Final Report of an Independent Investigation into the Case of AF commissioned by the Secretary of State for Justice in accordance with Article 2 of the European Convention on Human Rights

Rob Allen

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Contents

Executive Summary and List of Findings and Recommendations

Note on Language

The Investigation was commissioned on 25 March 2021 by HM Prison and Probation Service (HMPPS) on behalf of the Secretary of State for Justice. While the commissioning letter refers to AF as she/her because she now identifies as a female, this investigation report uses the pronouns he/she and him/her to refer to AF during the period up to and including 6 May 2016. The reasons for doing so are as follows. While AF communicated to us in 2021 that she identified as a woman when she was remanded to HMP Leicester, contemporaneous records suggest that AF was unsure about his/her gender at that time [1] and classed him/herself both as a man and a woman[2]. According to medical records, AF was going through a process of gender reassignment[3].

Almost all of the prison and medical records from May 2016 refer to AF using he/him, and this usage is reflected in the direct quotations we have included from relevant documents in the report.

In the circumstances, it seems more appropriate for us to use both male and female pronouns to refer to AF during the time period covered by the investigation and earlier. We use she/her when describing our contact with AF during the course of this investigation.

Summary of Investigation Report

AF was received on remand at HMP Leicester on 4 May 2016. AF was located on the First Night Centre and an ACCT was opened because of AF's strange presentation and history of mental health problems.

During a routine observation check at 00:43hours on 6 May 2016, AF was found with a ligature around the neck that was tied to the window bars. Staff entered the cell, removed

[1] AF Medical Record – 4 May 2016 – Pages 56-58 – Annex D and ACCT Document Concern and Keep Safe Form – 4 May 2016 – Annex C

[2] ACCT Document First Review Following Assessment – 4 May 2016 – Annex C

[3] Core Mental Health Assessment – 3 June 2015 – Annex D

the ligature and commenced CPR. An ambulance was called and arrived at 00:55hours when paramedics took over treatment. AF was taken to the Leicester Royal Infirmary. AF's injuries were life-threatening and have proved serious and enduring. After AF was found, the response by prison staff, healthcare staff and paramedics was prompt and efficient.

AF was a vulnerable young person aged 24 who had not been in prison before. AF had a long history of mental health problems and of self- harm and a very difficult relationship with his/her family. AF had been diagnosed with Gender Identity Disorder.

On the morning of 4 May 2016, AF had discharged himself/herself from psychiatric hospital and was picked up by the police sitting in the road. AF had made cuts to both wrists. After treatment for these, AF was taken into police custody because of an outstanding arrest warrant. AF refused to attend court and was remanded to HMP Leicester in their absence. The investigation considers that given AF's vulnerability, more consideration should have been given by the court to an alternative to a custodial remand.

Once remanded in custody, the decision to locate AF at HMP Leicester was the correct one, although no formal consideration of his/her gender was made.

On arrival at prison, good initial decisions were made to locate AF in his/her own cell on the First Night Centre, to open an ACCT document and to refer him/her for a mental health assessment. The initial health screen was undertaken well and medical information about AF sought and received promptly but it is not clear whether the triage assessment undertaken in the police custody suite was made available to prison healthcare staff.
The Immediate Action Plan put in place to ensure AF's safety requiring three observations per hour and three conversations per day was appropriate and properly implemented. The frequency of observations was raised to four an hour the following day, probably by the mental health nurses who assessed AF. This mental health assessment was prompt and went some way to identifying AF's needs and risks including the need to see a psychiatrist urgently. The outcomes and treatment plans resulting from the consultation could have been more clearly documented with a risk management plan.

Neither of the two nurses attended the ACCT review which took place shortly after their consultation with AF, so their views about the risk he/she posed to him/herself could not be taken into account.

The CareMap plan drawn up at the ACCT review rightly identifies the need for healthcare intervention and for AF to be made subject to Rule 45 to protect him/her from other prisoners, by placing him/her on a unit for vulnerable prisoners. AF had already been recommended for Rule 45 status, but no progress was made to achieve this on 5 May. This did not make a material difference to the supervision provided by staff to AF although Rule 45 status might have restricted the access which other prisoners would have had to AF The CareMap might also usefully have included plans to address the issues AF had with his/her gender, his/her risk of substance misuse and ways his/her parents might have been able to help support AF. There is no record of whether the need for AF to be placed in a Safer Cell, without ligature points, was discussed either when the ACCT was opened or reviewed.

The investigation has found it likely that AF had consumed a psychoactive substance prior to the act of self-harm but tests were not carried out to determine this. This may have affected AF's state of mind on the evening of 5 May. There is evidence that the substance had been given to AF by another prisoner who worked as a Wing Orderly on the First Night Centre.

A pattern of intelligence reports about the Wing Orderly should have led to his removal from that role before AF's reception at HMP Leicester and to the Wing Orderly's relocation from the First Night Centre.

Findings and Recommendations

Finding One

Given AF's vulnerability, more consideration should have been given by the court to an alternative to a custodial remand.

Recommendation A (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)
Assessments made by Criminal Justice Liaison and Diversion Services should be shared with courts when they are considering remanding a defendant to custody.

Finding Two
Once remanded in custody, the decision to locate AF at HMP Leicester was the correct one, although no formal consideration of his/her birth or acquired gender was made or noted.

Recommendation B (to HMP Leicester)
HMP Leicester should have a policy to ensure that where necessary, proper inquiries are made about the gender of prisoners they receive.

Finding Three
The Cell Sharing Risk Assessment was appropriate, and the necessary action taken as a result of it.

Finding Four
The Immediate Action Plan was appropriate and properly implemented although there is no record of any consideration as to whether placement in a Safer Cell was needed.

Recommendation C (To HMPPS)
ACCT Forms should be amended to ensure that consideration is given and recorded about whether placement in a Safer Cell is needed to keep a prisoner safe.

Finding Five
Given that mental health nurses saw AF shortly before the ACCT review, they should have been involved in the review and their views about his/her risk taken into account.

Finding Six

The decision in the ACCT Review to maintain the observations levels at four per hour and maintain the risk level as raised can be justified, although even in the absence of information from healthcare a case for more intensive supervision could have been made.

Finding Seven

Consideration should have been given to locating AF in a Safer Cell at the ACCT Case Review

Recommendation D (To HMPPS)

ACCT Forms should be amended to help ensure that a mental health practitioner is invited to, and attends, each ACCT review and where this is not possible, that every effort is made to find out their views about a particular person.

Finding Eight

The CareMap identifies the important issues of healthcare and consideration of Rule 45, but there was a missed opportunity to address the issues AF had with gender, risk of substance misuse and the way his/her parents might have helped to support him/her.

Finding Nine

Despite recommendations that AF be made subject to Rule 45 status, no progress was made to achieve this on 5 May. This did not make a material difference to the supervision provided by staff to AF although Rule 45 status might have restricted the access which other prisoners would have had to him/her.

Finding Ten

The initial health screen was undertaken well, and information sought and received promptly but it is not clear whether the triage assessment undertaken in the police custody suite was made available to prison healthcare staff.

Recommendation E (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)
Assessments undertaken by Criminal Justice Liaison and Diversion Services should be sent electronically to prison healthcare when an individual is remanded or sentenced to custody and a record made that it has been seen.

Finding Eleven
The mental health assessment was prompt and went some way to identifying AF's needs and risks including the need to see a psychiatrist urgently. The outcomes and treatment plans resulting from the consultation could have been more clearly documented with a risk management plan completed in line with policy.[4]

Recommendation F (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)
Treatment/care plans should be clearly articulated in the care notes and a copy given to the patient, which can then be signed and kept by them.

Recommendation G (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust) Risks should be assessed at every opportunity and recorded and that a risk formulation and a risk management plan completed in line with policy.

Recommendation H (To Leicestershire Partnership NHS Trust)
Leicestershire Partnership NHS Trust policies around care co-ordination and care planning should take into consideration those patients who are sent to prison.

Recommendation I (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)
Where a prisoner has a community care coordinator, they should be informed immediately by prison healthcare when their patient is sent to prison.

[4] Leicestershire Partnership NHS Trust Clinical Risk Assessment Policy, 2014 - Annex E

Finding Twelve

It is very likely that AF had consumed a psychoactive substance prior to his/her act of self-harm but tests were not carried out to determine this.

Finding Thirteen

There is evidence that NPS had been given to AF by another prisoner who worked as a wing orderly on the First Night Centre.

Finding Fourteen

A pattern of intelligence reports about the Wing Orderly should have led to his removal from that role before AF 's reception at HMP Leicester and his relocation from the First Night Centre. It is recorded that Prisoner 1 was to be suspended from his job on 15 April, but this appears not to have happened.

Recommendation J (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)

Where there is a suspicion that a prisoner admitted to hospital has taken illicit substances, tests should be carried out to determine whether this is the case.

Recommendation K (To HMP Leicester)

Vetting arrangements should be improved to ensure that prisoners suspected of involvement in drug dealing cannot work on the First Night Centre

Finding Fifteen

When AF was found, the response by prison staff, healthcare staff and paramedics was prompt and efficient.

Recommendation L (To HMPPS)

HMPPS should consider whether their policies in respect of the appointment, vetting and monitoring of orderlies and mentors who have access to potentially vulnerable prisoners are sufficiently robust.

Glossary

ACCT	Assessment, Care in Custody and Teamwork Plan. The care-planning system used to help identify and care for prisoners at risk of self-harm or suicide
CareMap	An action plan on how to keep an individual on an ACCT, safe
CPA	Care Programme Approach; a framework for ensuring effective mental health care
CJLDS	Criminal Justice Liaison and Diversion Service, which assesses and supports vulnerable people in police custody and the courts
CSRA	Cell Sharing Risk Assessment is used to assess an individual's suitability to share a cell
Code Blue	A code for calling a medical emergency over the prison radio network when a prisoner has symptoms such as difficulty breathing or is unconscious
Constant Watch	Also known as Constant Supervision. A cell that has a clear door, so that an individual can be constantly observed by a member of staff who is placed outside of the cell at all times
CPR	Cardiac Pulmonary Resuscitation
DSH	Deliberate Self Harm
EMAS	East Midlands Ambulance Service
F213	Injury to Prisoner Form
F213SH	Self-Harm Injury form
FNC	First Night Centre. Holds those who are new to the prison to complete an induction period
GEO Amey	Contractor for escorting prisoners to court or prison transfers

HMIP	His Majesty's Inspectorate of Prisons
HMPPS	His Majesty's Prison and Probation Service
LRI	Leicester Royal Infirmary
Mamba	A form of NPS, 'legal high'. Synthetic cannabis
Narcan	Emergency antidote for overdoses caused by heroin and other opiates and opioids
NOMIS	National Offender Management Information System. HM Prison Service's computerised system
NPS	New Psychoactive Substances. Drugs that are designed to replicate the effects of illegal substances
Oscar 1/Orderly Officer	Person responsible for the daily running of the prison regime and incident management
Peer Advisor	A trusted prisoner who undertook an additional role in helping to settle new prisoners in
PER	Person Escort Record – Accompanies prisoners when being escorted outside of the prison
POA	Prison Officers Association – Staff Union
PSI / PSO	Prison Service Instruction / Prison Service Order
Rule 45	Prison rule to segregate someone for their own protection or for the good order and discipline of the prison
Safer Cell	A cell from which ligature points have been removed and the risk of hanging significantly reduced
Victor 1	Duty Governor
VPU	Vulnerable Prisoners Unit
Wing Orderly	A prisoner who is employed within a wing setting

PART ONE

THE INVESTIGATION

Chapter 1.
How We Conducted the Investigation

The Investigation was carried out by Rob Allen, former Director of the International Centre for Prison Studies. He was assisted by Andy Barber, a former Governor from HM Prison Service. A clinical review was conducted by Cheryl Carson from Facere Melius and is annexed to this report.[5]

The terms of reference for the investigation are:

- to examine the circumstances of the incident on 6 May 2016 in which AF sustained life-threatening injuries, and, in so far as it is relevant, her management by HMP Leicester from reception on 4 May 2016 until that date, and in light of the policies and procedures applicable at the relevant time;

- to examine relevant health issues during the period spent in custody at HMP Leicester from 4 May 2016 until 6 May 2016, including mental health assessments and AF's clinical care up to the point of the life-threatening injury on 6 May 2016;

- to consider, within the operational context of HMPPS, what lessons in respect of current policies and procedures can usefully be learned and to make recommendations as to how such policies and procedures might be improved;

- to provide a draft and final report of my findings including the relevant supporting documents as annexes; to provide my views, as part of my draft report, on what I consider to be an appropriate element of public scrutiny

In addition to AF, the Interested Parties to the Investigation are HMPPS of which HMP Leicester is a part; Leicestershire Partnership NHS Trust which provided health care in the

[5] Clinical Review by Cheryl Carson – October 2022 – Annex A

prison at the time of the incident; and Nottinghamshire Healthcare NHS Foundation Trust which currently provides health care at HMP Leicester.[6]

In the initial stages of the investigation, Andy Barber and I met with AF on 4 May 2021 when it became clear that AF has very limited capacity to participate directly in the investigation. AF communicated with us by pointing to Yes/No or spelling out letters on a sheet, with the assistance of a Speech and Language Therapist. We have reservations about the reliability of what AF was able to tell us because of the impact of her injuries on her capacity, the length of time since the incident and the means of communication we were able to use.[7]

We visited HMP Leicester on the same day. We analysed an initial set of documents from the prison and AF's medical record, both of which were disclosed relatively promptly.

