

Rt Hon. Damian Hinds MP

Minister of State, Ministry of Justice

102 Petty France

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16 October 2023

Dear Damian Hinds MP

**Urgent Government action to prevent crises in the children’s secure estate**

The British Association of Social Workers (BASW) is the professional association for social work in the UK with offices in England, Northern Ireland, Scotland and Wales. With over 22,000 members we exist to promote the best possible social work services for all people who may need them, while also securing the well-being of social workers working in all health and social care settings.

This initial open letter calls for the Government to ban the use of pelargonic acid vanillylamide (PAVA) spray in the children’s secure estate, and for further urgent Government action to prevent further crises in the sector. Details are outlined below.

**Use of PAVA**

We are aware that the Alliance for Youth Justice (AYJ) have already issued a [statement](https://www.ayj.org.uk/news-content/open-letter-calls-for-urgent-government-action-to-prevent-crises-in-the-childrens-secure-estate) on this matter expressing concerns. Separately to the AYJ, The Prison Reform Trust (PRT) has issued several statements over the years about their view on the use of PAVA and have co-signed the letter from the AYJ. The PRT website and publications attempt to explore the case against PAVA use, not least the disproportionate use on people from Global Majority backgrounds. (See: <https://prisonreformtrust.org.uk/project/pava-sprary/>).

Children in custody have collectively experienced more serious harm and are living with and recovering from higher levels of trauma in childhood (for example see [‘Punishing Abuse’ report](https://www.wmca.org.uk/media/4678/punishing-abuse.pdf)) than their peers. Inevitably such trauma results in behaviours which are maladaptive responses and which can include aggression. What ’should’ work to manage ‘rational’ adults will not work with traumatised children.

The extent to which the use of PAVA ‘works’ with adults is also questionable. Behaviour with origins in such significant distress needs a trauma informed therapeutic response. The secure estate is largely not set up for that and this inevitably results in management by force and fear, alongside the management of ‘criminality’ and criminogenic risk rather than the reparative meeting of as yet unmet need. The use of PAVA would prioritise behaviour management and the criminal identity of children over their wellbeing and need for safety which may stand a better chance of reducing re-offending in the longer term.

Crucially, as you are aware, adult prisons are overpopulated to a large degree. The under 18 Young Offender Institutes (YOI’s) are the only place in the prison estate that have capacity. This situation led to your decision in late in 2022 to hold young people up to their 19th birthday. What this means in practice is that the YOI estate is operating with approximately 25% 18-year-olds – namely adults.

Under 18s are children under the United Nations Convention on the Rights of the Child (UNCRC) and as such attract necessary protections and support including in secure settings. Further to the Department of Education's Positive for Youth Summit in June 2011, evidence continues to highlight adolescence extending into a child's twenties from transitional safeguarding and neuropsychology research (Wood et al., 2018). We therefore refute PAVA can be used safely with respect to children let alone if there is a reasonable argument for the use of PAVA in child settings, or indeed adult.

"However, developments over the last decade or so, in particular in neuroscience and cognitive psychology have made it clear that this is not the case: the brain does not fully mature until the twenties, and retains plasticity and learning capacity throughout life." Positive for Youth Summit (2011) <http://www.education.gov.uk/positiveforyouth>.

The United Nation Convention on the Rights of the Child states that where children need to be held in custody, *they should not be held in establishments intended for adults*. We accept that, technically, the under 18 YOIs consider themselves to be ‘for children’ as many of the staff have undertaken a ‘Youth Justice’ qualification. Additionally, the restraint package was designed for children and the Prison Service accepts its responsibilities in relation to the Children Act 1989 and the Children Act 2004, in relation to safeguarding responsibilities and responsibilities to Looked After Children. Note that the Howard League challenged the government in this regard in 2003.

In practice however, the fact that there is a proportion of the population who are technically adults and the remaining children are overwhelmingly 16 or 17 means that when making decisions, increasingly, the fact that they are children becomes and secondary consideration, where is it considered at all.

It is our concern that the use of PAVA represents an increasing trend in treating young people who have committed offences as adults, rather than vulnerable young people to whom we have a responsibility of care. The disproportionate number of black and brown children in custody means that such ‘adultification’ is already factoring into decisions.

It is worth noting, based on the experiences of our members working in or with the secure estate, that when incidents exist where a child or young person is seriously harmed, which in other circumstances would warrant an Ofsted notification or Serious Safeguarding Incident Notification to the National Child Safeguarding Practice Review Panel and consideration for a Rapid Review, the appetite for doing so when those children are in custody, and a proportion of them are technically adults, is lessened. In our experience there is, overall, a reduced level of concern for children and young people in the secure estate regardless of the degree of harm suffered, partly due to them being placed away from their ‘home’ services, but also due to being viewed as more culpable for harm suffered due to having positioned primarily as criminals. Many of these young people we know have been victims of crime and abuse, as outlined in the [‘Punishing Abuse’ report (2021)](https://www.wmca.org.uk/media/4678/punishing-abuse.pdf).

Finally, there is very limited research about the impact of the irritant PAVA on adolescent bodies and psychologies. There is even less about the impact on children of living in environments where the staff are carrying what is technically defined as a firearm. We have serious concerns about the potential for PAVA to be disproportionately used against black and brown children as there is already evident discrimination in the over representation of this group in the youth secure estate, in addition to other minority groups, such as Roma children for example. Please see the report on [‘Gang Involved Young People’ by ‘Beyond Youth Custody’ (2015).](http://www.beyondyouthcustody.net/wp-content/uploads/Gang-involved-young-people-custody-and-beyond-a-research-report.pdf)

To summarise, in our view, any calls for the use of PAVA in YOI’s and the youth secure estate more widely link back to the increase in older young people in YOI’s which in turn stems from overcrowding in the prison system, rather than PAVA being a beneficial way to work with young people in custody, or as a result of the behaviour of young people being somehow less manageable than in the past. We therefore call for the end to the consideration of PAVA as an option for children and young people. We also call on the Government to think creatively and humanely regarding ways to reduce the custodial population overall, which in our view lies in the greater use of community sentences. We hope this feedback is helpful and received in the constructive spirit with which it is intended and look forward to the publication of the formal consultation.

**References**

Wood, D. et al. (2018). Emerging Adulthood as a Critical Stage in the Life Course. In: Halfon, N., Forrest, C., Lerner, R., Faustman, E. (eds) Handbook of Life Course Health Development . Springer, Cham. https://doi.org/10.1007/978-3-319-47143-3\_7

For further information please contact:

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