sheltering behind another officer and without provocation. Another is an allegation that a prisoner has been sprayed in both eyes at very close range, one after the other, while handcuffed. The third also concerns a prisoner with severe mental health difficulties and alleges a series of unjustified and brutal attacks by staff.

As you would expect, we have ensured that the prison is aware of all three cases and have been reassured by the deputy governor that they are being looked into. But they deserve mention because there is a good deal of unusually persuasive detail in the accounts, and no indication of any relationship between the different prisoners involved. It is unusual for us to receive complaints of such severity in such quick succession from the same prison. It would be good to know whether the case reviews from Hull which you receive centrally have caused you similar anxiety, and whether any action has been taken as a consequence.

Unmet commitments

Annex B lists the public commitments that we know have been made in relation to PAVA, along with our assessment of whether they have been or are being met. It would be useful to know if you agree with our assessment and, if so, what action is being taken to improve the situation.

Annex B

PAVA rollout commitments and evidence of being met

Commitment	Source	Met by readiness assessment?	Met in another way
Requirement to record the protected characteristics of people it is used on	EHRC press release 20/8/19, following settlement of legal challenge	Not mentioned. National systems meet need in part, but no requirement in readiness assessment to check use or analysis of data as part of Use of Force meetings/governance	Only in relation to race, age and religion (FOI response 17/12/19). Specifically, not available in relation to disability, sexual orientation or gender reassignment
Stronger guidance on when PAVA can be used	EHRC press release 20/8/19, following settlement of legal challenge	Implicit – national guidance	June 20 guidance/instruction sent to PRT on 6/2/2020. Not currently in public domain. Concerns over some elements of it and not clear what consultation undertaken outside HMPPS before issue
“Individual prisons will have to demonstrate that they understand the trends in the use of force at their establishment, and any areas where it is being used disproportionately, before they are permitted to use the spray”	EHRC press release 20/8/19, following settlement of legal challenge	No. Assessment contains no analysis of trends, nor assurance that this has been done locally	National analysis demonstrates discriminatory practice in use of force, particularly in relation to youth, race and religion, accepted by MoJ in its published equality assessment. So, trend is “understood”, but without a plan to address the problem that analysis discloses. No data on disability, so no understanding possible in relation to that characteristic

<p>“More robust” training for officers using PAVA</p>	<p>EHRC press release 20/8/19, following settlement of legal challenge</p>	<p>Training plan examined. No assessment of quality of training delivered, nor of whether training plan has actually been delivered prior to invitation to PGD to sign off. In example given, assurance visit is on 1/10/19, but indicates bulk of training is to be delivered in November 2019</p>	<p>Training materials not in public domain.</p>
<p>Monitoring use of PAVA across the country</p>	<p>EHRC press release 20/8/19, following settlement of legal challenge</p>	<p>N/A</p>	<p>Provided in response to FOI (17/12/2019). Not clear what will be published routinely.</p>
<p>Involving race and equality officers in reviews of use of force in prisons</p>	<p>EHRC press release 20/8/19, following settlement of legal challenge</p>	<p>Not mentioned</p>	<p>Not provided for in national instruction. Not clear how checked or enforced</p>
<p>“Until an establishment can demonstrate that they have strong governance, understand trends in their use of force, and are taking tangible, swift action to address use of force issues then they will not be signed off for PAVA roll out”</p>	<p>HMPPS Equality Analysis: Use of Force, published September 2019</p>	<p>No assessment of understanding trends, nor of action taken in response.</p>	<p>No</p>
<p>A digital use of force reporting tool is being developed...we intend to publish annual statistics on our use of force in prisons”</p>	<p>HMPPS Equality Analysis: Use of Force, published September 2019</p>	<p>N/A – tool not yet in use</p>	<p>Prototype of tool exists and would help to meet many of concerns on data gathering if implemented successfully. No public commitment at present to implementation date, or evaluation, or first publication of national statistics.</p>