There was a delay in the investigation while we awaited the appointment of a Clinical Reviewer by HMPPS. Facere Melius was eventually commissioned on 17 March 2022. A further delay was caused by the reluctance of staff at HMP Leicester to be interviewed until they had been advised by the Prison Officers Association that they should do so. This impasse was resolved through the intervention of the Governor in June 2022. We have also spent some time locating witnesses who have left the prison service; and determining how best to enable AF to participate in the investigation. AF indicated that she was not content for her interests to be represented by her parents. We regret the length of time that it has taken to finalise this Article 2 Investigation. Although we have looked at possible ways of obtaining AF's comments on the draft version of this report, it has not proved possible to do so.

We have interviewed six members of staff and one former member of staff. The report makes 15 findings and 12 recommendations.

[6] Nottinghamshire Healthcare NHS Foundation Trust took over responsibility in 2018. Leicestershire Partnership NHS Trust informed the investigation that they will ensure learning from the report and recommendations are considered in relevant policies and procedures.
[7] Note of the Interview with AF – 4 May 2021 – Annex B

Chapter 2.

HMP Leicester

HMP Leicester is an adult male local prison with a resettlement function. At the time of the incident, it was holding 332 prisoners.[8] This represented 154% of its Certified Normal Accommodation although the Operational Capacity was 411.[9] Much of the prison was constructed in 1874.

The main living accommodation is a long rectangular block split into A and B wings, with full integral sanitation and in-cell electricity. At the time of the incident, the accommodation was divided to provide a separate area for vulnerable prisoners, the first night centre and the segregation unit. There was a separate substance misuse unit housed above the health care centre which accommodated 30 prisoners and includes the delivery of the substance misuse programme.[10]

The escort contractor responsible for transporting prisoners was GEO Amey. The health service provider was Leicestershire Partnership NHS Trust.

The report by HM Inspectorate of Prisons of an inspection carried out seven months before the incident found that: "Too little attention was paid to safety and vulnerability issues during prisoners' early days. Too many prisoners felt unsafe. Levels of violence and intimidation were very high and not enough was done to make the prison safer. The number of prisoners at risk of self-harm was high and we were not confident that they were adequately cared for. Drugs and alcohol were easily available, but supply reduction arrangements were poor."[11]

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[8] Daily Briefing Sheet – 6 May 2016 – Annex C

[9] Prison population figures: 2016 - GOV.UK (www.gov.uk) Certified Normal Accommodation (CNA), or uncrowded capacity, is the Prison Service's own measure of accommodation. CNA represents the good, decent standard of accommodation that the Service aspires to provide all prisoners. The operational capacity of a prison is the total number of prisoners that an establishment can hold taking into account control, security and the proper operation of the planned regime. It is determined by the Deputy Director of Custody on the basis of operational judgement and experience.

[10] Information from Report on an unannounced inspection of HMP Leicester by HM Chief Inspector of Prisons 28 September – 9 October 2015 HMP Leicester (justiceinspectorates.gov.uk) – Annex E

[11] Information from Report on an unannounced inspection of HMP Leicester by HM Chief Inspector of Prisons 28 September – 9 October 2015 HMP Leicester (justiceinspectorates.gov.uk) – Annex E

Chapter 3.

AF

AF was born on 20 December 1991 and aged 24 when he/she arrived at HMP Leicester on 4 May 2016. AF had a long-troubled history involving experiences of abuse, homelessness, and both mental health and drug and alcohol problems. AF had not been in prison before. AF had a difficult relationship with his/her parents. AF's Core Prison Record notes his/her address as NFA (No Fixed Abode) and there are no details recorded about next of kin.[12] AF did however submit the phone numbers of both parents to prison staff and made a call to his/her father from prison on 5 May.

AF also had a long history of overdosing and scratching. AF had been diagnosed with gender identity disorder and was in the process of going through gender reassignment[13]

Between 15 March and 4 May 2016, AF had been an in-patient at the X Mental Health Unit.[14] AF had been admitted informally after presenting at the GPs surgery and threatening to end his/her life. Identified risks on admission were of impulsive and accidental death, with increased risk under the influence of alcohol and the risks remained throughout the admission. AF had been diagnosed as suffering from Mixed Personality Disorder, Gender Identity Disorder and Mental and Behavioural Disorders due to harmful alcohol use.[15]

The stay in psychiatric hospital from March to May 2016 was not AF's first. In January 2015, AF described being unable to cope with "feelings of shame she felt she had brought onto her family" and took an overdose of mixed medication with an intention of committing suicide.[16] Following this AF was admitted to the X Mental Health Unit, initially informally and subsequently under Section 3 of the Mental Health Act after absconding from the unit. On one occasion AF was brought back to the Unit by the Police after throwing him/herself

[12] F2050 Core Record – 4 May 2016 – Annex C
[13] Core Mental Health Assessment – 3 June 2015 – Annex D
[14] The X Mental Health Unit is an acute mental health admissions unit. Mental Health Services Inpatient Discharge Summary – 4 May 2016 – Annex D
[15] Mental Health Services Inpatient Discharge Summary – 4 May 2016 – Annex D
[16] Mental Health Services Inpatient Discharge Summary – 4 May 2016 – Annex D

into oncoming traffic.

During the period 15 March to 4 May 2016, prior to being remanded to prison, on three occasions, AF was made subject to provisions in the Mental Health Act which allow an existing informal inpatient to be held for an assessment of where detention might be needed. These followed AF expressing a wish to discharge him/herself against medical advice, on two occasions in order to kill him/herself. AF was not sectioned; however a referral was made to a specialist locked unit for patients with Personality Disorders, but AF was deemed unsuitable for admission to it on 21 April due to self-harm attempts and gender identity problems.

On 1 May AF was found by staff unconscious with cuts on the arms and after treatment at the Accident and Emergency Unit returned to the X Mental Health Unit. Three days later, in the early hours of Wednesday 4 May 2016, AF again wanted to discharge him/herself. AF was deemed to have capacity to make the decisions and was not considered detainable. AF was allowed to leave although against medical advice.

Prior to leaving the X Mental Health Unit, meetings were held with AF's father to encourage AF to cooperate with the care team in the community. Risks on discharge were noted as including cutting, overdose and impulsive behaviour such as attempting to jump off a bridge especially when under stress stemming from an ongoing court appearance. This related to an arson charge which followed an incident at the YMCA prior to AF's admission to the X Mental Health Unit. Risks were noted of "accidental death from these behaviours and a medium to long term risk of suicide" though this is not a risk that can be minimised by acute hospital admission due to his non engagement and lack of appropriate psychological support on the ward to patients with personality disorders".[17]

AF was discharged from the X Mental Health Unit at 09.24 hours on 4 May.[18]

[17] Mental Health Services Inpatient Discharge Summary – 4 May 2016 – Annex D
[18] Mental Health Services Inpatient Discharge Summary – 4 May 2016 – Annex D

Later that day, AF was picked up by the police as he/she was sitting in the road. AF had made cuts to both wrists. It was discovered that there was an outstanding warrant for AF's arrest following a failure to appear in court. AF's cuts were treated, and he/she was then taken into police custody at Euston Street. According to the Person Escort Record prepared when AF was to be transferred to HMP Leicester later in the day, AF was on "constant watch" while in police custody.[19]

AF was seen there by one or possibly two practitioners from the Criminal Justice Liaison and Diversion Service at 14.45 hours.[20] The consultations are recorded in a Psychiatric Triage Form[21]; and a Police Medical Report[22]. AF was found to be fit to face criminal proceedings and "fit to be released as appropriate."[23]

AF said he/she wanted to end his/her life and had a specific plan to do so but when asked about this did not specify how, when or where this would happen.

AF said that being in hospital was not helping, making him/her harm him/herself more and making him/her feel vulnerable due to his/her gender issues on the ward. The assessment notes that AF did not wish to attend court or be involved in the criminal justice system. AF reported that "he would specifically kill himself if he was sent to prison"[24]

The assessment decided that AF should contact his/her normal care team on release from police custody and records that AF was made aware that "there is some chance he may be remanded to prison." AF refused to attend court, apparently having been made aware that such a refusal would result in this happening.

According to the report by the Criminal Justice Liaison and Diversion (CJLD) practitioner, AF's case was held "in his absence". [25] The PER refers to AF being taken into the custody of GEO,

[19] Person Escort Form (PER) – 4 May 2016 – Annex C
[20] Psychiatric Triage Form for UCC, ED and CJLDS – 4 May 2016 – Annex D
[21] Psychiatric Triage Form for UCC, ED and CJLDS – 4 May 2016 – Annex D
[22] Police Medical Report – 4 May 2016 – Annex D
[23] Police Medical Report – 4 May 2016 – Annex D
[24] Psychiatric Triage Form for UCC, ED and CJLDS – 4 May 2016 – Annex D
[25] Psychiatric Triage Form for UCC, ED and CJLDS – 4 May 2016 – Annex D

the escort contractor from “Virtual Court” so it is conceivable that AF did in fact appear in court via video link.

On balance, it is more likely that the CJLD practitioner would have known exactly what happened given his involvement with AF throughout the process, and that AF did not appear at all.

In any event, AF was remanded to prison until 29 June 2016 with a preliminary hearing via video link scheduled for 11 May 2016.

AF communicated to us that at the time of the remand, she identified as a woman and let someone called Roy know that she wanted to go to a women’s prison.[26] We have not been able to identify who Roy was. As noted in Chapter 1, we have reservations about the reliability of what AF was able to tell us.

[26] Note of Meeting with AF – 4 May 2021– Annex B

PART TWO

THE EVENTS

Chapter 4

Reception on Wednesday 4 May 2016

AF arrived at HMP Leicester at 15.48 hours on Wednesday 4 May after being remanded into custody by Leicester Magistrates Court. He/she had been charged with Fail to Surrender, Damage Property and Harassment. It was AF's first time in prison. It is written on the Person Escort Record Form (PER) that AF had stated "intent to kill himself in 2015".[27] The PER also says that a suicide and self-harm form was opened, and that AF refused to answer questions. The Suicide and Self Harm Form did not seem to arrive with AF at HMP Leicester, but the PER includes a statement which says that AF has cuts to the wrists, that he/she had been non-compliant and abusive, had self-harmed prior to coming into police custody and had been on constant watch. A copy of the PER was handed over to a Prison Officer in Reception and the Reception Nurse, Nurse 1.

It is not clear whether a copy of the Triage assessment completed by CJLD at the police custody suite accompanied AF to the prison or whether this was sent electronically.

A Cell Sharing Risk Assessment was completed by an officer at Reception. This assessed AF as a high risk. This means AF presented a high level of risk of severe cell violence to or from a cell mate. AF was considered to be significantly vulnerable to assault. The officer completing the form commented: "presents very strange in manner, would suggest HRSC {High Risk Cell Share} pending further investigation and mental health history".[28] The healthcare part of the form assessed AF as at increased risk and includes the comment "Needs to be assessed by Mental Health. Known to Mental Health in the Community".[29] This part of the form was signed by Nurse 1.

