



Ministry of Justice

Sir Robert Neill MP
Chair of the Justice Select Committee
House of Commons
London
SW1A 0AA

The Right Honourable
Alex Chalk KC MP
Lord Chancellor & Secretary
of State for Justice

MoJ ref: 109525

11 October 2023

Dear Sir Bob,

LORD CHANCELLOR ORAL EVIDENCE SESSION – 18 JULY 2023

Thank you for the opportunity to provide evidence to the Committee on Tuesday 18 July. During the session I agreed to write to the Committee to provide additional information.

Short Term Capacity

How many police cells have been used since Operation Safeguard started? (Q142-146)

Between first activation of Operation Safeguard cells in February 2023, and the end of July, 1,135 prisoners have been held in police cells under Operation Safeguard.

How much has been spent on temporary measures to manage prison capacity issues to date (Q155)?

To deal with recent pressures, we are continuing to increase capacity through short-term contingency measures – for example, increasing the number of dual-occupancy cells where it is safe to do so – which by their nature are difficult to quantify in a monetary way, and exclude measures such as the use of Rapid Deployment Cells whose useful economic life is 10-15 years. The main cost of our temporary measures to manage prison capacity issues is Operation Safeguard. The Ministry of Justice has made provision to fund the activation of up to 400 police cells a day from within the overall departmental budget. On average, 274 cells per day have been activated between February-July.

The total spend on Operation Safeguard for the period since activation in February 2023 to end of July 2023 is £30.2m.

Operation Safeguard has provided us with vital extra short-term resilience in response to an exceptional rise in the prison population, driven by higher-than-expected flows into the sentenced, recall and remand populations, the impact of the Criminal Bar Association strike in the summer of 2022 and the aftermath of the pandemic. Operation Safeguard is an effective contingency that has allowed us to keep serving the courts and, in certain regions, to meet an acute, localised rise in the prison population.

Our agreement with the police is based on the principle that delivery of Safeguard places will not be at the expense of frontline operational policing. Even when Safeguard places are activated, we deliberately try to minimise usage to reduce the impact on police operation.

Since activating Operation Safeguard, we have made progress on our commitment to build 20,000 additional, modern prison places to ensure the right conditions are in place to rehabilitate prisoners, helping to cut crime and protect the public. These places are being delivered through the

construction of six new prisons, as well as the expansion and refurbishment of the existing estate and temporary accommodation, including Rapid Deployment Cells. This portfolio was fully funded in this Spending Review (£3.8bn received at SR21 across three-year SR period).

Use of PAVA Spray

A programme to roll-out PAVA to all men's prisons concluded in April 2023. During this time a national panel met fortnightly to review every PAVA incident and this process proved useful in identifying areas of concern (e.g., disproportionality). Monthly data reports were shared with internal and external stakeholders, which included analysis of PAVA use by protected characteristics. The final data summary was shared in April 2023, and now the programme of work has closed, PAVA has moved to routine delivery alongside wider Use of Force techniques (e.g., Control and Restraint, Baton use).

As the roll-out of PAVA transitions to business as usual, we are taking the opportunity to reflect on the successes of the roll-out and what could be improved. A team of assurance and practice development leads have recently completed a 14-month cycle of visits in which they assessed the local governance surrounding force at every prison in England and Wales and are currently bringing together their findings. We intend to publish an evaluation into the Use of Force in the coming months which will inform our new model of assurance and scrutiny. Initial indications suggest that a new model of national assurance will need to consider all force (not only PAVA), better utilise data to target sites of concern, and encourage closer working between evidence and assurance colleagues. To show our commitment to this, a new function is being convened, to sit within the Operational Response and Resilience Unit, that will focus on Use of Force Insights and Assurance. This team will be a dedicated resource to UoF assurance that will implement a systematic model to scrutinise force at a national level. To this end, we will soon be recruiting permanent resource to cover a data analyst and evidence specialist positions.

Publishing Use of Force data remains an ongoing commitment, and we continue to work with Data and Analysis colleagues to achieve this aim. Whilst the PAVA roll-out programme has now closed, we continue to monitor PAVA uses and encourage local governance at every establishment to hold frequent committee meetings to review and assure every use. Once a new model and permanent resource is in place we aim to once again communicate frequently with interested parties regarding uses of PAVA, and wider force.

In line with our commitments, we still encourage:

- that local Use of Force committees meet regularly, are diverse and have the appropriate authority, include at least one member whose explicit remit is to consider prisoners' interests, and by best practice include service users and independent external members.
- prison governors ensure scrutiny takes place following every PAVA incident, with information on PAVA and other use of force readily available to prison inspectors.
- PAVA will only be deployed to sites that have strong governance in place, understand trends in their use of force and are taking prompt and appropriate action to address any issues, as assessed in the readiness process.

We encourage all interested parties and stakeholders to attend the HMPPS External Advisory Panel (EAP) to discuss PAVA developments and concerns at regular meetings (next panel December 2023).

Section 28 - Special and Wasted Preparation

From 1 February 2023, the Government introduced £4m of additional funding (over the remainder of this Spending Review period) for paying remuneration for barristers who undertake cases that involve pre-

recorded cross-examination (also known as Section 28 cases) in the Crown Court. Section 28 is a “special measure” available to the Court consisting of video recording of a vulnerable witness’ cross-examination during a hearing separate to the main trial.

From 16 May 2023 the Government introduced an additional preparation fee of £62 to be payable to a trial advocate in respect of preparation for a case which goes to trial, or which is a cracked trial. I am giving careful consideration to the issue of remuneration for both s28 cases and special and wasted preparation and will set out more details shortly.

Yours sincerely,

A handwritten signature in blue ink, appearing to read 'Alex Chalk'.

RT HON ALEX CHALK KC MP

LORD CHANCELLOR AND SECRETARY OF STATE FOR JUSTICE