A national use of force committee will monitor use of force...with outside scrutiny members invited..."	HMPPS Equality Analysis: Use of Force, published September 2019	No role for this committee in readiness assessments	Not clear if committee has been established, its membership, terms of reference, transparency, or whether it has met
Ensure that all prison officers are trained as key workers	HMPPS Equality Analysis: Use of Force, published September 2019	Not clear – OMiC “sign off” does not require all staff to have been trained. Andy Rogers letter of 21/11/19 implies that only Hull and Preston of the 4 pilot sites have been signed off for key worker delivery	No – figures given only for pilot prisons, and not as a proportion of staff in post
All prisoners have been assigned a key worker	HMPPS Equality Analysis: Use of Force, published September 2019	Not clear – not checked as part of assessment for PAVA.	No
All staff are FMI (five-minute intervention) trained	HMPPS Equality Analysis: Use of Force, published September 2019	Not clear. In the example given, target is stated as 60% of staff in post, but text indicates that “all staff” trained prior to OMiC roll-out	No – see above re key worker training
Body worn cameras are in full use	HMPPS Equality Analysis: Use of Force, published September 2019	Not clear – assessment only records number of cameras “in use” on average and on day of visit. No evidence as to whether this amounts to “full use”, nor whether they are turned on and relevant footage is efficiently kept and reviewed	No. Repeated evidence from HMCIP and PPO that BWC use is sporadic and instructions for obtaining and retaining footage are often not followed.
There is effective use of force governance in place	HMPPS Equality Analysis: Use of Force, published September 2019	In part – Assessment checks that a co-ordinator is in post and that monthly meetings of UoF committee take place. No assessment of quality.	No. Specifically, no central oversight or record of case by case reviews occurring, instigation or outcome of disciplinary or other performance management measures relating to PAVA use

Sufficient NHS or Public Health England staff in the prison	HMPPS Equality Analysis: Use of Force, published September 2019	No. Assessment comments only on quality of “engagement with healthcare provider”	No. Data not yet provided.
Due consideration given to the makeup of the population and its protected characteristics and prison engaging with their health partners effectively through a local Health Partnership Board	HMPPS Equality Analysis: Use of Force, published September 2019	No. Assessment comments only on quality of “engagement with healthcare provider”	No
Governors will be expected to ensure that scrutiny takes place after any drawing and/or use of PAVA...with a centrally designed scrutiny model to assist	HMPPS Equality Analysis: Use of Force, published September 2019	Not mentioned	No - national instruction describes a thorough process but no information as to whether it is being delivered (and anecdotal information through complaints that it is not. Specifically no central scrutiny of case by case reviews so far as we are aware.
Complaints – “we shall keep this under review to ensure that everyone in our prisons understands their right to tell us when we have got things wrong, and how they do that”	HMPPS Equality Analysis: Use of Force, published September 2019	No. Readiness assessment does not require examination of complaints, nor any consultation with prisoners	No. No central analysis or scrutiny of PAVA related complaints so far as we are aware
Governors and staff will be made aware of the high proportion of LDD (learning disabilities or difficulties) among their prisoners.	HMPPS Equality Analysis: Use of Force, published September 2019	No – not mentioned	Not clear

Every prison must use a consistent and rigorous assessment mechanism to.... Screen for LDD	HMPPS Equality Analysis: Use of Force, published September 2019	No – not mentioned	Not clear
Staff will need to demonstrate a reasonable relationship of proportionality between the means employed and the aim pursued which may be different based on a prisoner's physical disability	HMPPS Equality Analysis: Use of Force, published September 2019	No - no case by case analysis and no mention of physical disability	Not clear, but no central collection or analysis of case information
Use of force committees should not be ethnically homogenous and involve at least one individual with explicit remit to consider interests of prisoners	HMPPS Equality Analysis: Use of Force, published September 2019, and HMPPS response to Lammy review	Not clear – not mentioned specifically	Not clear. Lammy update suggests patchy progress.
Specific point of contact appointed for PAVA implementation	Sarah Daniels email of 23/9/19	Yes	N/A
FMI training being routinely delivered to ensure all staff receive the training	Sarah Daniels email of 23/9/19	In part – example of assessment describes previous training delivery rather than current	Not clear
Body Worn Cameras “in full use”	Sarah Daniels email of 23/9/19	See earlier entry – “full use” not defined or checked	No – specifically excluded from national scrutiny
OMiC implementation signed off	Sarah Daniels email of 23/9/19	Yes. Example shows that delivery post sign-off has slipped, however.	Likely to be available as part of OMiC implementation project
Trainers identified and realistic plan in place	Sarah Daniels email of 23/9/19	Yes – however, permission to roll out in anticipation of training is at odds with commitment in equality analysis to have all staff trained	N/A

Use of Force coordinator in place	Sarah Daniels email of 23/9/19	Yes	N/A
Use of force processes effectively in place	Sarah Daniels email of 23/9/19	In part – assessment checks co-ordinator in place and UoF committee formed, but no analysis of whether other key processes, for example case by case scrutiny, exist or are adequate.	Not clear what role of proposed national committee will include. Information on complaints, disciplinary and other management responses to case by case scrutiny appears to be specifically excluded from national data collection
Infrastructure in place, including storage	Sarah Daniels email of 23/9/19	Yes	N/A
Engagement with local healthcare providers	Sarah Daniels email of 23/9/19	Yes, but see earlier entry re disparity with equality analysis commitments	Not clear – some level of general scrutiny likely through national oversight of healthcare commissioning.