[27] Person Escort Record (PER) – 4 May 2016 – Annex C
[28] CSRA – 4 May 2016 – Annex C
[29] CSRA – 4 May 2016 – Annex C

AF told us that she was wearing women's clothes when arrested but as noted in Chapter 1, we have reservations about the reliability of what she was able to tell us.[30]

AF was examined by Nurse 1 who cleaned and dressed his/her wrists at Reception, referred AF to the mental health team and opened a ACCT.[31] The ACCT case manager was Senior Officer 1. [32]

Nurse 1 described on the medical record "Mood subjectively low. Stated he does not want to be alive. Came with scabbed wounds on both arms. Unsure about his own gender. Reluctant to engage in own reception screening"[33]

As part of the ACCT, a Concern and Keep Safe Form was completed by Nurse 1. All six boxes on the form were ticked: Suicide attempt or statement of intent to take own life; Self Injury or statement to self-harm; unusual behaviour or talk; very low mood; problems related to drug/alcohol withdrawal; Other concerns including vulnerability due to age or immaturity. Nurse 1 added the following comments: "stated that he does not want to be alive. Scabbed skin on both arms due to self-harm. Reluctant to engage in meaningful conversation. Mood subjectively low. Stated he allegedly took a cocktail of drugs and alcohol. AF told me he was unsure about his gender".[34]

An action plan was drawn up by Custodial Manager 1. This states that AF should remain in his/her current location until assessed and be observed by staff three times per hour with conversations three times per day. Samaritans phone access and family phone access were explained.[35]

It is noted that AF declined to engage with substance misuse services, admitting to having issues with alcohol, but not seeing the point in engaging. [36]

[30] Note of Meeting with AF – 4 May 2021 – Annex B
[31] F213 – 4 May 2016 – Annex D
[32] ACCT Log Entry – 4 May 2016 – Annex C
[33] AF Medical Record – 4 May 2016 – Pages 56-58 – Annex D
[34] ACCT Document Concern and Keep Safe Form – 4 May 2016 – Annex C
[35] ACCT Document Concern and Keep Safe Form – 4 May 2016 – Annex C
[36] AF Medical Record – 4 May 2016 – Pages 56-58 – Annex D

AF was located on the first Night Centre (FNC) in Cell B 12. This was an area of 16 cells where prisoners would spend at least one night and sometimes longer, depending on their needs and circumstances. As well as new arrivals at the prison, the FNC also accommodated one or more prisoners who worked there as a cleaner and/or orderly.

AF was taken to the FNC from Reception at approximately 17.20hours. It was noted on the ACCT form that AF was very quiet. "refused to engage with induction so has spoken slightly with orderly and gone behind his door.[37] The orderly was Prisoner 1. AF indicated to us that she met other prisoners, and that they were kind and that she did not know any prisoners from outside. [38]

According to an Intelligence Report created on 9 May 2016, five days later, a prisoner stated that Prisoner 1 did the induction for AF. He said, "one of the first questions he heard him ask AF was if he smoked mamba".[39]

Prison Officer 1 who would normally have held an induction interview with a new prisoner like AF on the First Night Centre in order to provide information about the prison noted that AF "Presented extremely strange in manner upon reception unable to process the FNC paperwork due to AF not engaging or appearing to understand the process. Supplied with 2 x smokers packs as known to be a smoker, £5 pin credit as indicated he wanted to speak with his mum. Staff aware that they must attempt to speak with him and explain protocols as soon as possible tomorrow"[40]

Prison Officer 2 told us that she remembered AF "not engaging" and "trying to speak to him and he wouldn't look at me, he wouldn't answer me, he wouldn't engage at all. He was just staring straight ahead".[41] She also told us that she wasn't sure if AF was understanding what she was saying because she was getting no comprehension back.

[37] ACCT Document Ongoing Record – 4 May 2016 – Annex C
[38] Notes of Meeting with AF – 4 May 2021 – Annex B
[39] INED01379183 The Intelligence Report states that the time and date of this event was 10.am on 7 May but this cannot be correct as AF was no longer in the prison at that time – 9 May 2016 – Annex C
[40] NOMIS Case Notes – 4 May 2016 – Annex C
[41] Prison Officer 2 Interview Transcript – 2 November 2022 – Annex B

AF remained in his/her cell until the following morning, laying on the bed. Prison Officer 2 told AF that he/she could make a phone call, but he/she declined. AF was observed three times an hour during the night.

Chapter 5

AF on Thursday 5 May 2016

AF appeared to remain asleep until about 09.00 hours, not leaving the cell when the door was opened for "domestics"- that is to have a shower. The Prison's Daily Briefing Sheet, which is prepared each morning to summarise the key events and issues over the previous 24-hour period, records that at 09.00 hours "Concerns raised by wing staff regarding AF's vulnerability on the landing. Although not claiming to be under threat, staff have asked that this information be raised at the morning meeting. Will remain on the FNC for the time being."[42] An entry in the Nomis case notes record that "Due to his current behaviour AF has been recommended for Rule 45 status.[43] Safer custody informed". It is not clear exactly what aspects of AF's vulnerability and behaviour were causing concern but staff on the FNC were clearly of the view that AF might be better located elsewhere in the prison.

The ACCT records that AF declined exercise at 09.15 hours but at 09.25 hours spoke with the Chaplain, although on the Nomis case notes, this is noted to have taken place earlier at 08.52 hours. The chaplain recorded that this was a very poor conversation, in which AF either did not know or was not forthcoming about their remand date, religious affiliation or whether family or friends will visit.[44]

Shortly afterwards, Prison Officer 2 undertook an ACCT assessment interview which she recorded fully at 10.25 hours. Prison Officer 2 described AF as initially unwilling to engage but then telling her that he/she was in the X Mental Health Unit from where he/she ran away. AF told Prison Officer 2 that he/she did not know why he/she was in prison and that he/she was not bothered by it as it was only a building. AF started telling her about the spirits in the building and how he/she has lots of work to do here. AF talked about life after death and how this is the afterlife we are living. AF stated the need to sleep. Prison Officer 2 notes AF as "very bizarre in his conversation".[45]

[42] Daily Briefing – 6 May 2016 (which lists significant occurrences in the previous 24 hours) – Annex C
[43] Nomis Case Notes – 4 May 2016 – Annex C – Rule 45 See Glossary
[44] ACCT Document Ongoing Record and Nomis Case Notes – 4 May 2016 – Annex C
[45] ACCT Document Assessment Interview – 4 May 2016 – Annex C

AF told Prison Officer 2 about the s recent act of self-harm in which he/she cut their wrists with glass prior to coming into prison. AF said he/she did this because he/she wanted to die. However, when asked if he/she had any current thoughts of self-harm or suicide, "he stated he didn't."[46] AF also told Prison Officer 2 that he/she did not have any family support but always tries to look at the positives.

In terms of what was to happen, Prison Officer 2 noted that AF needs to see mental health and that staff have requested that AF be on the vulnerable prisoner's unit "as this may be a more suitable location for him".[47]

The summary of key issues were "staff vigilance and support, awareness of Listeners/Samaritans phone, referral to mental health and to be considered for Rule 45". [48]

Later that morning staff on the First Night Centre made several attempts to engage AF in conversation without success. At 13.50 hours, Prison Officer 3 had a conversation with AF who was "confused and unaware of things which is understandable being his first time in prison"[49]

AF asked Prison Officer 3 whether he/she could make a phone call, but Prison Officer 3 noted that the permitted numbers had not been activated. This is despite the fact that the night before AF had been told that one of the staff had got the phone numbers, he/she was offered a phone call and when he/she declined was told that he/she had 72 hours to take the call.[50] During the conversation at 13.50 on 5 May, Prison Officer 3 told AF he would explain the phoning process shortly.

This presumably happened during an induction interview which Prison Officer 3 held with AF an hour later in the office. Prison Officer 3 explained the regime to AF whom he found to be

[46] ACCT Document Assessment Interview – 4 May 2016 – Annex C
[47] ACCT Document Assessment Interview – 4 May 2016 – Annex C
[48] ACCT Document Assessment Interview – 4 May 2016 – Annex C
[49] ACCT Document Ongoing Record – 4 May 2016 – Annex C
[50] ACCT Document Ongoing Record – 4 May 2016 – Annex C

coherent and understanding, "much better than what was described on initial reception". [51] AF again asked for his free phone call.

Prison Officer 3 noted on Nomis that AF "answered the questions asked of him slowly but thoroughly. He still highlighted signs of vulnerability and claimed to have thoughts of self-harm, an ACCT is already open for him. Listener provisions have been explained and Samaritans phone use has been explained. AF did say he would be expecting a visit from his father showing there may well be a relationship with him on the outside. He submitted the numbers of both his father and mother"[52].

Before he/she could make the phone call, at 15.30 hours, AF was taken for an interview with Nurse 2 and Nurse 3 from the mental health team. Nurse 2 noted that AF "appeared low in mood, softly spoken, Clean and tidy in prison attire, long hair tied back in a ponytail. 1st time in Prison unsure why he is here". [53]

AF agreed that the mental health team could request a discharge summary from the X Mental Health Unit and confirm any medication with their GP. AF said he/she had not seen a solicitor and that he/she "has issues with transgender". Nurse 2 advised AF to sign up for Rule 45. Nurse 2 notes that AF "reports having thoughts of hanging himself," and that AF "has constant thoughts of DSH {Deliberate Self-Harm}, Feels like hanging himself, has old and new scars on his arms with fresh cuts on his wrists covered by dressings, states they did not require suturing, reports he has a long history of DSH".[54]

Nurse 3 noted that AF was on an ACCT document and that "observations increased to 4 per hour, with 3 conversations per day. Oscar 1 informed".[55] It reads as if the decision to increase the observations was made by the mental health nurses. It is however possible that they are reporting a decision made by the ACCT review that was held shortly

[51] ACCT Document Ongoing Record – 4 May 2016 – Annex C
[52] Nomis Case Notes – 4 May 2016 – Annex C
[53] AF Medical Record – 4 May 2016 – Pages 56 – 58 – Annex D
[54] AF Medical Record – 4 May 2016 – Pages 56 – 58 – Annex D
[55] Oscar 1 is the code used for the Orderly Officer, the Custody Manager or Other Officer responsible for the running of the prison each day.

afterwards. The note of that review says that AF "*has had*" the observations increased which suggests the decision had been taken already. On the other hand, the questionnaire prepared by the prison following the incident say the observations were "increased on first review."[56] Exactly when the decision was made little difference to the supervision provided to AF as there can only have been a short period between the end of the mental health assessment and the start of the ACCT Review.

The nurses advised AF "to request support through Listeners and the Samaritans if he is struggling with his thoughts during out of hours otherwise ask officers to contact the mental health team".[57] An appointment was to be booked the next day with a psychiatrist.

Nurse 3 spoke by telephone with someone at the X Mental Health Unit where AF had been an inpatient prior to imprisonment; and with the Offender Management Unit in the prison to find out the reason for AF's detention at HMP Leicester.

After the meeting with the nurses, at 16.10 hours AF phoned his/her father who said he would visit the next day.[58]

Shortly afterwards at 16.30 hours, the first ACCT Review was held. It was chaired by Supervising Officer 1 who was the Case Manager and attended by Prison Officer 3 and Prison Officer 4. Prison Officer 3 noted in the ACCT record that AF seemed to engage well with Supervising Officer 1.

The record of the review itself, made by Supervising Officer 1 states that AF "is aware of where he is and has settle onto the FNC. Due to his split personality (info from inmate), he classes himself as both AF and Female Name 1. He is a very intellectual young man who appears quite relaxed and presents very timid. He stated that he self-harmed whilst in police

[56] Questionnaire Serious Self-Harm AF – May 2016 – Annex C
[57] AF Medical Record – 4 May 2016 – Pages 56 – 58 – Annex D
[58] ACCT Document Ongoing Record – 4 May 2016 – Annex C

custody and cannot guarantee he won't self-harm again. Due to his unpredictable behaviour, he has had his observations raised to 4 per hour".[59]

A further review was to take place the following day with AF's offender supervisor and a member of the mental health team. It is not clear who the offender supervisor was.

The record of the review rates the initial assessment of risk of harm to self as "raised" which is the middle option between low and high. The current likelihood of further risk behaviours is also assessed as "raised ".

Supervising Officer 1 has signed a CareMap, a document which summarises issues and the actions proposed to address them. The CareMap for AF identifies two issues. The first is "Medication" issues, for which the action required is "mental health" to be taken by "Healthcare". The second is "Accommodation whilst in custody "for which the action required is "Needs to be R45" which means Rule 45. This is to be taken forward by "Safer Custody Residential Manager ". There is no timescale mentioned for either action and the status of both is "ongoing".[60]

By 17.10 hours, after the review concluded, AF returned back to their cell.

