



Ministry
of Justice

The Right Honourable
Robert Buckland QC MP
Lord Chancellor & Secretary of
State for Justice

Frances Crook
Chief Executive
The Howard League for Penal Reform

Peter Dawson
Director
Prison Reform Trust

1st June 2020

Dear Frances and Peter

COVID-19 IN PRISONS: THE NEXT PHASE

Thank you for your letter of 6 May, regarding the next phase of our COVID-19 response in prisons. I am grateful for your continued engagement and for your constructive input at this challenging time.

Managing the pandemic in prisons

We continue to take a range of measures to contain the spread of the virus in the prison estate, evolving our approach as needed. Key elements include: restricted regimes in order to facilitate social distancing; minimising the use of inter-prison transfers; creating headroom to implement cohorting to isolate the sick, shield the vulnerable and quarantine those new to custody; boosting staff resilience at the frontline; providing appropriate Personal Protective Equipment; rolling out staff testing; and exploring options for wider prisoner testing. We are also minimising the cross-deployment of staff between different units in prisons to prevent the incursion of the virus. We are, of course, concerned to mitigate the impact of the restricted regimes on prisoners. We are improving prisoners' in-cell experience with additional pin credit to maintain family ties and have lifted all restrictions on access to in-cell TVs. As of 15th May, we have also announced the first phase of a rollout of secure video calls to enable further contact with families. We are supporting staff to continue key work in an appropriate format, and sustaining important staff and prisoner relationships, for example through 'conversational playing cards' and Wellbeing Plans created with input from mental health charity Mind.

As you are aware, the latest Public Health England (PHE) modelling, developed in conjunction with HMPPS, provides an indication that our current COVID-19 strategy in prisons is having a positive impact on limiting deaths and the transmission of the virus within the prison estate. HMPPS has already put in place a "Protect & Mitigate" strategy which enables Gold Command to manage controlled prisoner movements in a manner which seeks safely to make best use of the additional headroom created in prisons and to relieve pressures upon capacity within the local estate.

Publishing advice

COVID-19 presents unprecedented challenges, and with that comes understandable enhanced public interest and scrutiny. We continue to work closely with PHE and Public Health Wales (PHW) to draw on their advice in containing the spread of the virus in the estate, alongside wider aims to deliver a functioning prison service to protect the public. PHE and PHW advice is provided on an ongoing basis and through various channels however, if and when more formal advice is provided, then consideration will be given to disclosing this. We continue to be accountable to Parliament on these matters, providing regular updates to the Justice Select Committee.

Medium and long-term planning

Whilst our strategy is having a positive impact in limiting the transmission of the virus within the estate during this current phase of the pandemic, we are conscious of the need to develop our strategy in a way that can be sustained over a longer period, establishing the 'new normal' in the prison estate. With this in mind, we are developing a road map for how we can safely remove restrictions and interventions in the medium-term without heightening the risk of future outbreaks. As with all HMPPS COVID-19 strategy, this will be designed in collaboration with advice from public health authorities, and will take into account the broader objectives of the prison system.

As is the case in the community, we are unlikely to be able to lift restrictions across the estate, both in England and Wales, in a uniform way. We expect this next phase to involve a localised approach. Decisions will be made by governors within a nationally set framework, to allow individual prisons to move at a different rate depending on their specific circumstances and conditions, and the conditions in their local area. The situation in establishments will also have to be kept under close review, and it may be required to reintroduce restrictions in response to local outbreaks and infection rates. This plan will need to remain aligned with Government guidelines on social distancing in the workplace and wider community. In formulating and developing our response, we will continue to take such reasonable steps as are available to minimise safety risks in each sense, considering infection control as well as the impact on mental health and the risk of disorder. Until visits can be reintroduced, we will continue to support prisoners with additional phone credit and access to handsets where in-cell telephony is not available.

Whilst we are not in a position to publish our medium-term strategy at present, I can reassure you that we are acutely conscious of the key risks around ongoing restrictions to regimes and suspension of social visits, and the need to provide sustainable solutions to capacity management as court activity increases and increased prisoner movement becomes necessary. In developing our medium-term planning assumptions, we will be supported by regular advice from public health authorities to model the potential impact of changes on rates of contact and the likelihood of introducing infection to prisons. Regular modelling and advice from public health authorities will enable us to continue to balance health advice with wider operational considerations.

