



Juliet Lyon CBE  
Independent Advisory Panel on Deaths in Custody  
102 Petty France  
7th floor,  
London  
SW1H 9AJ

MoJ Ref: ADR 79941

28 August 2020

Dear Juliet,

### **PAVA SPRAY**

Thank you for your letter of 6 July, in which you express your concerns about the exceptional deployment of PAVA during COVID-19 and how this decision was both made and shared. As you have stated we have a shared priority to ensure the safety of both staff and prisoners and I would like to reassure you that this was very much at the heart of the decision to deploy PAVA more widely across the adult male estate.

At the outset of the COVID-19 pandemic we recognised the significant impact it would have on prisons. The Prison Service therefore had to make some exceptional operational decisions at pace during this time to ensure the safety of those who live and work in prisons. Prior to COVID-19 we had already commenced the roll out of PAVA, 23 establishments already had PAVA and 14 establishments had gone through the readiness assessment before the exceptional arrangements were put in place.

The rationale for the exceptional decision to issue PAVA to the wider adult male estate was to ensure that it was available in all closed male public sector prisons. It is not a preventative measure and staff still have to adhere to the same requirement that it should only be used in the most exceptional situations to help protect staff and prisoners from incidents where there is serious violence, or an imminent or perceived risk of serious violence.

I agree that the key worker scheme will help to support staff and prisoner relationships. As you will be aware prior to the pandemic all male closed prisons had completed the implementation of the key worker scheme and preparations were being made to roll it out to the women's estate. As part of our recovery plans an updated Exceptional Delivery Model for key work is being put in place. I fully recognise the value of interpersonal skills and how important these have been during this challenging time, PAVA is not intended to undermine this and it remains the case that it should absolutely only ever be a last available option.

Furthermore, the exceptional arrangements to deploy PAVA more widely have only been put in place for staff who have been trained in both SPEAR and PAVA, this is because we recognise the additional skills that SPEAR provides to our staff to manage incidents effectively and potentially without the need to use force. As your helpful report suggests we very much want staff to "keep talking and stay safe". The

indication that positive relationships have been enhanced during this time when PAVA has been more present is a hopeful sign that staff are not allowing it to deter them from their everyday interactions with prisoners.

You have expressed concerns about the use of PAVA in confined spaces. I can confirm that prior to its introduction the use of PAVA in confined spaces was subject to rigorous assessment and testing by the Centre for Applied Scientific Technology (CAST)) to determine how well it met the operational requirements. In respect of your concerns regarding those who have respiratory conditions PAVA has been medically tested to its full dose on both healthy and asthmatic people with no adverse effects.

Prior to the exceptional deployment of PAVA advice was sought from Public Health England and operational guidance was issued which requires that: “staff must take the health of a prisoner into consideration before deploying PAVA. The policy states that it must not be used on a prisoner in respiratory distress or showing other signs of immediate symptoms of acute ill health which are likely to be significantly exacerbated by PAVA deployment. This would include any prisoner that is suspected of having COVID-19. Staff are also reminded that PAVA will only be used when exceptional circumstances apply and in accordance with training.”

On the matter of how the use of PAVA will be recorded and reviewed, we require governors to adopt strong leadership and ensure effective governance, including to foster and drive best practice. Governors will be expected to ensure that scrutiny takes place after any drawing and/or use of PAVA, including in relation to bias, and we have developed a scrutiny model to underpin this. Prisons are required to ensure that all uses of PAVA (whether drawn and the subsequently used or not used) are reported centrally and are subject to regular monitoring, including consideration of a breakdown of the data by protected characteristics. This is undertaken by senior managers in HMPPS with any concerns identified during this scrutiny being addressed directly with the establishment concerned and senior operational managers responsible for them.

With regards to wider review of its use I attach a copy of the latest PAVA data report which is also shared with senior operational managers with responsibility for prisons. Our intention is that this internal management information will be shared with you and other stakeholders on a regular basis, but would ask that it is also not shared more widely given that this is for internal use only.

The use of PAVA is subject to the same stringent application of legal and professional standards as all use of force in prisons. We have introduced a number of additional measures to safeguard against misuse of force, consistent with our commitment to delivering the recommendations of the Lammy Review. In addition, we are introducing a digital use of force reporting tool, which will be rolled out to further sites as soon as it is practical to commence staff training, this is to improve methods of monitoring and recording. We plan to publish annual statistics on use of force, once the new recording process is established.

We take the matter of self-harm and potential PAVA use very seriously and the guidance reinforces that it should only be used if all the following criteria are met; there is a serious and imminent risk to the life of the prisoner who may also be threatening staff; and intervention is required immediately to prevent that; also, there are serious risks to staff in physically intervening and; no other reasonable options are judged to be appropriate.

I would like to reassure you that we have given additional consideration to the potential human rights implications that PAVA might bring. PAVA is already used routinely in a custodial setting in Denmark, Hungary, Norway, Germany, Latvia and Monaco that are also subject to the Convention. As with all use of force, any use of PAVA, including the threat of PAVA alone, will have to be the least excessive use of

force necessary in the circumstances. The training programme and guidance provides prison officers with the knowledge and skills to assess whether use of PAVA is appropriate to the circumstances.

We welcome and benefit from external scrutiny and have already shared the draft Use of Force framework with external stakeholders for their consultation, we would be happy to extend this to the IAP. I hope that engagement now offers the opportunity for further dialogue.

As with other operational decisions that have been taken during the response to COVID-19, the position has recently been reviewed in order for a decision to be made as to whether it should be reversed or addressed through further processes.

Thank you for raising these points, I hope this response provides assurance on the matters you have raised.

Yours ever

A handwritten signature in black ink that reads "Robert Buckland". The signature is written in a cursive, slightly informal style.

**RT HON ROBERT BUCKLAND QC MP**