At some point on 5 May, the day 2 CSRA assessment was completed.[61] This confirmed that AF was a high risk.

Notes of observations on AF's ACCT record show that he/she was given a meal at 18.20 hours which he/she said they would try to eat. After that AF was observed to be asleep although an entry at 19.40 hours reports that it seems he/she ate some of his meal.

At 20.20 hours it is noted that there was a full handover to new staff. These appear to have been Prison Officer 5 and Prison Officer 7 who were to work on the FNC during the night.

[59] ACCT Document First Review Following Assessment – 4 May 2016 – Annex C
[60] ACCT Document CareMap – 4 May 2016 – Annex C
[61] CSRA – 4 May 2016 – Annex C

From 20.40 hours, AF was observed to be awake, first lying in bed, then in a chair watching television and then back on the bed.[62] At 23.28 hours AF was observed walking around the cell and at 23.46 hours awake stood in the cell.

[62] ACCT Document Ongoing Record – 4 May 2016 – Annex C

Chapter 6

The Incident of Self Harm 6 May 2016

At 00.03 hours on Friday 6 May, AF was observed to be awake lying in bed; at 00.15 hours awake on his/her bed and at 00.26 hours also awake on bed.

At some time between 00.40 and 00.43 hours, AF was observed by Prison Officer 5 standing at the back of his/her cell with a bedsheet around his/her neck. The other end was tied to the window. Prison Officer 5 "called for assistance on the radio staff attended. Ligature cut off AF. CPR administered and healthcare attended".[63]

Prison Officer 5 provided slightly more detail in the Nomis case notes, recording that "At 00:43 on 06/05/2016 whilst carrying out a routine ACCT check, AF was found to have a ligature around his neck tied to the window at the back of the cell. AF was standing but was unresponsive. Staff assistance was called, and staff entered the cell and took the ligature off AF who was placed on the cell floor and CPR was administered. Healthcare and an ambulance were called. AF had a pulse and was breathing however, was unresponsive to staff. AF was taken to the hospital".[64]

An entry in the medical records made by Nurse 4 says that at 00.43 hours, an Officer called for assistance on the FNC. Code blue and ambulance then called by Oscar 1. The 999 call was made at 00.47.[65] Code blue is the call sign used for a medical emergency in a prison when a prisoner is unconscious or having difficulty breathing.

Nurse 4 recorded that "On arrival Officers performing CPR. Pulse present but weak. Oxygen administered. Patient breathing, low respiration rate. Airway not obstructed. Pulse became stronger and fast. Pupils dilated and unresponsive. Patient unresponsive. Paramedics

[63] ACCT Document Ongoing Record – 4 May 2016 – Annex C
[64] NOMIS Case Notes – 4 May 2016 – Annex C
[65] EMAS Transcript of 999 call – 6 May 2016 – Annex D

arrived and took over the patients care[66]. Nurse 4 wrote much the same in the medical part of the F213SH Form which was completed by Prison Officer 5.[67]

Prison Officer 6 told us that she was on duty that night, patrolling another part of the prison. Prison Officer 6 heard a call for assistance, she thinks over the radio but cannot remember for sure. She made her way to the First Night Centre where she saw Officers doing CPR. Prison Officer 6 thinks that Prison Officer 5, Prison Officer 7 and Oscar 1, the Orderly Officer in charge of the prison at the time, were all in attendance by the time she arrived. Nurse 4 was also in attendance by this time.

Prison Officer 6 confirmed that AF had been found by Prison Officer 5 during one of the observation checks on AF. Prison Officer 6 said to us that by the time she arrived there were enough staff at the cell, so she assisted Prison Officer 6 "in what to do and made sure she was okay. Because obviously it was a big shock to her." Prison Officer 5 was apparently very new to the Prison Service. We have not been able to locate Prison Officer 5 who has left the Prison Service.

The Daily Briefing Sheet reports that the ambulance was in attendance at 00.55 hours and the escort despatched at 01.40 hours. An entry in the ACCT record confirms that AF left HMP Leicester at 01.45 hours. Officer 6 was one of the two staff who escorted AF in the ambulance.

AF's parents were informed by phone that AF had been admitted to hospital although it is not clear exactly when the call was made. The Safer Custody Family Contact record notes that on 6 May the Head of Safer Custody left a message on AF's father's answer machine and separately spoke to AF's mother about what had happened. At 12.30 hours, another staff member told AF's mother which hospital he/she was in and that she could visit.[68]

[66] AF Medical Record – 4 May 2016 – Pages 56 – 58 – Annex D
[67] F213SH – 6 May 2016 – Annex D
[68] Safer Custody Family Contact – 6 May 2016 – Annex C

PART THREE

ISSUES EXPLORED IN THE INVESTIGATION

Chapter 7

Should AF have been at HMP Leicester?

The decision to remand AF into Custody.

This investigation has not looked in detail at the decision made by the magistrates to remand AF to custody because it lies outside the terms of reference. We are concerned however that AF was remanded to custody without appearing in court, albeit because he/she refused to do so. According to the report of the Psychiatric Triage carried out by the Criminal Justice Liaison and Diversion Service (CJLDS) in the police station prior to AF's court appearance on 4 May 2016, AF refused to attend court after being advised that refusal to attend would result in him/her being remanded to custody. "Despite having this information, he continued to refuse to attend court and as such the case was held in his absence".[69] There is a reference in the Person Escort Form to AF being taken into GEO custody from "Virtual Court", which suggests that AF might have appeared in court via video link. It is more likely that the report of the CJLDS is accurate, and AF did not appear before the Magistrates either in person or remotely. It is not clear whether AF had any legal representation.

The Triage report says that AF had been arrested after sitting in the road, having self-harmed. There was a warrant for an outstanding court appearance. AF told the CJLDS that he/she wished to end their life and that he/she had a specific plan in place. AF was unable to express any specific plan or timeframe, but reported he/she was going to hang him/herself, slit their wrists, overdose or jump off a cliff. AF said that he would specifically kill him/herself if sent to prison. [70]

[69] Psychiatric Triage Form for UCC, ED and CJLDS – 4 May 2016 – Annex D
[70] Psychiatric Triage Form for UCC, ED and CJLDS – 4 May 2016 – Annex D

The Triage report says that many of the issues AF expressed "appeared to be in direct relation to the fact that he did not want to attend court or be involved in the criminal justice system". [71]

Given the circumstances of AF's arrest and subsequent refusal to attend court, it is somewhat surprising to see the view expressed in the CJLD assessment that AF appeared "to present with full capacity to make decisions in relation to his care and to be involved in any criminal proceedings that may occur." The assessment recorded in the Police Medical Report that there were "no significant mental health issues identified at this time" also seems surprising. [72] On the face of it, AF appears to have been in a highly disturbed state, certainly earlier in the day. The CJLDS's plan to discharge AF back to the care of the community mental health team following release from custody does not seem to have met the urgency of the situation.

It is not clear what efforts were made to persuade AF to attend court, nor how much if any of the CJLDS's assessment was shared with the Magistrates, and indeed later on, with the prison. It is true that AF told the CJLDS that being in hospital was not helping him/her. But we do not think that a young person with a long-standing psychiatric history and risk of harm to themselves should have been sent to prison for the first time without a very careful consideration of alternative options. We consider that remanding AF in custody in their absence should have been avoided if at all possible.

Finding One

Given AF's vulnerability, more consideration should have been given by the court to an alternative to a custodial remand.

Recommendation A (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)

Assessments made by Criminal Justice Liaison and Diversion Services should be shared with courts when they are considering remanding a defendant to custody.

[71] Psychiatric Triage Form for UCC, ED and CJLDS – 4 May 2016 – Annex D
[72] Police Medical Report – 4 May 2016 – Annex D

The Decision to locate AF to HMP Leicester

AF had been diagnosed with Gender Identity Disorder and according to Mental Health Assessments carried out in June 2015 and October 2015, AF was going through a process of gender reassignment from male to female.[73] However, by the time of AF's remand to custody, the process was not complete. AF communicated to us that she identified as a woman, and it would have been easier to be in a women's prison; and that she had discussed it and let someone called Roy know that she wanted to go to a women's prison. [74]As noted in Chapter 1, we have reservations about the reliability of what AF was able to tell us. We have been unable to identify Roy.

There is no record of any consideration being given by the court or Prison Service about AF being allocated to a women's prison. The policy in force at the time AF was received at HMP Leicester was contained in PSI 07/2011 The Care and Management of Transexual Prisoners.[75] This states that "In most cases, prisoners should be located according to their gender as recognised under UK law. This will usually be the prisoner's birth gender. However, UK law recognises that transsexual people with gender recognition certificates have a gender opposite to the one assigned at birth".

The PSI also says that "Before a prisoner is placed in custody, attempts must be made to determine which gender is recognised under UK law."

There is no documentary evidence of this determination being formally made but in AF's case, there does not seem to have been a need to do so. The CJLDS assessment refers to AF as "a gentleman" well known to psychiatric services.[76]

[73] Core Mental Health Assessment – 3 June 2015. Outcome of Assessment – 12 October 2015 – Annex D
[74] Note of Meeting with AF – 4 May 2021 – Annex B
[75] Although this Instruction says that its expiry date is 14 March 2015, PSI 17 2016 which was issued on 9 November 2016 and effective from 1 January 2017 say that PSI 07/2011 is cancelled on 1 January 2017. This implies that it was in force until then. – Annex E
[76] Psychiatric Triage Form for UCC, ED and CJLDS – 4 May 2016 – Annex D

It is true that the F213 form completed by Nurse 1 to record the cuts on AF's arm when AF was received at HMP Leicester says in the section on details of inmate "sex unknown". [77] Nurse 1 also recorded that AF told him that "he was unsure about his gender" when the ACCT was opened shortly after AF arrived at HMP Leicester.[78] The health assessment on the afternoon of 5 May noted that AF "has issues with transgender" and the ACCT review held later that afternoon noted that AF "classes himself as both AF and Female Name 1 "[79] Supervising Officer 1 who chaired that review told us that AF "wanted to use the name as Female Name 1."[80] But AF is described in the note of that review as a "very intellectual young man".

The question of whether AF might be located in a women's prison was not mentioned in any of the assessments undertaken during his/her time in Leicester - the Cell Sharing Risk Assessments on 4 and 5 May, the health care screening (undertaken by Nurse 1) on 4 May, the mental health assessment on 5 May or the ACCT assessment and review on 5 May. PSI/07/2011 says that if a prisoner requests location in the estate opposite to the gender which is recognised under UK law, a case conference must be convened to consider the matter."[81] There is no evidence that AF made any such request, apart from AF's suggestion in her meeting with us that she let someone called Roy know that she wanted to go to a women's prison.[82]

Moreover, the Equality Policy in force at HMP Leicester at the time says that the prison "will allow prisoners who consider themselves transsexual and wish to begin gender reassignment to live permanently in their acquired gender".[83] It is implicit in the Equality policy that a person such as AF would be appropriately located in the prison, with a number of adjustments allowed – for example to dress in clothes appropriate to their acquired gender.

[77] F213 – 4 May 2016 – Annex D
[78] ACCT Document Concern and Keep Safe Form – 4 May 2016 – Annex C
[79] ACCT Document First Review Following Assessment – 4 May 2016 – Annex C
[80] Supervising Officer 1 Interview Transcript – 28 June 2022 – Annex B
[81] PSI 07/2011 Para 4.5 – Annex E
[82] Note of Meeting with AF – 4 May 2021 – Annex B
[83] HMP Leicester Equality Policy 10/7/2015 – Annex E

Prison Officer 2 told us that as far she remembered it was not "something that we dealt with until probably about 2018. Because it never came up". [84]

Finding Two

Once remanded in custody, the decision to locate AF at HMP Leicester was the correct one, although no formal consideration of his/her birth or acquired gender was made or noted.

Recommendation B (To HMP Leicester)

HMP Leicester should have a policy to ensure that, where necessary, proper inquiries are made about the gender of prisoners they receive.

[84] Prison Officer 2 Interview Transcript – 2 November 2022 – Annex B

Chapter 8

How well was AF's vulnerability properly assessed and managed?

During AF's short period at HMP Leicester, his/her needs were assessed in a variety of ways and various steps were taken as a result of the assessments.