Expanding temporary release schemes

In your letter you suggest that further measures will be required to reach our headroom target. The updated modelling that we have conducted in collaboration with PHE suggests that the headroom required to limit the spread of the virus is around 5,000-5,500, and we continue to keep this figure under review. Early release is only one part of our strategy towards achieving the target headroom. We are also expanding the capacity of the prison estate through temporary accommodation; reviewing remand cases and ensuring access to timely hearings; and making use of community measures to divert individuals away from the system. In all of this, we are acutely aware of the need to develop sustainable solutions for managing headroom as community restrictions lift and court inflows increase, and this is being carefully considered as part of our medium-term planning. While we are conscious of the need to manage prison population pressures, public protection is paramount and we must balance risks to the public with our responsibility to protect the health and safety of those in our care.

Many of the other recommendations that you highlight in your 8 April letter are already being acted upon as part of our COVID-19 strategy to increase headroom and prison capacity. You have asked that I urgently consider these. I hope you will find the below helpful in providing reassurance that each of these measures has been proactively considered and is either being implemented, or has been dismissed for good reason.

- On **remand**, HM Courts and Tribunals Service and HMPPS have been working through the Covid-19 Criminal Justice System Strategic Command to expedite sentencing hearings where feasible for those convicted prisoners who are unsentenced. Some of these people are, when sentenced, immediately due for release due to the time already served or because they receive a non-custodial sentence. We

are also facilitating the legal consultations and probation interviews required to support these hearings to take place by video link. Although only a proportion of sentencing hearings are suitable to be expedited, this is helping to reduce the pressure on the prison estate. For defendants on overnight remands we have introduced a bail information scheme in all open magistrates' courts. The National Probation Service (NPS) bail information scheme provides the court with verifiable information about the defendant's circumstances to assist in the courts decision about bail. It is available on request from the magistrates, CPS or the defence community.

- You also raise the issue of **short sentences**. We have no plans to end short term prison sentences. Sentencing is a matter for our independent courts, taking into account circumstances of each case and following any relevant sentencing guidelines issued by the Sentencing Council. We are clear that custodial sentences should always be a last resort. We have made information known to sentencers on the practical issues which arise in prisons as a result of the COVID-19 pandemic. We are also promoting the use of alternatives to custodial sentences, including community measures. The NPS staff in court will continue to be available remotely to advise the court on the suitability and deliverability of specific requirements that are being considered as part of a community sentence. In line with the Government's social distancing policy, all group delivery of requirements will be suspended until further notice. However, communications have been issued to NPS staff in court and sentencers, updating them on the availability of certain requirements at a local level from Community Rehabilitation Services. There is of course a distinct purpose and context when sentencing children and young people, with these issues covered in depth in the Sentencing Council's definitive guideline on this issue.
- On **recall**, the threshold for recalling offenders on the basis of increased risk to the public has not changed. While we are acutely conscious of the need to manage prison population pressures, it is of paramount importance to maintain public protection and take effective enforcement action when offenders breach their licence conditions in such a way as to indicate that their risk is escalating. Where the offender manager's judgment is that the imposition of additional licence conditions does not enable the raised risk to be managed effectively, then the offender manager will have to recall the offender to custody in order to protect the public. It will, therefore, be necessary for recalled offenders to be accommodated in prisons. However, during the period of the COVID-19 outbreak, the Public Protection Group (PPG) in HMPPS is undertaking extra checks to ensure that the use of recall remains proportionate and that there is no alternative, yet effective, means of dealing with the breach of licence conditions and any increase in risk. PPG is also working with the NPS Divisions and the Community Rehabilitation Companies in order to identify as soon as possible those offenders recalled to prison on a standard basis who are suitable to be re-released using executive powers.
- As you rightly note, the **Parole Board** has introduced an adapted model following the decision to postpone all face-to-face hearings in prisons to safeguard the health and wellbeing of its members, those involved in the parole system and the offenders themselves. We meet regularly with the Parole Board and have noted its commitment to ensuring hearings continue as much as possible through the use of intensive paper reviews, case conferences (where appropriate) and remote hearings via telephone or video technology, all whilst respecting the rights of offenders. HMPPS is working with the Parole Board to facilitate remote hearings, including to encourage the use of enhancements that have been made to prison videoconferencing facilities since early April which allow connection to a wider range of external participants. The Parole Board is working hard to ensure that prisoners can be safely progressed or released whilst continuing to refuse the release of prisoners where necessary to do so to protect the public. We will continue to support the Parole Board to progress parole reviews as quickly as possible in these difficult circumstances and, where release is directed, to ensure that arrangements are in place for the safe management of those offenders in the community
- You make several recommendations for **expansion of the early release schemes**, including through extended compassionate release and mercy, executive release and release for category D prisoners. From early on in the COVID-19 outbreak, we considered in what circumstances, and by what mechanisms, it would be appropriate to release prisoners into the community. In taking these decisions,

