Investigation into the death of a man in April 2009 whilst in the custody of HMP Lewes

Report by the Prisons and Probation Ombudsman for England and Wales

October 2009

This version of my report, published on my website, has been amended to remove the names of the man who died and those of staff and prisoners involved in my investigation.

This is the report of an investigation into the death of a 60 year old prisoner at HMP Lewes. He died on 9 April 2009 in a hospice from natural causes. The man had been admitted to the hospice two days earlier. He had suffered from chronic ill health for many years but the illness that led to his death was only diagnosed a month beforehand.

I would like to add my personal condolences to those already expressed to the man's family on behalf of this office by one of the Ombudsman's Family Liaison Officers.

A post mortem examination was not carried out as the Coroner was satisfied that there were no suspicious circumstances surrounding the death.

This investigation was undertaken by one of the Ombudsman's investigators. In addition, a doctor was asked by East Sussex Downs and Weald Primary Care Trust to undertake a review of the man's clinical care. I am grateful for the assistance they received from staff at HMP Lewes and would ask the Governor to pass on these sentiments.

I have noted that the clinical reviewer concluded that the quality of care the man received was in some instances better than that he would have received in a community setting. I hope that his family are reassured by the conclusions of my report.

I make no recommendations in this case.

Jane Webb
Deputy Prisons and Probation Ombudsman **October 2009**

SUMMARY

The man was born in 1948. He was 60 years old when he died at a hospice on 9 April 2009. The man's death was from natural causes as a consequence of gastric carcinoma with liver metastases (stomach cancer).

The man was received into custody (on remand) at HMP High Down on 30 April 2008. He transferred to HMP Lewes on 8 August and was sentenced to 16 years imprisonment in January 2009. At his first health screening interviews it was recorded that the man had history of diabetes and angina. The man was a smoker but he chose not to accept assistance to help him to stop smoking.

After he was sentenced, the man wrote a suicide note which was intercepted by staff at Lewes. Accordingly, a self-harm observation and support regime was started. This involved regular checks being carried out and recorded. The regime was stopped on 20 February when the man appeared to have accepted his situation.

The man collapsed in his cell on 2 March and was taken by ambulance to a local hospital. After his admission to hospital, the man was told that he was terminally ill and that his life expectancy was a matter of weeks. Although he was discharged on 4 March and returned to Lewes, the man collapsed again on the following day and returned to the hospital. He returned to Lewes on 6 March but refused to be admitted to the healthcare centre.

Whilst the man was in hospital, a bedwatch was carried out by prison staff. The initial security risk assessment concluded that an escort chain was to be used and two officers needed to be at the man's bedside.

On 31 March, the man was released on temporary licence (ROTL) and taken by ambulance to a hospice. The revised security risk assessment concluded that handcuffs were not be used and prison staff were not required to be at his bedside. On 1 April, hospice staff requested that the man leave the hospice as they regarded him as terminally ill but not in need of hospice care. The man returned to Lewes and was admitted to the healthcare centre. He continued to deteriorate and six days later, on 7 April, the man returned to the hospice. He was visited by his family whilst he was there. He died on 9 April and his death was pronounced at 1.20pm.

The clinical review concludes that the man's clinical care was good and in some instances better than that available in the community. Consequently I make no recommendations in this report.

THE INVESTIGATION PROCESS

1. The investigation was opened on 20 April 2009 by one of the Ombudsman's investigators. He issued notices announcing the investigation to both staff and prisoners. The notices included an invitation to anyone who wished to submit information relating to the man's death to make themself known. In the event, no one came forward. The investigator also studied all relevant prison records, which included the man's main prison record and his medical records.

2. The investigator visited Lewes on 1 May, 5 May and 9 June and discussed aspects of the man's treatment with staff. He interviewed staff and a fellow prisoner on the wing where the man had lived. The investigator also met a member of the Independent Monitoring Board at Lewes and a member of the Prison Officers Association.

3. The East Sussex Downs and Weald Primary Care Trust commissioned a General Practitioner/Reviewer to carry out an independent review of the man's clinical care. I am grateful to him for undertaking the review.

4. The investigator contacted HM Coroner to inform him of the nature and scope of my investigation and to request a copy of the post mortem report. Upon completion, this report will be sent to the Coroner.

5. One of the Ombudsman's Family Liaison Officers contacted the man's family. This gave them the opportunity to discuss the purpose of the investigation and raise any concerns or questions that they wanted to be addressed. The man's family did not raise any concerns at that time about the care he received at Lewes. I hope that this report provides the family with a better understanding of the events leading up to the man's death.

HMP LEWES

6. HMP Lewes is a category B local prison serving the courts of East and West Sussex. It accepts both adult men and young adults, and has an operational capacity of 723.

7. The prison has a 19 bed healthcare unit under the responsibility of the East Sussex Downs and Weald Primary Care Trust. Mental health services are provided by Sussex Partnership NHS Trust and General Practitioner services by Sussex Forensic Medical Services.