AF communicated to us that neither prison nor health staff were kind to her– in contrast to the police- and agreed that if prison staff had been kind, she might not have tried to kill herself. [85] AF communicated that staff treated her "bad" AF recalled talking to a religious person who was kind and helpful. This is presumably the Chaplain who saw AF early on 5 May 2016 in a conversation the Chaplain described as "very poor."[86] As noted in Chapter 1, we have reservations about the reliability of what AF was able to tell us.

a) The Cell Sharing Risk Assessment (CSRA)

The CSRA undertaken on 4 May assessed AF as a high risk. As a result, he/she was allocated a cell to themselves on the First Night Centre. This was a good decision based on AF's strange presentation which staff thought made them significantly vulnerable to assault and the need for further investigation of their mental health. The CSRA undertaken the following day rightly confirmed the assessment.

The decisions made during the CSRA were implemented with AF allocated to stay alone in a double cell on the first night centre.

Finding Three

The Cell Sharing Risk Assessment was appropriate, and the necessary action taken as a result of it.

[85] Note of Meeting with AF – 4 May 2021 – Annex B
[86] ACCT Document Ongoing Record and Nomis Case Notes – 4 May 2016 – Annex C

b) The ACCT Process

The Concern and Keep Safe form completed by Nurse 1 when he opened the ACCT during the health screening interview on 4 May sets out clearly the concerns about AF, chief among which is that he/she stated that he/she did not wish to be alive. The Immediate Action Plan put in place shortly afterwards required three observations per hour and three conversations per day. While this level of supervision was lower than the "constant watch" provided while AF was in police custody, it was a reasonable and appropriate response which was agreed with AF. The records show that the observations were made at the required frequency. The plan also refers to an explanation being given to AF about access to the Samaritans phone and Family Phone.

It is not clear whether consideration was given to placing AF in a Safer Cell.

Finding Four

The Immediate Action Plan was appropriate and properly implemented although there is no record of any consideration as to whether placement in a Safer Cell was needed.

Recommendation C (To HMPPS)

ACCT Forms should be amended to ensure that consideration is given and recorded about whether placement in a Safer Cell is needed to keep a prisoner safe.

The ACCT assessment interview on the morning of 5 May was thorough and the assessment form was comprehensively completed. Prison Officer 2 who conducted the assessment told us that AF "didn't want to engage, so you sort of like pursue a little bit and try and encourage… and what he's said to me, I've literally written down".[87]

The summary of the meeting identifies the need for:

i) staff vigilance and support. This was presumably to be achieved through the continuation of three observation checks per hour and three conversations per day.

[87] Prison Officer 2 Interview Transcript – 2 November 2022 – Annex B

ii) AF to be aware of Listeners/Samaritans phone. This had already been explained to AF as part of the Immediate Action Plan.
iii) AF to be referred to mental health. This action had already been taken.

The one new proposal made during the assessment was that AF should be considered for Rule 45. The assessment form says that "staff have requested that AF be on the VPU {Vulnerable Prisoners Unit} as this may be a more suitable location for him"[88]. The request from the staff had been noted in the Nomis Case notes by Prison Officer 4.

The question of whether more progress should have been made in respect of making AF subject to Rule 45 is discussed in the following section of this chapter.

By the time the ACCT review was held in the late afternoon of 5 May, the number of observations had been raised from three to four per hour. This is noted in the ACCT Ongoing Record by Nurse 2 at 15.55 hours, so it is likely that the decision was made by Nurse 2.

The ACCT review was chaired by Supervising Officer 1 who had been appointed case manager for AF and was attended by Prison Officer 2 and Prison Officer 3, together with AF. Neither Nurse 2 nor Nurse 3 was present despite having interviewed AF very shortly beforehand.

The review records that the decision to raise the number of observations from three per hour to four per hour had been taken because of AF's unpredictable behaviour.[89] The record of the review rates the initial assessment of risk of harm to self as "raised" which is the middle option between low and high. The current likelihood of further risk behaviours is also assessed as "raised".

[88] ACCT Document Assessment Interview – 4 May 2016 – Annex C
[89] ACCT Document First Review Following Assessment – 4 May 2016 – Annex C

The questions arise whether during the ACCT review:

a) the observations might have been further increased or AF placed under constant supervision;
b) the likelihood of further risk behaviours might have more properly been assessed as high rather than raised;
c) whether consideration should have been given to locating AF in a safer cell and
d) whether the CareMap which was created properly identified and addressed AF's needs.

Consideration of the Need for Constant Supervision

When we asked Supervising Officer 1 whether she had considered whether AF needed to be placed on constant supervision (colloquially known as constant watch), she told us that "a constant watch is serious self-harm or they've done the act of self-harm. That would be a constant watch to me."

Supervising Officer 1 could not recall the conversation with AF at the review but after reading through the record explained to us that she would have considered the fact that AF had no thoughts of self-harm or suicide, and also his behaviour. The record of the review notes that AF had settled on to the First Night Centre and appeared quite relaxed. This judgement is supported by an entry made by Prison Officer 3 in the ACCT Ongoing Record at 14.50 hours which noted that when AF was having the regime explained to him "he seemed coherent and understanding, much better than what was described on initial reception."[90]

Supervising Officer 1 told us, "I would have put that into perspective and thought, right, he's not quite the constant watch, but I don't want it to be on the three, I want it to be on four".[91]

It is not clear whether it would have been possible for the review to raise the observations to five per hour. Prison Officer 4 who attended the review told us that five would have

[90] ACCT Document Ongoing Record – 4 May 2016 – Annex C
[91] Supervising Officer 1 Interview Transcript – 28 June 2022 – Annex B

been possible. He said "it's five observations and then it goes to max."[92] Supervising Officer 1 implied that the choice was between four observations per hour and constant supervision. Custodial Manager 1 agreed with this.

As for the reasoning adopted by Supervising Officer 1, it is true that AF had told Prison Officer 2 during the assessment earlier in the day that they had no thoughts of self-harm or suicide. But the review completed by Supervising Officer 1 herself records AF as saying that "he self-harmed whilst in police custody and cannot guarantee he won't self-harm again" which suggests AF might have been having some thoughts of self-harm at least. Prison Officer 3 who had talked to AF earlier in the afternoon had noted that AF "claimed to have thoughts of self-harm."[93]

More significantly, the record of AF's consultation with the mental health team which had taken place very shortly before the review says that AF "reports having thoughts of hanging himself."[94] The at-risk state is noted as "Has constant thoughts of DSH {Deliberate Self-Harm}, Feels like hanging himself." But Supervising Officer 1 does not seem to have had access to this information at the time of the ACCT review.

If one of the nurses who saw AF had been able to attend the review, or at least provide information about what AF had told them, it is possible that Supervising Officer 1 might have reached a different view of the level of observation AF required.

According to the Daily Briefing, there were no prisoners subject to constant supervision on 5 May,[95] so placement in a constant supervision cell would have been possible.

[92] Prison Officer 4 Interview Transcript – 28 June 2022 – Annex B
[93] Nomis Case Notes – 4 May 2016 – Annex C
[94] AF Medical Record – 4 May 2016 – Pages 56 – 58 – Annex D
[95] Daily Briefing – 6 May 2016 – Annex C

Consideration of AF's Risk Level

With the benefit of input from one the nurses who had seen AF, Supervising Officer 1 might also have reached the view that AF's risk level should be assessed as "high" rather than "raised." This might have had consequences for the actions taken to ensure AF's safety.

The criteria for assessing risk as "raised" and "high" are shown in the Table below together with the actions to be taken for each level of risk. [96]

Risk Level Factors	Raised	Suicidal Ideas are frequent but generally fleeting	No specific plan/immediate intent	Evidence of mental disorder	Situation experienced as painful but no impending crisis	Previous especially recent suicide attempts	Current self-harming behaviour
	High	Frequent suicidal ideas not easily dismissed	Specific Plan with likely access to lethal methods	Evidence of mental illness, acute or ongoing	Significant alcohol or drug abuse	Situation experienced as causing unbearable pain	Escalating pattern of self-harm-increased frequency/and/or lethality of methods
Actions to be Taken	Raised	Ease emotional distress as far as possible	CareMap addressing identified social and custodial problems	Ensure safety Consider location, frequency of conversation and observation and occupation			
	High			Ensure Safety Consider Admission to Healthcare Centre	Increase levels of support and therapeutic interventions	Refer urgently for mental health assessment	Review immediately after assessment and at agreed intervals

The ACCT form says that this is a guide only. "Decisions will be made on an individual basis by the multi-disciplinary team depending on the combination of risk factors that the

[96] Table taken from Suicide/Self-Harm Risk Guidance section of ACCT Documents – Annex C

individual at risk is displaying".[97] But in AF's case, there was no multi-disciplinary team involved because of the absence of the mental health team. Only prison officers attended the review meeting.

Supervising Officer 1, the ACCT Case Manager who chaired the review told us that she cannot remember the meeting but that she would have been concerned that the review meeting had not had any input from the mental health team. She said "if somebody stated that they had mental health issues, I would want Mental Health there".[98] Supervising Officer 1 thought that nobody would have been available from Healthcare because "half past four is smack bang in the middle of when we're doing the meals and medication".[99] A further review was to take place the following day with a member of the mental health team and also with AF's offender supervisor.

Had the mental health team been able to attend the ACCT review it is likely that AF would have been seen to be on the cusp of "raised" and "high" risk. The mental health nurses had not themselves proposed the need for constant supervision but a fuller discussion on how best to keep AF safe might have reached the view that it was appropriate.

Had AF's risk been assessed as high, if the guidance had been followed, consideration would have been given to admitting AF to the healthcare centre and to increasing levels of support and therapeutic interventions.

Consideration of the Need for a Safer Cell

We have already noted that no record was made about whether placement in a Safer Cell was needed when the ACCT was first opened. Neither is any discussion recorded at the ACCT review about whether AF should be relocated to a safer cell - a cell from which ligature points have been removed and the risk of hanging significantly reduced. Custodial

[97] ACCT Document – 4 May 2016 – Annex C
[98] Supervising Officer 1 Interview Transcript – 28 June 2022 – Annex B
[99] Supervising Officer 1 Interview Transcript – 28 June 2022 – Annex B

Manager 1 told us that there were one or two such cells on the FNC at the time of the incident, but they may have been occupied.

Prison Officer 1 told us that "there is a safety cell, it's not a constant watch cell but it's number two. I can't say whether it was fitted that way at the time, I can't remember, and I can't remember if it was occupied at the time which was why he wasn't in there, wasn't put in there".[100]

In fact, the question of accommodating AF in a Safer Cell may not have been considered at all. It is not mentioned in the Cell Sharing Risk Assessment. The form for the ACCT Immediate Action Plan which was produced by Custodial Manager 1 includes a requirement to discuss with an individual where they feel safe. The guidance on the form says "Consider CSRA level when considering location, particularly shared accommodation, safer cell, referral to health care". The text written in the box says, "to remain in current location until assessed".[101]

Finding Five

Given that mental health nurses saw AF shortly before the ACCT review, they should have been involved in the review and their views about his/her risk taken into account.

Finding Six

The decision in the ACCT Review to maintain the observations levels at four per hour and maintain the risk level as raised can be justified although even in the absence of information from healthcare a case for more intensive supervision could have been made.

Finding Seven

Consideration should have been given to locating AF in a Safer Cell at the ACCT Case Review

[100] Prison Officer 1 Interview Transcript – 2 November 2022 – Annex B
[101] ACCT Document Immediate Action Plan – 4 May 2016 – Annex C

Recommendation D (To HMPPS)

ACCT Forms should be amended to help ensure that a mental health practitioner is invited to and attends each ACCT review and where this is not possible, that every effort made to find out their views about a particular person.

The Measures Proposed in the CareMap

The ACCT review also led to the drafting of a CareMap which according to guidance should address identified social and custodial problems. The CareMap, signed by Supervising Officer 1 and AF identifies only two issues.[102] The first is "Medication" issues, for which the action required is "mental health," action which is to be taken by "Healthcare". The second is "Accommodation whilst in custody "for which the action required is "Needs to be R45" which means Rule 45. This is to be taken forward by "Safer Custody Residential Manager ". There is no timescale mentioned for either action and the status of both is "ongoing".

Healthcare is discussed in chapter eight of this investigation report and the issue of Rule 45 is discussed in the following section of this chapter. In addition, the production of the CareMap provided an opportunity to address three potential further issues of significance to AF's wellbeing. The ACCT form says that an effective CareMap identifies the most urgent and pressing issues. Issues includes "problems that are causing the person at risk most pain" and "resources and strengths that have most potential to support the person at risk".