we had to balance the degree of risk posed to individual prisoners from the COVID-19 outbreak and the advantages of creating additional headroom within the prison estate, on the one hand, with the need to continue to protect the public and maintain confidence in the justice system, on the other. Our release measures have been informed by the latest advice and, having regard to all the interests involved, we continue to review whether we have the appropriate release measures in place. Our judgement is that we do. Prisoners falling outside of the End of Custody Temporary Release scheme or the current groups who will automatically be invited to apply for Release on Temporary Licence (ROTL) on compassionate grounds (pregnant women, those in Mother and Baby Units, those identified as extremely vulnerable) may still apply for ROTL on compassionate grounds.

- You suggest that **additional days on sentences** awarded as an adjudication punishment should be remitted given the circumstances. Applying for the restoration of added days is a prisoner-led process, and there have been no restrictions on prisoners making an application during the pandemic. An application for restoration of up to 50% of additional days (or more in very exceptional circumstances) can be made by a prisoner following a six-month adjudication-free period. In the case of young people, this is four months. An adjudication-free period is deemed necessary so that bad behaviour is not rewarded in any way. The restoration of additional days would only make a material difference for those prisoners currently serving or imminently serving the added days element of their sentence, and so this would only benefit a limited number of individuals. This benefit does not outweigh the value that adjudications processes have in maintaining order at this time.
- In terms of **Home Detention Curfews (HDCs)**, we have developed an 'accelerated HDC process' that will ensure that those prisoners who are past their Home Detention Curfew Eligibility Date or close to it will not time out because of delays in the process. This scheme is in line with the current framework document and it should ensure that the HDC process is as efficient as it can be. The Operational Implementation Support Group in HMPPS, who have responsibility for HDC, are driving the scheme by monitoring performance nationally and offering assistance to establishments. We are also working with the regional Homelessness Prevention Teams to maximise accommodation for those released on HDC.

Finally, you have asked that we review the position on children within our care. We are very conscious of our responsibilities, and our COVID-19 response to children in the Youth Justice System has been informed by their specific needs and vulnerabilities. We have provided an enhanced SECURE STAIRS team, comprising of colleagues from across NHS England and NHS Improvement, the Youth Custody Service (YCS), and YCS Psychology, to provide a blanket of support and advice during this time. As we indicated in our previous response, the youth custodial estate is currently under capacity in terms of population – with all children having their own rooms, and this is regularly reviewed. We are, nevertheless, including children from Young Offender Institutions and Secure Training Centres who meet the criteria in the End of Custody Temporary Release programme, and will take care to ensure every child released has appropriate accommodation in place and that Youth Offending Teams are ready and able to supervise and support them. We are also working with Youth Offending Teams to review whether any children on remand could be safely re-considered for bail application, and those children who do not meet these new temporary release criteria will continue to be eligible for early or temporary release in the usual way.

We are faced with unprecedented challenges, but the best way to manage this is for all health and justice partners to work collaboratively, recognising each other's priorities and constraints, and to deliver the ultimate goal: the health and safety of the public and those in our care. I welcome your continued collaboration and challenge in this respect.



RT HON ROBERT BUCKLAND QC MP