



Ministry
of Justice



Home Office



Department
of Health &
Social Care

Independent Advisory Panel on Deaths in Custody

***Chair: Juliet Lyon CBE
Head of Secretariat: Piers Barber***

***102 Petty France
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Rt Hon Robert Buckland QC MP
Lord Chancellor and
Secretary of State for Justice

24 April 2020

Dear Robert

Thank you for your letter of 21 April. The Independent Advisory Panel on Deaths in Custody (IAP) respects your commitment to human rights and the rule of law and your embodiment of these principles in your role as Lord Chancellor. However, the IAP remains concerned that you are in breach of the fundamental duty to protect life. We ask you for three things: to be bolder in steps to protect the lives of prisoners and staff; to bring in experts from beyond HMPPS to help, advise and challenge colleagues who are already working so hard on the response to Covid-19; and for greater transparency of information to help those experts to help you.

On the first and primary point, we ask you to expedite and extend the arrangements you have announced to protect pregnant women and mothers and babies; people in custody who are medically vulnerable and those eligible for early release. We note that you are also developing options for use of temporary accommodation. We understand that your strategy is to create the environmental space and staff and healthcare capacity necessary to follow the medical scientific advice you have been given. This is so you can restrict the spread of the virus in prisons and out into the wider community and thus save lives.

In your letter you stress your department's active and urgent response to Covid-19. You refer to the announcement made on 31st March confirming that pregnant women, and those with their baby in custody, will be urgently considered for release. Just 18 of the 70 women eligible have been safely released. It is proving difficult, and in some cases impossible, to shield people defined as medically vulnerable within the confines of overcrowded institutions. Under your existing powers, no-one from this group has yet been released on compassionate grounds. You announced on 4 April an early release programme for people within two months of the end of their sentence who could be considered for temporary release, subject to case by case review. Of the up

to 4,000 people eligible within this cohort, just 18 have been released by 22 April under your new powers.

This weak response to the crisis cannot be reconciled with your obligation under Article 2 to take active steps to protect lives. Yet we know you are committed to protecting the lives of people in custody - many of whom are vulnerable and for all of whom you are fully responsible and accountable.

This leads the IAP to question whether the policy and arrangements for compassionate or early release are too complex and convoluted to follow sensibly and promptly. Are there conflicting assessments of public health and safety risk, or competing political considerations, that are proving hard to prioritise and consequently leading to stasis? Are things being made too difficult for the prison service to act in a characteristically disciplined and timely manner in a crisis? Or is the service itself too depleted by Covid-19 to take the necessary action?

We know that you will want to satisfy yourself that everything possible is being done to keep people safe. This includes, of course, prison governors and prison officers, ancillary staff and the nurses and doctors providing healthcare under the NHS to whom we are all indebted for their selfless public service. Organisations representing staff, notably the PGA, the POA, RCN and other unions and professional associations, have asked consistently and repeatedly for the protective equipment and testing availability essential to protect the lives of their members in the course of their duty. As you know as at 22 April, 237 staff across 57 prisons had tested positive for Covid-19. Five members of staff have sadly died.

There are 300 prisoners across 69 prisons who have tested positive for Covid-19. Fifteen prisoners have sadly died. On the advice of the World Health Organisation and PHE amongst others, space must be created for social distancing and provision made for isolation. HMPPS cohorting strategy is helping to restrict the spread of the virus in some prisons but more needs to be done to prevent further loss of life. In line with efforts in the community, strenuous efforts must be made to shield those in custody who are most vulnerable.

The IAP strongly advises you to extend emergency arrangements for release. Policy and guidance should be revised to include consideration of short-term prisoners serving sentences of eighteen months or less and those prisoners nearing release up to three months before their due date as the Justice Secretary has announced in Scotland. Others for consideration should include people recalled for technical breach of licence; category D prisoners in the open estate already approved for release on temporary licence; prisoners assessed as eligible for ROTL or HDC; and vulnerable people already under consideration for compassionate release on health grounds. The comparatively small number of prisoners, up to 1,000 each year, who have been assessed and approved for urgent mental health care should be transferred to the secure health estate without further delay. The courts should continue to be encouraged to hear cases where people are being held on remand for non-violent offenses. The IAP will continue to monitor progress closely.

This brings me to outline the other two things we ask. The IAP would like you and colleagues across the Home Office and DHSC to reconvene the Ministerial Board on Deaths in Custody. Uniquely this Board brings together Ministers and operational leads, scrutiny bodies and key voluntary organisations committed to working constructively together, and combining their considerable knowledge and skills, to

prevent or reduce deaths in custody. The IAP will be pleased to consult co-sponsors on how best this can be done. I am copying this letter to your colleague Lucy Frazer QC MP, Nadine Dorries MP and Kit Malthouse MP in their capacity as Co-chairs of the Ministerial Board. The letter will also be placed on our website for the attention of Board members and interested parties.

To support this move to bring in experts to further shape an effective response to Covid-19 in custody, it is important to publish up to date information and relevant policy documents. This would include regular, at least weekly, records of people who have died in custody due, or related, to Covid-19. And regular records of numbers of people who have been released. We welcome your decision to publish your early release policy today. Once available we will place it on the Covid-19 information hub at www.iapondeathsincustody.org We encourage you to publish the PHE advice that underpins this policy and to give further information on the risk assessments you are deploying.

The IAP supports you to meet your human rights obligations. Notwithstanding your hard-pressed diary, I should very much welcome a brief opportunity to discuss our advice and proposals with you and to learn more about the steps you are taking to protect lives.

As ever,

A handwritten signature in black ink, appearing to read 'Juliet', written in a cursive style.

**Juliet Lyon CBE,
Chair of the Independent Advisory Panel on Deaths in Custody**