The King (on the application of) The Howard League for Penal Reform

v.

The Secretary of State for Justice

Press Summary

Introduction

1. Mr. Justice Calver today handed down a judgment dismissing a challenge brought by the Howard League for Penal Reform (**"the Claimant"**) against the decision of the Secretary of State for Justice (**"the Defendant"**) on 24 April 2025 to authorise the use of pelargonic acid vanillylamide spray ("**PAVA**") in three public youth offender institutions ("**YOIs**") in England for a 12-month period ("**the Decision**"). The Decision permits the use of PAVA by specially trained staff in YOIs Feltham A, Werrington, and Wetherby.

Context in which the Decision was made

2. The YOIs accommodate young persons aged 15-18, who are likely to be serving sentences for serious offences. In recent years, there has been a significant increase in the level of serious assaults within YOIs [7]-[9]. These assaults often involve multiple perpetrators, improvised weapons, and a real risk of life changing injury or death [10]-[11]. Youth Justice Workers are authorised and trained to use force, but do not have access to a wide range of control equipment, nor do they routinely wear protective gear. With limited equipment available, it can take time to assemble enough staff to intervene safely, during which time young persons and staff are vulnerable [12]-[13].

3. PAVA has been available for serious incidents in YOIs since 2006, but its deployment had to be authorised by a "Gold Commander" and could only be used by the National Tactical Response Group, a specialist unit of prison officers. However, obtaining Gold Commander approval and awaiting attendance can also take time, which is problematic in the case of urgent threats. PAVA has also been authorised for use by the police against young persons in non-custodial settings since 2004 [14]-[15].

Process which led to the taking of the Decision

4. In April 2023, the Lord Chancellor and Secretary of State began an extensive consultation process, which included setting up a working group, commissioning reports, and engaging with stakeholders. This process is characterised by detailed analysis of the issues and concerns identified, and arguments for and against the use of PAVA. The evidence demonstrates a continual testing of the arguments, with repeated attempts to obtain as much literature and data as possible from experts concerning the effects of PAVA [18]-[74].

5. The process established that the following facts were known to the Secretary of State at the time of the Decision: (i) there was a significant rise in serious assaults in YOIs, and an urgent need to address a deteriorating situation; (ii) the decision whether to authorise PAVA was difficult and finely balanced; (iii) PAVA enables staff to prevent the infliction of immediate and serious harm, but it may not reduce overall harm, and may indeed escalate violent behaviour in the long-term; (iv) the efficacy of PAVA in reducing immediate risk, the harm which PAVA can cause, and the need to guard against its disproportionate use against persons with protected characteristics; and (v) that any deployment of PAVA would need to be subject to comprehensive safeguards to mitigate its risks [78].

6. Those safeguards are as follows: (i) PAVA is to be used as a last resort to prevent an immediate risk of serious harm; (ii) PAVA will only be made available to small numbers of specially trained staff; (iii) prior to authorisation, staff must undergo a suitability assessment and comprehensive programme of training and briefing; (iv) the roll out is limited to a 12-month period, during which data will be collected and reviewed; (v) a high level of governance and oversight is in place and scrutiny will take place at operational, national, and ministerial levels, and by the Independent Restraint Review Panel, and the roll out can be recalled at any time; (vi) deployment will be subject to the completion of detailed readiness assessments; and (vii) in each instance of PAVA use, staff must notify the NHS-commissioned healthcare team [79].

Judgment

7. The Decision was challenged on three grounds: (1) there was an alleged breach of the public sector equality duty contained in s.149 of the Equality Act 2010 ("**PSED**"); (2) there was an alleged failure to comply with the *Tameside* duty to make reasonable enquiries; and (3) there was unreasonableness and/or substantive irrationality.

8. Mr. Justice Calver dealt first with Ground 3 [81]-[106]. The Claimant argued that the Decision was unreasonable or irrational because the Defendant sought to justify it on the basis that it was necessary to reduce violence and harm, but there was no evidence that it would reduce violence and harm *overall* and in fact there was substantial evidence that it may increase violence and harm. However, this ground misrepresented the reasoning of the Defendant. The reason for the taking of the Decision was the significant increase in the severity of violence in the YOIs against prison staff and young prisoners. The Decision was intended to address the problem of the commission of immediate and serious violence against staff and young persons within the YOIs: using PAVA under strictly controlled conditions to seek to prevent potentially life-changing injuries. The Defendant knew that PAVA was unlikely to reduce overall harm [94]-[95]. The Claimant contended that there was process irrationality in the Decision because either there was no evidence to support an important step in reasoning, or the reasoning involved a serious logical or methodological error, or unexplained evidential gap. This argument was rejected, the Defendant undertook extensive engagement with stakeholders, whose concerns were considered seriously, and which had significant influence on the formulation of the Decision and the safeguards. There was no evidential omission or unexplained gap in reasoning, and therefore no process irrationality [97].

9. The alleged breach of the PSED under Ground 1 [107]-[141] rested on weak foundations since before the Decision was taken (i) there were several equality analyses addressing the potential impact of PAVA on young persons; (ii) a specific Child Rights Impact Assessment on PAVA in YOIs; and (iii) the Defendant's attention was specifically drawn to the PSED issues to which she needed to have regard. Nevertheless, the Claimant advanced three arguments.

10. First, the Claimant argued that the Defendant failed to have due regard to whether PAVA would reduce overall harm, which argument was rejected for the same reasons as Ground 3. Secondly, the Claimant argued that the Defendant failed to have due regard to the risk and extent of the impact of PAVA, and that further enquiries should have been made to calculate the extent of its impact on young persons in custody who are neurodiverse, disabled, or have suffered significant trauma. This argument was also rejected. The process outlined at [18]-[74] showed that the Defendant took more than reasonable steps to inform herself about the potential impact of her proposed decision, which led to the safeguards incorporated [124]-[126]. It was unclear what further enquiries could have been made that

would have led to any further useful information nor how long it would have taken to obtain any further useful information [128]-[132]. Thirdly, the Claimant argued that the Defendant failed to assess the extent of the discriminatory impact of PAVA on ethnic minorities. This argument was rejected: the Defendant is recorded as being concerned about disproportionate use of PAVA, and specific safeguards were introduced to mitigate these concerns [134]. There was no duty on the Defendant to commission further studies, nor to determine the precise extent of any potential impact [135]-[136]. The Defendant took account of the risks of disproportionate use on ethnic minorities and the risk that persons with certain characteristics were likely to be disproportionately affected, and took steps to address these risks; she had full regard to the equality issues [138]-[139] and the relevant questions within the PSED were conscientiously considered [141].

11. Finally, in relation to Ground 2, the Claimant argued that the Defendant had failed to gather sufficient information to arrive at an informed, rational decision, in breach of the *Tameside* duty, and the duty to have regard to the best interests of young persons in custody [142]-[148]. This ground failed for the same reasons that the PSED challenge failed. It could not be seriously contended that no reasonable Secretary of State could have been satisfied on the basis of the enquiries made that the Defendant possessed the information necessary for her decision to authorise a *limited* roll out of PAVA to the YOIs, particularly in view of the extensive safeguards she insisted upon [142]-[146], nor could it be said that she did not have regard to the welfare and best interests of young persons in custody [147].

References in square brackets are to paragraphs in the judgment.

19 January 2026