One problem that might have been identified was the need for work to be done with AF on uncertainty about their gender. While this had not been identified in the ACCT assessment, the review noted that AF identified as a man and woman. This is likely to have been causing AF anxiety in the unfamiliar setting of a male prison. AF informed us that she had been scared and frightened in prison.[103]

[102] ACCT Document CareMap – 4 May 2016 – Annex C
[103] Note of Meeting with AF – 4 May 2021 – Annex B

Another potential issue for AF was the risk of drug misuse. Problems with drug and alcohol withdrawal had been identified when the ACCT was opened. It should have been well known to prison staff that drugs particularly new psychoactive substances were easily available. While AF had declined to engage with substance misuse services when asked shortly after arriving in the prison, it might have been useful to explore what support might be provided to help AF to resist opportunities to consume drugs and alcohol if and when they were offered to him/her. Specific risks of that occurring on the First Night Centre are discussed further in Chapter Nine of this report.

One resource that might have been mentioned in the CareMap was AF's family. In the morning of 5 May, AF had told the ACCT assessor Prison Officer 2 that he/she did not have any family support or family to visit. But Prison Officer 3, who worked on the First Night Centre recorded in the ACCT Ongoing Record at 14.50 hours that AF "seems to have a relationship with his mother and father". Before the ACCT review, at 16.10 hours, AF is noted to have spoken with their father on the phone and that their father would be visiting the next day. An entry to the same effect was made by Prison Officer 3 in the Nomis case notes[104] at 15.38 hours. As Prison Officer 3 took part in the review, he was in a position to mention this and to explore how AF's parents might after all be able to support AF while he was in prison.

Finding Eight

The CareMap identifies the important issues of healthcare and consideration of Rule 45, but there was a missed opportunity to address the issues AF had with gender, risk of substance misuse and the way his/her parents might have helped to support him/her.

c) The Consideration of Rule 45 Status for AF

Rule 45 refers to Rule 45 of the Prison Rules which states that: "Where it appears desirable for the maintenance of good order and discipline or in his own interest, that a prisoner

[104] NOMIS Case Notes – 4 May 2016 – Annex C

should not associate with other prisoners, either generally or for particular purposes, the governor may arrange for the prisoner's removal from association accordingly."

Some but not all prisoners subject to Rule 45 are placed in the Segregation Unit. At HMP Leicester, prisoners under Rule 45 for their own protection were located in a Vulnerable Prisoners Unit (VPU) although a Rule 45 regime could be applied to a prisoner in any location, including the First Night Centre.

At 10.12 hours on 5 May, an entry in the Nomis case notes made by Prison Officer 4 states that "due to his current behaviour AF has been recommended for Rule 45 status. Safer Custody informed".[105] Staff had already raised concerns about AF's vulnerability on the landing, although without specifically mentioning Rule 45.[106]

"To be considered for Rule 45" was one of the key issues identified in the ACCT assessment at 10.25 hours, which also noted that staff have requested that AF be on the VPU as this may be a more suitable location. The nurses who saw AF in the afternoon of 5 May "advised him to sign up for Rule 45". The CareMap prepared at the ACCT Review at 16.30 says "needs to be R45".

By the time of the incident of life-threatening self-harm, it does not look as if any progress had been made in making AF subject to Rule 45. The question arises whether this might have made any difference to the likelihood of the self-harm.

Prison Officer 4 told us that he probably recommended AF for what he called "protection status" because of his gender issues. On normal location, there "might have a bit of mickey taking, a bit of ribbing, a bit of bullying, possibly''.[107] Supervising Officer 1 told us that she would not necessarily have recommended Rule 45 because of the gender issues alone but because of AF's bizarre behaviour. She agreed that AF might have faced bullying during normal association, not sexually abusing him but "more of a case of taunt and laughing at

[105] Nomis Case Notes – 4 May 2016 – Annex C
[106] Daily Briefing – 6 May 2016 – Annex C
[107] Prison Officer 4 Interview Transcript – 28 June 2022 – Annex B

him and joking and all … 'ooh, look at what we've got here' type of thing''. Prison Officer 2, the ACCT assessor, agreed that AF was potentially "vulnerable from how he presented" and the VPU would provide a quieter and more sheltered environment.

A decision to place AF on Rule 45 would have required authorisation from a Governor. Prison Officer 4 told us that "it depends if the Governor or Oscar One / Victor One, can come on that day, sign the paperwork up, so he can go onto the Vulnerable Wing. Sanction it, accept it, and then it's obviously waiting for when a space comes up on the Vulnerable Wing and when we move the prisoner over".[108]

We have not seen any evidence that the paperwork was prepared or signed on 5 May. So no steps were therefore taken to move AF to the VPU.

In fact, even if the Rule 45 status had been authorised on 5 May, it is far from certain that AF would have been moved from the First Night Centre on that day. Prison Officer 4 told us that having been assessed as a high risk for sharing a cell, any move would have had to await the availability of a single cell.[109] "They probably would have stayed where they were with a different regime for a couple of days until there was a space under the Rule 45 Vulnerable Wing, and then moved him over there." Prison Officer 3 told us that he thinks that AF would have had to stay on the First Night Centre for three days before moving off. Prison Officer 1 said that "because we're such a local jail, we do get a lot of people who come back in, already know the prison system and might have been released a few days prior, so they could potentially just stay for one night. But "it was kind of dependent on the person, if they needed more support, then they would stay on there for longer".

If the Rule 45 status had been agreed but AF remained in the First Night Centre, he/she would have been made subject to a different regime, separate to the general population. AF would only have been allowed out of his/her cell either alone or with other Rule 45 prisoners on the FNC- and potentially those located elsewhere in the prison.

[108] Prison Officer 4 Interview Transcript – 28 June 2022 – Annex B
[109] Prison Officer 4 Interview Transcript – 28 June 2022 – Annex B

In AF's case, there is no evidence that the delay in authorising Rule 45 status disadvantaged him/her during their short period in the prison. Prison Officer 2 said that at that time, there were only 16 cells on the Induction Unit and so it was quite a small unit and… potentially if you were going on Rule 45 you would be on that landing anyway until a space became available or… it's like now on our Induction Unit, where it is now, we still have Rule 45's located on induction because it's still induction".[110]

There is no evidence at all that AF was the victim of any bullying or taunting which the Rule 45 status was considered necessary to prevent.

There is however strong evidence, discussed in Chapter Nine that AF might have consumed illicit substances on the evening of 5 May. Prison Officer 4 told us that the restricted association involved in being subject to Rule 45 might have reduced the opportunity for AF to obtain such substances. He told us "It would be more difficult for them to get drugs to them if he's not on the same regime as everyone, and he comes out on his own, for say a shower or a phone call or whatever. It would be a lot more difficult, isn't it".[111] Prison Officer 3 agreed up to a point telling us that "So once he's established to be a Rule 45 prisoner, physical contact probably is reduced to zero. But in terms of just access to standing at a person's door, erm, that isn't … that isn't so unheard of". [112]

Finding Nine

Despite recommendations that AF be made subject to Rule 45 status, no progress was made to achieve this on 5 May. This did not make a material difference to the supervision provided by staff to AF although Rule 45 status might have restricted the access which other prisoners would have had to him/her.

[110] Prison Officer 2 Interview Transcript – 2 November 2022 – Annex B
[111] Prison Officer 4 Interview Transcript – 28 June 2022 – Annex B
[112] Prison Officer 3 Interview Transcript – 28 June 2022 – Annex B

Chapter 9

Was the health Care received by AF adequate?

Although AF was only at HMP Leicester for less than 36 hours, he/she had a number of contacts with healthcare staff. The Clinical Review commissioned as part of this Article 2 Investigation has assessed the care AF received as appropriate, with national guidelines followed.[113]

Initial Health Screen 4 May

AF's initial prison health screen was comprehensive and completed fully by Nurse 1. From the initial health screen, mental health issues were of concern and a prompt referral to mental health services was timely and completely appropriate. An ACCT document was initiated by the nurse following the initial healthcare screen, which was also highly appropriate.

It is not clear whether the report prepared by the Criminal Justice Liaison and Diversion Service was shared with medical staff at HMP Leicester.

A fax was sent from HMP Leicester to the GP requesting information about AF. 10 pages were received promptly at 14.02 hours on 5th May, including a mental health assessment carried out on 12 March 2016.

AF was seen by a health care practitioner from substance misuse services on 4 May but declined any interventions from them. Whilst AF admitted having issues with alcohol, he/she denied drinking daily and having a physical dependence on alcohol. Therefore, no further action was pursued. AF was however given the option to speak with them again should he wish to, which was appropriate.

[113] Clinical Review by Cheryl Carson – October 2022 – Annex A

Finding 10

The initial health screen was undertaken well, and information sought and received promptly but it is not clear whether the triage assessment undertaken in the police custody suite was made available to prison healthcare staff.

Recommendation E (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)

Assessments undertaken by Criminal Justice Liaison and Diversion Services should be sent electronically to prison healthcare when an individual is remanded or sentenced to custody and a record made that it has been seen.

Mental Health Assessment 5 May

AF's consultation meeting with two staff nurses from mental health services on the afternoon of 5 May was commendably prompt.

The Clinical Review for this Investigation notes that "records state 'treatment plan given'. Yet, there is no evidence of what that treatment was, or who was to carry it out and when, nor was there an assessment of risks".

It does appear however from the entry in the medical record that the nurses were sufficiently concerned about AF that they decided that the number of observations under the ACCT process should be increased from three to four per hour. We cannot be certain that it was they who made this decision but, in any event, it was a reasonable one. Custodial Manager 1 told us that it was not uncommon for health care staff to make these kinds of decisions.

The nurses also advised AF to request support through Listeners and the Samaritans if he/she were struggling with their thoughts during out of hours, otherwise to ask officers to contact the mental health team.

An appointment was booked for the following day with a psychiatrist.

There is nothing to suggest that the two nurses consulted the medical records that had been faxed to the prison from the GP. Indeed, the entry says that AF has agreed that they can request a confirmation of medication from his GP. The information that had arrived at the prison two hours before the consultation provided this information. AF was not currently on any medication.

With AF's consent, Nurse 2 rang the Psychiatric Unit where AF had been an inpatient to request a discharge summary.

The Clinical Review has found no evidence to show that AF's care coordinator was informed of his imprisonment by prison healthcare staff. The care coordinator was a Community Psychiatric Nurse who was managing AF under the Care Programme Approach framework. This framework describes the approach used in secondary mental health care to assess, plan, review and coordinate the range of treatment, care and support needs for people in contact with secondary mental health services who have complex characteristics.[114] It does not seem that the nurses who saw AF knew who the care coordinator was at the time.

Finding 11

The mental health assessment was prompt and went some way to identifying AF's needs and risks including the need to see a psychiatrist urgently. The outcomes and treatment plans resulting from the consultation could have been more clearly documented with a risk management plan completed in line with policy.[115]

Recommendation F (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)

Treatment/care plans should be clearly articulated in the care notes and a copy given to the patient, which can then be signed and kept by them.

[114] Leicestershire Partnership NHS Trust informed the investigation that the Care Programme Approach was replaced with principles of good care co-ordination and high-quality care planning set out in the Community Mental Health Framework 2019.

[115] Leicestershire Partnership NHS Trust Clinical Risk Assessment Policy, 2014 – Annex E

Recommendation G (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)
Risks should be assessed at every opportunity and recorded and that a risk formulation and a risk management plan completed in line with policy.

Recommendation H (To Leicestershire Partnership NHS Trust)
Leicestershire Partnership NHS Trust policies around care co-ordination and care planning should take into consideration those patients who are sent to prison.

Recommendation I (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)
Where a prisoner has a community care coordinator, they should be informed immediately by prison healthcare when their patient is sent to prison.

ACCT Review

As discussed above, it was very unfortunate that no one from mental health services was able to attend the ACCT review at 16.30 hours on 5 May, in particular one of the two nurses who had assessed AF less than an hour beforehand. There is no indication that anyone from mental health services was invited to this initial review. It is noted on the document that they were to be invited to the next review the following day.

Chapter 10

Is there evidence that AF consumed illicit drugs on the First Night Centre?

This Article 2 investigation has looked into the question of whether AF might have consumed some kind of psychoactive drug prior to the incident of self-harm.