8. The investigator reviewed the Ombudsman's reports into earlier deaths from natural causes at Lewes. He found no common issues with his own investigation into the death of the man.

Independent Monitoring Board

9. Each prison has an Independent Monitoring Board (IMB) made up of members of the community. The Board's role is to ensure that the prison is properly run and that prisoners are treated decently. The Board produces an annual report for the Secretary of State. The most recent report from the Lewes IMB commented on how population pressures across the prison estate had resulted in the retention of life sentenced prisoners due to the lack of capacity at lifer centres. The Board said that lifers were waiting a long time at Lewes before moving to an appropriate lifer unit.

10. The IMB report summarised the healthcare at the prison in the following way:

> "HMP Lewes appears to have a relatively unique relationship with its local PCT (East Sussex Downs and Weald), where healthcare staff are employed by the local PCT and the PCT actively manages prison healthcare. As a result there has been a concerted attempt to bring prison healthcare up to NHS standards which, not yet fully achieved, has resulted in significantly higher standards in staffing and delivery of services. There also appears to be strategies to take improvements forward."

Her Majesty's Chief Inspector of Prisons

11. The most recent inspection of Lewes by Her Majesty's Chief Inspector of Prisons, Dame Anne Owers, was in August 2007. The Chief Inspector described Lewes as "reasonably safe", but with weaknesses in anti-bullying and suicide prevention measures. Drug and alcohol work was described as effective and as having good links with the local community.

12. With regard to healthcare, the Chief Inspector wrote: “Health services were improving, but there were gaps and deficiencies in inpatient care in primary mental health services”. The Chief Inspector’s report particularly commended the extremely good relationships between staff and prisoners.

KEY EVENTS

13. The man was born in 1948 in Sussex. He had been married twice and was a father and grandfather. He had retired due to ill health before coming into custody and had previously worked as a decorator and a security guard.

14. In January 2009, the man was sentenced to 16 years imprisonment for sexual offences. He had previously been remanded into custody at HMP High Down and transferred to HMP Lewes on 8 August 2008. This was his first experience of prison.

15. During the man's first reception health screening interviews at both prisons, it was recorded that he had been diagnosed with diabetes, had a history of arthritis of the hips and suffered from angina. It was noted that he had a heart attack in 1998. It was also recorded that the man had taken an overdose in 1985 as a result of a marital breakdown and that he was claustrophobic. After a risk assessment, he was allowed to keep his medication in his possession. The man was a smoker but chose not to accept help to stop smoking.

16. On 3 June 2008, the man was found to have "left sided weakness and erratic breathing" and he was admitted to outside hospital where he was thought to have possibly had a transient ischaemic attack (a temporary mini stroke). He went back to High Down on the same day. The man returned to the hospital on 11 June due to heart problems and, again, went back to prison the same day.

17. On 1 July, the man complained of nausea and vomiting and general debility and was taken to the Accident and Emergency (A&E) Department of the local hospital the following day. He returned to High Down the same day. The man subsequently complained on 7 July of abdominal pain and vomiting. He began to take medication on 11 July to correct his blood calcium levels. On 29 July, it was recorded that the man declined to attend a hospital outpatient appointment, signing a disclaimer.

18. A week later, on 8 August, the man transferred to Lewes and on his reception at the prison it was noted that he had "reduced mobility, reduced physical capacity and difficulty with physical co-ordination". A care plan in respect of his diabetes and other medical conditions was prepared.

19. Due to the nature of his offences the man had been identified as a vulnerable prisoner, and he was located in a single cell on M wing, which is part of the Vulnerable Prisoners Unit. It was noted in his prison record that he had previously been given enhanced prisoner status and he retained this after his transfer. (The Incentives and Earned Privileged Scheme (IEPS) is a scheme that is designed to encourage and reward good behaviour in prisons. There are three tiers – Basic, Standard and

Enhanced. Incentives include access to in-cell televisions, having their own private money to spend, being able to wear their own clothes, more time out of the cell and community visits.)

20. On 23 September, the man complained of abdominal pain and of feeling generally unwell. Three days later he developed epigastric pain (the epigastrium is the area of central abdomen lying just below the sternum) and vomiting. On 28 September, a prison medical officer recommended hospitalisation after checking the man's urine and finding evidence that his diabetes was less than adequately controlled (abdominal pain can be a manifestation of uncontrolled diabetes).

21. The man was admitted to hospital on 2 October for 24 hour observation after a bout of diarrhoea and vomiting. On 13 October, the man was again admitted to hospital after complaining of chest pains. He was given intravenous therapy and discharged on 17 October to Lewes where he was admitted to the healthcare centre.

22. On 6 November, the man again complained of nausea, vomiting and diarrhoea. It was recorded on 18 November that he refused to go to his gastroscopy appointment (a gastroscope is an instrument used to examine or view the interior of the stomach).

