

6 May 2020

Rt Hon Robert Buckland QC MP
Secretary of State and Lord Chancellor
Ministry of Justice
102 Petty France
London SW1H 9AJ

Cc: Lucy Frazer QC MP

Dear Robert Buckland,

Covid19 and prisons: the next phase

Thank you for the full response to our pre-action letter of 17 April 2020 and confirmation, received yesterday, that you are content for us to publish your response of 28 April 2020 along with the enclosures.

We confirm we will publish your letter and its enclosures on our websites today as we believe that transparency is essential for all those affected by the spread of Covid19 in our prisons.

We are pleased to be able to work constructively with you and welcome your invitation to us to continue to engage with you on this important issue.

You now have the ability, with a reduced prison population and the options for temporary release available to you, to level up prisons and run purposeful places that are safe for prisoners and safe for staff. Further releases are needed to create the space to do that and manage the transition towards active regimes, rather than simply warehousing people.

The risk of not releasing prisoners is grave: prisoners will either remain in prolonged solitary confinement or will be forced to mix and your worst-case scenarios for infections may arise. As you pointed out in your letter, the modelling that informed your advice had changed drastically from 24 March 2020, when it was feared that around 2,500 to 3,500 people could die from Covid19 based on the reasonable worst-case scenario and that half of these deaths could occur over three weeks at the height of the outbreak.

The briefing paper you published on 24 April 2020, by contrast, estimated that 100 people in prison would die from Covid19. Even so, the same paper warns that:

“in the absence of a vaccine or effective treatment, risks of large outbreaks in the prison estate will remain. These risks may be escalated later in the year relating to relaxation of wider community restrictions, some return of normal police and court

activities, with consequent impacts on prisoner flow which may exceed capacity of [Reverse Cohorting Units].”

It is clear that the risk is only contained while admissions to custody remain low and prisoners remain effectively in solitary confinement. That is unsustainable for any prolonged period. Yet it is anticipated that these conditions will need to be maintained for a further 12 months if the virus is to be controlled. That risks serious harm to tens of thousands of prisoners and provides further evidence for the need to progress with the programme of releases.

Your letter confirmed that the programme of releases had not been abandoned but was one of many strategies and that as of 28 April 2020 a further 200 people in prison had been approved for temporary release under the scheme and a further 300 prisoners were being considered with further information being awaited before a final decision could be made. For these reasons we are asking you to:

- continue to publish your advice in a clear and transparent way, ensuring your modelling factors in all relevant information
- set out your plans for managing the pandemic in prisons without subjecting prisoners to prolonged solitary confinement
- consider a further expansion of the release scheme in response to Covid19

The extent of the risk of Covid19 in prison – the need for transparency

The difference between the advice you received on 24 March and 24 April is stark. But the common thread is that the risk of outbreak in prisons is much higher than in most community settings. We welcome the fact that you chose to publish the later advice promptly, and we would ask that you now continue that practice. Your decision not to act on the recommendation in the advice received on 24 March for a much larger reduction in the prison population than is your current intention was clearly a matter of public importance, and has only been subject to proper scrutiny well after the event. Confidence could only be undermined if you were now to revert to your earlier practice of making key decisions entirely behind closed doors, and we would welcome an assurance that future specialist advice should be disclosed promptly, and with a full explanation of the assumptions on which it is based.

We believe this is in line with the government’s broader approach, and see no reason to make an exception for prisons and the people who live and work in them.

Please confirm that you will continue to publish the advice upon which you are acting, ensuring that your models take account of both the best- and worst-case scenarios to ensure that life and health of those in prison is best protected.

The viability of the response in prisons in the medium to longer term – the need to reveal the plan ahead

The latest Public Health England (PHE) advice makes clear that the current containment of the virus in prisons rests on fragile foundations. These include the maintenance of an extremely restricted regime in prisons, the operational breathing space brought about predominantly by a reduction in new receptions from court, and by the cessation of inter-prison transfers. It also points to a probable threat from renewed outbreaks of infection in prison for another 12 months. These foundations are not sustainable in the medium to longer term.

The restrictions on the prison regime mean that people in prison are either in overcrowded conditions or prolonged solitary confinement. The damage inflicted on individuals' psychological health and prospects of progression by current regimes will become intolerable. The courts will start to resume work and crime is likely to rise as lockdown restrictions in the community are lifted. Inter-prison transfers will become essential in order to make space in local prisons.

It has become abundantly clear to all of us that winning the battle against the pandemic requires prompt pre-emptive action based on plans drawn up in advance. In the spirit of transparency, we ask that you now describe the plans you have to manage the pandemic in prison and in particular your specific plans to:

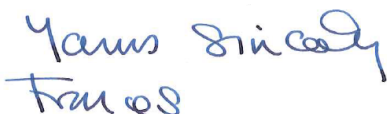
- Contain any future growth in the prison population that will erode the operating headroom on which your containment strategy currently relies;
- Manage the reception of new prisoners, the movement of prisoners between prisons, and the deployment of staff within prisons, in ways that prevent the incursion of the virus; and in particular what policy you plan to adopt in relation to the testing of prisoners for the virus;
- Ease the day to day restrictions on liberty and opportunity which prisoners have so far accepted as necessary to their own safety, but which cannot safely or decently remain in place for an extended period.

The need to review the expansion of the temporary release scheme

We are pleased that your strategy continues to include the release of prisoners given the advice that this is the best way to ease pressure on the system and is in line with international practice. Yet your response to our letter before claim still outlines a very restricted group of prisoners eligible for temporary release for this based on the announcements of 31 March 2020 (pregnant women and mothers), 4 April 2020 (the end of custody release scheme limited to two months before automatic release) and those who can apply for special purpose release on compassionate grounds. It seems likely that your current strategy will not achieve even the very limited goal you have set yourself of achieving "headroom" that PHE advice says you require to contain the virus and is clearly essential if prisoners are not to be confined in long term solitary confinement or overcrowding. Indeed, headroom will contract as courts begin to operate more fully.

It is possible to go further without undue risk to public safety or confidence. We set out a number of options in our letter of 8 April 2020 which we ask you consider urgently. We also ask that you review your position in respect of children, given the enhanced welfare duty that applies.

We, prisoners and their families, and many other individuals and organisations who want to help you, look forward to your response.



Frances Crook
The Howard League for Penal Reform



Peter Dawson
Prison Reform Trust