

Lucy Frazer QC MP
Ministry of Justice
102 Petty France
London
SW1H 9AJ

12th June 2020

Dear Minister

PAVA

We have all watched as events in the United States have unfolded in recent weeks. The disproportionate use of force against people of colour has persisted for many years and no one questions the legitimacy of the fundamental complaint that has prompted so many people to protest.

In our prisons, the disproportionate use of force against BAME prisoners has also persisted over many years. To its credit, the prison service does not dispute that fact. Its own published equality analysis concluded that:

“Evidence suggests there is disproportionality in the number of Use of Force incidents against black males across the estate, especially younger black males.”

and that

“From the data currently available, PAVA has been drawn or used more against BAME prisoners. The evidence from wider use of force would suggest that this trend will continue as roll out progresses.”

The process of drawing up an equality assessment, as required by law, was undertaken as part of the planning for the rollout of PAVA spray announced by the previous government and which you have chosen to continue. Recognising the serious deficiencies in use of force governance across the estate, highlighted by the Chief Inspector amongst others, that assessment made a series of undertakings to introduce safeguards before PAVA was issued in more prisons, and further undertakings were given to the divisional court in order to settle litigation supported by the Equality and Human Rights Commission. Your officials have also given undertakings in response to concerns we and many others have raised. In total we have counted 31 commitments. To the best of our knowledge 25 remain unmet wholly or in part.

We were very concerned when a rollout beyond the 4 pilot prisons began earlier this year and continued to raise our concerns with your officials, as indeed we have done since the fact of the original PAVA pilot became known to us in 2018. It therefore came as a relief when we were told

that the rollout would be paused for at least 3 months as a consequence of the Covid-19 pandemic, a decision confirmed in a letter to stakeholder organisations on 15 April. Imagine our consternation when we then discovered that that decision had been reversed, with no notification or justification given, and that PAVA had been issued to all staff trained in its use in the adult male closed estate.

We do not know whether any separate analysis was carried out to consider the additional risks of using PAVA in a prison during this pandemic. The spray causes people affected by it to cough, potentially increasing the risk of contagion. But its effect is also dangerous for people suffering from any condition affecting their breathing, of which Covid-19 is one, of course. We note with alarm reports of a prisoner reported as suffering from asthma dying after being pepper sprayed in a New York prison this week. Please confirm that medical advice was sought about the specific risks associated with PAVA use in prison during the pandemic.

We believe this decision is wrong on its merits, although we respect the fact that the operational judgement must ultimately lie with the prison service's leadership. But the manner in which it has been taken appears to breach undertakings given in public documents and, although the terms of the settlement have only been described in an EHRC press release, promises made in private on the government's behalf to the Divisional Court. It is not clear that the particular risks associated with PAVA use in prison during the pandemic have been considered or subject to expert medical advice. We are also aware that, having already been misrepresented on this matter in your published update on Lammy recommendations earlier this year, the External Advice and Scrutiny Panel was not even given notice of, still less consulted about, the decision to issue PAVA in this way.

It would be hard to imagine a more important issue in terms of demonstrating your department's commitment to the equitable treatment of people with protected characteristics under the law. As events in America have shown, the abuse of force epitomises and symbolises a much wider pattern of discrimination, and that is true in our prisons too. I strongly urge you to reverse the decision that has been taken, and instead to keep the many promises that have been broken.

Given the intense public interest in these matters, and the fact that PAVA has been made so widely available already, I will be publishing this letter on our website, and look forward to your response.

With best wishes

A handwritten signature in black ink, appearing to read 'Peter Dawson', with a stylized flourish at the end.

Peter Dawson
Director
Prison Reform Trust