There is no incontrovertible evidence that AF did consume substances on 5 May, such as the result of a test administered when AF arrived at the Leicester Royal Infirmary in the early hours of 6 May. There is however a considerable amount of circumstantial evidence. If AF consumed such a substance, this might have affected his/her state of mind prior to the incident of self-harm.

AF communicated with us that she had taken drugs in prison. She spelled out Cocaine and Opiates. AF communicated that she got them from another prisoner.[116] As noted in Chapter 1, we have reservations about the reliability of what AF was able to tell us. But there is much to corroborate what she communicated about this matter.

When the Head of Safer Custody spoke to AF's mother in the hours following the incident, he "informed her AF has been admitted to the LRI[117] due to ligaturing and possible substance misuse".[118] The Incident Report prepared by the prison after the event says that the self-harm involved illegal drugs. [119]

The Fact-Finding Report prepared by the prison five days after the incident states that "At this time we are awaiting to find out if AF was under the influence of an illicit substance. At the time of the incident attending paramedics indicated this may be the case".[120] It is not clear that the prison ever did find out.

[116] Note of Meeting with AF – 4 May 2021 – Annex B
[117] Leicester Royal Infirmary
[118] Safer Custody Family Contact – 6 May 2016 – Annex C
[119] Reportable Incidents Distribution Report IR 580781 – 6 May 2016 – Annex C
[120] Fact-Finding Report – 11 May 2016 – Annex C

The Daily Briefing prepared by the prison the day after the incident says that AF's "symptoms thought to be consistent with taking an illicit substance".[121] The entry in the medical record states "Novel psychoactive substance misuse?"[122] There is however no box ticked on the F213SH form in the section on self-poisoning, overdose, substances, swallowing.[123]

The report by East Midlands Ambulance service shows that when they found AF, he/she had 'black shoelace ligatures on both upper arms' and noted 'pupils 2 and non-reactive' and so administered 400 micrograms of Narcan.[124] This was followed by a further 400 mcg of Narcan x 2 as AF's breathing was increasing after the first dose, as was pupil size as the pupils began to react. Narcan is the emergency antidote for overdoses caused by heroin and other opiates and opioids.

The Paramedics' report also states "prison say they have a problem with NPS".[125] NPS, or new psychoactive substances are synthetic versions of existing drugs originally developed to avoid legal sanction and detection. One of the commonest forms was synthetic cannabis, known as Spice and Mamba. The Psychoactive Substances Act (PSA) 2016, which came into force on 26 May 2016 introduced penalties for the production and supply of psychoactive substances. Possession of a psychoactive substance became an offence within a custodial setting. While at the time AF was in HMP Leicester, the Act was not yet in force, NPS were a form of contraband which the prison service had taken steps to tackle since 2015.[126] So while these so-called "legal highs" may have been legal in the community, at the time of the incident, they were treated as illicit substances at HMP Leicester.

In addition to the evidence from the fact-finding report, Daily Briefing, medical and ambulance records, there are three Intelligence Reports which suggest how AF might have obtained an illicit substance. They provide troubling evidence that AF was offered the

[121] Daily Briefing – 6 May 2016 – Annex C
[122] AF Medical Record – 4 May 2016 – Pages 56 – 58 – Annex D
[123] F213SH – 6 May 2016 – Annex D
[124] EMAS Incident Report PRF 8262399 – 6 May 2016 – Annex D
[125] EMAS Incident Report PRF 8262399 – 6 May 2016 – Annex D
[126] New crackdown on dangerous legal highs in prison - GOV.UK (www.gov.uk) – Annex E

psychoactive substance known as mamba by one of the prisoners who worked on the First Night Centre.

Prison Officer 1 told us that there was usually a wing cleaner and an orderly who had cells in the first night centre. Sometimes both roles were taken by one prisoner. The orderly's job was to fetch bedding and other items for new arrivals. Prisoner 1 was the orderly and cleaner during the period under investigation. It also seems that he was for a time at least a Peer Advisor - that is a trusted prisoner who undertook an additional role in helping to settle new prisoners in. It is not clear whether Prisoner 1 was playing this role when AF arrived on 4 May 2016 as he had been recommended for removal from the role on 14 April 2016[127] But he was still living on the FNC and working as a Wing Orderly on 4 and 5 May 2016.

The first of the relevant intelligence reports was created on 9 May 2016 and refers to an event that supposedly took place on 7 May 2016. This cannot be correct as AF was no longer at HMP Leicester on 7 May. As it refers to AF's induction it is likely to have happened on 4 May or the morning of 5 May. The text of the intelligence report says "A prisoner stated that he wanted to raise concerns regarding AF. He stated that Prisoner 1 did the induction for AF. He said one of the first questions he heard ask AF was if he smoked mamba."[128]

It is clear from the ACCT record that when AF arrived on the FNC, he/she refused to engage in induction with the staff and, according to one of the officers "so has spoken slightly with orderly and gone behind his door."[129] It is not of course possible to know for sure what was said by Prisoner 1 during this conversation and whether he would have had the opportunity to ask AF the question that he was alleged in the Intelligence report to have asked. Prison Officer 4 said that at no point would an induction orderly have been alone with AF, but he was not in a position to know about this particular instance.[130]

[127] INED01334128 Intelligence Report – 14 April 2016 – Annex C
[128] INED01379183 Intelligence Report – 9 May 2016 – Annex C
[129] ACCT Document Ongoing Record – 4 May 2016 – Annex C
[130] INED01334128 Intelligence Report – 14 April 2016 – Annex C

The second relevant intelligence report refers to a conversation one the officers had on 11 May with a prisoner - almost certainly the same prisoner who raised the earlier concern. This says that "whilst on duty as Oscar 3, I spoke to [Redacted] and he told me that on the night that AF was found hanging he had been given some mamba by Prisoner 1 prior to evening lock up. [Redacted] has stated that he will be happy to give a police statement to this effect."[131] This intelligence report was disseminated to the police, but it is not clear to us what if any action was taken by them.

The ACCT record suggests that AF was in his cell from 17.10 hours onwards on 5 May although it is noted that a meal was given to him/her at 18.20 hours. It is not clear if the orderly, Prisoner 1 would have brought AF his/her meal, or whether AF left his/her cell to fetch it. The latter is the more likely scenario. Either way, there would have been the opportunity for Prisoner 1 to give AF some mamba as alleged.

The third relevant intelligence report states that on 13 May an officer "was talking to a prisoner about different things and he said to me "I tell you what, if that man from number 12 dies it's on Prisoner 1's head, he fed him loads of stuff before he did that. I heard him offering him loads of mamba."[132] The prisoner from number 12 was AF. It seems likely that the prisoner was the same source of this report as the other two.

We have been told that being an induction orderly was a paid and relatively sought-after job in the prison. It is conceivable that the allegations that Prisoner 1 had abused his position might have been malicious ones aimed at ensuring that Prisoner 1 was relieved of his duties thereby opening up an opportunity for another prisoner, potentially the prisoner making the allegations. It is also possible that the prisoner making the allegations had some other reason to cause problems for Prisoner 1. He may have owed him money for example and wanted him moved.

The more straightforward explanation is that Prisoner 1 was in fact taking advantage of his position to sell drugs to new arrivals on the First Night Centre. There is a good deal of

[131] INED01386551 Intelligence Report – 12 May 2016 – Annex C
[132] INED01388339 Intelligence Report – 13 May 2016 – Annex C

evidence that Prisoner 1 was doing this and that he was highly unsuitable in all sorts of other ways to be in the role of orderly on the FNC. It is also clear that the Security department who collate Intelligence reports should have known this to be the case and that many opportunities were missed to protect new arrivals on the FNC from Prisoner 1.

One of the witnesses, Prison Officer 4 told us that he thought it was highly unlikely that AF would have been given drugs by a Wing Orderly. Prison Officer 1 however told us that it would not surprise her if this was the case.

The supporting intelligence for the allegation that on 4 or 5 May Prisoner 1 asked AF if he smoked mamba says: Prisoner 1 "is a known bully who should not be on the FNC as it has been reported more than once that he is pressurising new receptions. The source is well placed to hear such information and is credible. Prisoner 1 has been accused recently of spiking a new reception with NPS". The Intelligence assessment says: "Highly likely that Prisoner 1 is looking to deal / steal or spike this new reception."[133]

The supporting intelligence for the allegation that on 5 May Prisoner 1 actually gave mamba to AF says that "Prisoner 1 has a long history of being involved in the drugs culture which has escalated recently. He was reported for bullying his cell mate who also reported heavy use of mamba. There are also reports of him spiking a new reception with drugs. The same source also stated he heard asking AF about mamba when he first arrived on the FNC."

As far back as December 2015, Prisoner 1 had been described in an Intelligence report as being deep within the drugs culture.[134] At that time he was working in the kitchen. By 11 March 2016 he was First Night Orderly. On 30 March 2016, an Intelligence Report about Prisoner 1 removing items from another prisoner's cell concluded that Prisoner 1 "is not, in my opinion, the right individual for this role abusing his perceived status to bully and intimidate other prisoners". [135] On 5 April 2016 an Intelligence Report alleged that "Whilst being on the FNC {Prisoner 1} has repeatedly joked about getting involved in "insane joker"

[133] INED01388339 Intelligence Report – 13 May 2016 – Annex C
[134] INED01125641 Intelligence Report – 21 December 2015 – Annex C
[135] INED01304565 Intelligence Report – 30 March 2016 – Annex C

on the out which is NPS.[136] On 14 April, Prisoner 1 was allegedly bullying his cell mate and "smoking mamba on a nightly basis and has been winding up so that {he} self-harms and Prisoner 1 will get a bonus for cleaning up the blood spillage. Prisoner 1 also supplies {him} with the blades to self-harm. Prisoner 1 is a peer advisor, but I have emailed regarding this".[137] The report says that the Peer Advisor Manager was informed and "would recommend removal as a peer advisor and separated from his cell mate. Have spoken to [Redacted] who will take it forward".

The following day, 15 April 2016, Prisoner 1 was overheard telling another prisoner "that ever since he has become FNC orderly he doesn't have to buy anything because he just has all the newbies canteen".[138] It was reported that Prisoner 1 was being suspended from his job that afternoon but appears to be staying on the FNC for the time being which " is putting the new intake at risk on a daily basis." It seems that for whatever reason Prisoner 1 was not in fact suspended from his job, certainly as a Wing Orderly. It is possible he may have been suspended as a Peer Mentor.

In any event, Prisoner 1 was still living on the FNC on 3 May when he called an Officer to tell her that a prisoner was fitting, apparently having taken an unknown substance.[139] The following day AF arrived at HMP Leicester.

Prisoner 1 remained on the FNC and, it seems in his job as FNC orderly despite the allegations made in respect of AF. On 8 May, a further intelligence report suggested that Prisoner 1 had given a cigarette that had been "spiked with some drugs".[140] On 15 May, an intelligence report was made after a prisoner told an officer that Prisoner 1 had been "getting stuff brought onto the first night." [141] The officer comments "suspicious behaviour for such a trusted FNC orderly". The reports continue including describing Prisoner 1 as enjoying his position on first night "as it allows him access to new receptions;"[142] and being

[136] INED01315612 Intelligence Report – 5 April 2016 – Annex C
[137] INED01334128 Intelligence Report – 14 April 2016 – Annex C
[138] INED01335905 Intelligence Report – 15 April 2016– Annex C
[139] INED01369733 Intelligence Report – 3 May 2016 – Annex C
[140] INED01378098 Intelligence Report – 8 May 2016 – Annex C
[141] INED01391606 Intelligence Report – 15 May 2016 – Annex C
[142] INED01398419 Intelligence Report – 18 May 2016 – Annex C

"associated with bullying, drugs and shaking down new receptions on the FNC".[143] Prisoner 1 was transferred out of HMP Leicester at the end of May 2016.

While we have no conclusive evidence about whether AF consumed any substances and if he/she did whether he/she obtained them from Prisoner 1, it is our judgement that it is very likely. It is clear from this analysis of the intelligence reports submitted about Prisoner 1 that there must have been very serious shortcomings in the operation of the security department to allow him to continue to work on the First Night Centre with access to new and sometimes vulnerable prisoners such as AF. It is hard to understand why Prisoner 1 was not suspended from his job on 15 April and relocated to another cell away from the FNC. We have not investigated this question as it is some way removed from our Terms of Reference.

Prison Officer 1 told us that if a Wing Orderly was thought to have supplied drugs to other prisoners "then they are removed from that post, like, very quickly".[144] Prison Officer 3 however told us that an Intelligence Report "could have triggered events maybe to get that person suspended, if enough of them went in and there was a pattern. But at the end of the day, we … we employ prisoner who we deem that could be trusted to some level to help, and that also comes true as well; they are of great assistance, especially to first timers, sometimes, to ease them. And so, it kind of swings and roundabouts when it comes to engagement like that. Everybody is potentially subject to, to do the wrong thing".[145]

HMP Leicester's Suicide and Self -Harm Prevention Strategy in place at the time of the incident in 2016 says that : "Providing prisoners with specific roles to undertake alongside staff will improve their social capital and will improve problem solving skills for their release – mentors will also feel valued and see the importance of good social interaction and how problem solving in a measured, informed and mature way can be an alternative to other negative behaviours. The wide use of peer mentors also supports a culture of maturity and

[143] INED01400125 Intelligence Report – Annex C
[144] Prison Officer 1 Interview Transcript – 2 November 2022 – Annex B
[145] Prison Officer 3 Interview Transcript – 28 June 2022 – Annex B

responsibility and gives others something to aspire to."[146] While we endorse this approach, it is important that robust processes are in place for appointing prisoners to such roles, monitoring their performance in them and where necessary removing them when there is evidence that they are misusing the position.

Whilst it was suspected AF may have taken mamba on the day of the incident, the ambulance service reported that on finding AF, he/she had black shoelace ligatures around both arms and that his/her pupils were very small and non-reactive. This is an indication of possible opiate use and the ambulance service responded appropriately to this suspicion by administering Narcan. It is therefore possible that AF might have taken a different substance to Mamba. We cannot know for certain. It would have been prudent of the acute hospital to have undertaken tests for drugs of misuse.

Finding 12

It is very likely that AF had consumed a psychoactive substance prior to his/her act of self-harm but tests were not carried out to determine this.

Finding 13

There is evidence that NPS had been given to AF by another prisoner who worked as a Wing Orderly on the First Night Centre.

Finding 14

A pattern of intelligence reports about the Wing Orderly should have led to his removal from that role before AF 's reception at HMP Leicester and his relocation from the First Night Centre. It is recorded that Prisoner 1 was to be suspended from his job on 15 April, but this appears not to have happened.

[146] HMP Leicester Suicide and Self-Harm Prevention Strategy March 2016 – Annex E

Recommendation J (To Leicestershire Partnership NHS Trust and Nottinghamshire Healthcare NHS Foundation Trust)

Where there is a suspicion that a prisoner admitted to hospital has taken illicit substances, tests should be carried out to determine whether this is the case.

Recommendation K (To HMP Leicester)

Vetting arrangements should be improved to ensure that prisoners suspected of involvement in drug dealing cannot work on the First Night Centre

Chapter 11

The Response to the Incident

The evidence we have seen and heard suggests that staff responded appropriately to AF after they were discovered hanging at the back of their cell. Prison Officer 5 recorded that she called for assistance on the radio, staff attended, the ligature was cut off, CPR was administered, and healthcare attended.[147] Nurse 4 recorded that Oscar One, the manager in charge of the prison at the time called a Code Blue and for an ambulance.

Initially staff could not find a pulse and CPR was administered before Nurse 4 arrived - by Prison Officer 7 according to Prison Officer 6 who was also on the scene. Oxygen was administered once Nurse 4 arrived and AF's breathing and pulse improved.

Although Prison Officer 5 was "really shook up" and in shock, there were sufficient staff quickly on the scene to respond. [148] Prison Officer 6 told us that "it was all done efficiently. Everything was done how it should be. From what I remember. The escort was very quick, the medics came in and they decided he was going out to hospital. All procedures were carried out, safely, … like it should be. But I can't remember the minute details; I can't.''[149] From the information available it appears that actions were taken by staff in line with the Emergency Response Protocol in operation at the time[150].

The ambulance arrived at 00.55 hours, eight minutes after the 999 call was made from the prison control room. After treating AF on the scene, the paramedics departed with AF to Leicester Royal Infirmary at 01.40 or 01.45 hours arriving at the hospital within 10 minutes.

Finding 15

When AF was found, the response by prison staff, healthcare staff and paramedics was prompt and efficient.

[147] ACCT Document Ongoing Record – 4 May 2016– Annex C
[148] Prison Officer 6 Interview Transcript – 28 June 2022 – Annex B
[149] Prison Officer 6 Interview Transcript – 28 June 2022 – Annex B
[150] HMP Leicester Emergency Response Protocol March 2016 – Annex E

Chapter 12

The Need for Public Scrutiny

The State's investigative obligation under Article 2 of the ECHR includes an element of public scrutiny and I am required to provide my views as to what I consider to be an appropriate element of public scrutiny in all the circumstances of this case. I base these views on two criteria. The first is whether there are serious conflicts in the evidence provided by witnesses. The second is whether the investigation has uncovered widespread or systemic failures.

On the first of these questions, I have not found serious conflicts in the evidence that I have obtained during this investigation so do not consider that questioning witnesses in a public setting is necessary to test the credibility of their evidence.

On the second question, the investigation found strong though not conclusive evidence that prior to his/her act of self-harm, AF consumed an illicit substance, probably a new psychoactive substance such as mamba, and this may have affected his/her state of mind. There is strong circumstantial evidence that AF was given the substance by another prisoner who worked as a Wing Orderly on the First Night Centre.

The investigation has found that a pattern of intelligence reports about the Wing Orderly should have led to his removal from that role well before AF's reception at HMP Leicester. I consider that the fact that Prisoner 1 was allowed to continue in his role represents a failure on the part both of the Security Department and those responsible for allocating work who should have suspended him and removed him from the FNC.

In their report following a visit to HMP Leicester in September - October 2015, HM Inspectorate of Prisons (HMIP) had identified that responses to intelligence reports were "often inadequate."[151]. The Inspection report also found "compelling evidence that new

[151] Report on an unannounced inspection of HMP Leicester by HM Chief Inspector of Prisons 28 September – 9 October 2015 Report on an unannounced inspection of HMP Leicester by HM Chief Inspector of Prisons, 28 September - 9 October 2015 (justiceinspectorates.gov.uk) – Annex E

psychoactive substances (NPS) and alcohol were readily available in the prison. Well over half of prisoners thought they were easy to obtain and yet too little was done to disrupt supply."[152]

In 2018, 18 months after AF's incident of self-harm, HMIP reported that "there were insufficient resources to act on all of the intelligence received".[153] In 2020, HMIP found the volume of security intelligence reports had reduced since covid restrictions were imposed. "Intelligence was analysed effectively and there were few backlogs. The intelligence was used at security meetings to address emerging risks, such as the ingress of illicit items".[154]

It is not clear that such risks include the involvement of supposedly trusted prisoners in the supply of drugs which we have found was likely to have happened in this case. But because the latest inspection reports suggest some improvement at least in respect of the availability of drugs and the use of intelligence reports at HMP Leicester, I do not think it is necessary for a public hearing to held to examine these issues alone.

I do however recommend that HMPPS consider whether the current policy in relation to the appointment, vetting and monitoring of orderlies and mentors who have access to potentially vulnerable prisoners is sufficiently robust.

Recommendation L (To HMPPS)
HMPPS should consider whether their policies in respect of the appointment, vetting and monitoring of orderlies and mentors who have access to potentially vulnerable prisoners are sufficiently robust.

[152] Report on an unannounced inspection of HMP Leicester by HM Chief Inspector of Prisons 28 September – 9 October 2015 Report on an unannounced inspection of HMP Leicester by HM Chief Inspector of Prisons, 28 September - 9 October 2015 (justiceinspectorates.gov.uk) – Annex E
[153] Report on an unannounced inspection of HMP Leicester by HM Chief Inspector of Prisons 8–19 January 2018 Report on an unannounced inspection of HMP Leicester by HM Chief Inspector of Prisons 8-19 January 2018 (justiceinspectorates.gov.uk) – Annex E
[154] Report on a scrutiny visit to HMP Leicester by HM Chief Inspector of Prisons 8 and 15-16 December 2020 Leicester-SV-web-2020-1.pdf (justiceinspectorates.gov.uk) – Annex E

Publishing this report and the response to all of the recommendations, will in my view be sufficient to satisfy the obligation for public scrutiny in this case.

Annexes

Annex A Clinical Review

Clinical Review by Cheryl Carson – October 2022

Annex B Transcripts of Interviews

Note of Meeting with AF - 4 May 2021

Custodial Manager 1 Notes of Interview – 27 January 2023

Prison Officer 1 Interview Transcript – 2 November 2022

Prison Officer 2 Interview Transcript – 2 November 2022

Prison Officer 3 Interview Transcript – UNSIGNED – 28 June 2022

Prison Officer 4 Interview Transcript – UNSIGNED – 28 June 2022

Prison Officer 6 Interview Transcript – 28 June 2022

Supervising Officer 1 Interview Transcript – 28 June 2022

Annex C Prison Records about AF

Person Escort Record (PER) – 4 May 2016

F2050 Core Record – 4 May 2016

Nomis Case Notes – 4 May 2016

ACCT Documents – 4 May 2016 - Including:

- Concern and Keep Safe Form
- Immediate Action Plan
- CareMap
- Assessment Interview
- First Review Following Assessment
- Ongoing Record

Fact - Finding Report – 11 May 2016

CSRA – 4 May 2016

Daily Briefing – 6 May 2016

Intelligence Reports

- INED01379183 Intelligence Report – 9 May 2016
- INED01334128 Intelligence Report – 14 April 2016

INED01386551 Intelligence Report – 12 May 2016

INED01388339 Intelligence Report – 13 May 2016

INED01125641 Intelligence Report – 12 December 2015

INED01304565 Intelligence Report – 30 March 2016

INED01315612 Intelligence Report – 5 April 2016

INED01335905 Intelligence Report – 15 April 2016

INED01369733 Intelligence Report – 3 May 2016

INED01378098 Intelligence Report – 8 May 2016

INED01391606 Intelligence Report – 15 May 2016

INED01398419 Intelligence Report – 18 May 2016

INED01400125 Intelligence Report – 19 May 2016

Safer Custody Family Contact – 6 May 2016

Questionnaire Serious Self-Harm AF – 6 May 2016

Reportable Incidents Distribution Report IR 580781 – 6 May 2016

ACCT Log entry – 4 May 2016

Annex D AF Medical Records

AF Medical Record – 4-6 May 2016 – Pages 56-58

F213SH – 6 May 2016

F213 – 4 May 2016

Psychiatric Triage Form for UCC, ED and CJLDS – 4 May 2016

Mental Health Services Inpatient Discharge Summary – 4 May 2016

Core Mental Health Assessment – 3 June 2015

Outcome of Assessment – 12 October 2015

EMAS Incident Report PRF 8262399 – 6 May 2016

EMAS Transcript of 999 call – 6 May 2016

Police Medical Report – 4 May 2016

Annex E Policy Documents

HMP Leicester Equality Policy 10/7/2015

HMP Leicester Suicide and Self-Harm Prevention Strategy March 2016

HMP Leicester Emergency Response Protocol March 2016

PSI 07/2011 The Care and Management of Transexual Prisoners

Care Programme Approach Policy exp Dec 16

Leicestershire Partnership NHS Trust Clinical Risk Assessment Policy, 2014

HMP Leicester (justiceinspectorates.gov.uk) Report on an unannounced inspection of HMP Leicester by HM Chief Inspector of Prisons 28 September – 9 October 2015

HMP Leicester (justiceinspectorates.gov.uk) Report on an unannounced inspection of HMP Leicester (8-19 January 2018)

Prison population figures: 2016 - GOV.UK (www.gov.uk)

Leicester-SV-web-2020-1.pdf (justiceinspectorates.gov.uk) Report on a scrutiny visit to HMP Leicester by HM Chief Inspector of Prisons 8 and 15-16 December 2020

New crackdown on dangerous legal highs in prison - GOV.UK (www.gov.uk)

Annex F Documents seen but not referred to.

Safer Custody Minutes (March) meeting held on 17 March 2016

Safer Custody Minutes (April) meeting on 26th March 2016

Safer Custody Minutes (May) meeting held on 26th May 2016

Referral Summary Letter

Pin number request redacted

Decision Log

Property card

Solicitors Letter

183243.PDF Incident details

CAD 8262399 from EMAS

The Clinical Management of Service Users with Dual Diagnosis on Trust Premises