23. Three days after he was sentenced, on 30 January 2009, to 16 years imprisonment, staff on the wing intercepted a suicide note from the man. As he was identified as an ongoing suicide risk, an Assessment, Care in Custody and Teamwork (ACCT) self-harm observation and support regime was started. (The Prison Services describes ACCT as a flexible, prisoner-centred assessment and care planning system, which aims to identify individual needs and offer personalised care and support before, during and after crisis, in a safe and caring environment.) It was recorded that the man was not only "suicidal" but also had "Type 1 Diabetes, Angina, Magnesium and Calcium deficiencies, Gastric Ulcer and kidney problems".

24. At 8.45am on 11 February, the man was found comatose in his bed. He was given glucose and responded. A care plan was instigated to treat his diabetes. Two days later on 13 February, the man was referred to the diabetic nurse for reassessment.

25. On 20 February, the ACCT document was closed when the medical assessment identified that the risk of self-harm had abated and that the man had come to terms with his situation. An ACCT post closure interview took place as required a week later, on 27 February.

26. The man was found collapsed in his cell on 2 March and taken to hospital by ambulance. A tentative diagnosis of pancreatitis (an inflammation of the pancreas which is a soft, elongated gland situated at the back of the upper abdominal cavity behind the stomach) was made soon after he arrived. Hospital doctors informed the man the following day that he was terminally ill and that his life expectancy was a matter of weeks. He returned to Lewes on 4 March but refused to be admitted to the healthcare centre. A staff nurse was asked to see the man at around 5.30pm because he did not want to be admitted to healthcare. The nurse wrote the following entry in the man's medical record:

> "He declined healthcare as he feels he will benefit from the support of his peers on M wing who have been helping him to clean his cell. Objectively the man appears lucid and rational offering appropriate and valid reasons why despite his shock he is not planning on taking his own life. No need to move to HCC [healthcare centre] at this time although the man acknowledges that if his health deteriorates rapidly this may have to be considered."

27. On the following day, 5 March, the man collapsed and was taken back to the hospital. Whilst the man was an inpatient at the hospital, a bedwatch was carried out by prison staff. The security risk assessment said that an escort chain should be used and two prison officers should be in attendance. Staff on bedwatch duty maintained a log of activities whilst the man was an inpatient. He returned to Lewes the next day and again declined to be admitted to the healthcare centre.

28. When interviewed as part of this investigation, a matron who works in the prison's healthcare centre said:

> "The reason that he declined to come to healthcare was because he felt that he had a lot of support from his friends on M wing that was one of the reason. He had a very nice single cell which was nice and quiet at night so he could rest, whereas healthcare tends to be noisy and … quite a big reason is that he was quite a heavy smoker, if I remember rightly and in healthcare it's totally no smoking. … he signed the disclaimer to say that he refused to come into healthcare. We did try, we tried to say to him … you know you would be far better off in the healthcare, the nurses are there they can give you the pain medication you know regularly and be there if you need them for anything. But he was adamant there was no way he wanted to come into healthcare."

29. During a telephone call on 11 March, a consultant from the hospital informed the matron that the man's stomach biopsy was negative, but that an ultrasonic scan of his liver had revealed "multiple cancer

metastases". A liver biopsy on 15 April confirmed the cancer but the source of the primary tumour was not known.

30. A referral was made on 22 March for the man to be moved to a hospice. A consultant from the hospice visited him a week later, on 27 March, to carry out an assessment. He advised the man that his prognosis was between three and four weeks. The following day the man was described as "deteriorating rapidly" and being "very jaundiced".

31. When interviewed as part of this investigation, a member of the Independent Monitoring Board (IMB) at Lewes said that the IMB have good access to prisoners. He described the Governor as "quite positive and he is visible around the prison and has an open door policy". The member of IMB staff produced a log entry completed by a fellow board member after she spoke to the man on 27 March. She wrote: "Spoke to the man who is terminally ill, but unlikely to be released early because of his offence. He said that everyone was being very kind, and thought that a hospice placement might be possible."

32. In his letter to the Governor dated 30 March, a prison doctor wrote:

> "I can confirm that the above prisoner has advanced widespread cancer and is now expected to die within days. … His condition has deteriorated over the past few days – he is now unable to leave his bed due to weakness."

33. When interviewed as part of this investigation, a fellow prisoner on M wing and a Listener talked about events on 30 March. (Listeners are trained by the Samaritans to provide confidential emotional support to fellow prisoners in distress.) The Listener recalled that the man was not eating or drinking. The Listener spent most of the day with him as he was concerned about his health. He was due to be relieved by another prisoner at 9.00pm but the man wanted him to stay. The Listener stayed with the man all night with a member of healthcare staff sitting outside the cell door. The Listener said:

> "He felt more comfortable with me being there with him. And as it transpires a nurse can't be in the cell with an inmate at night, so they're outside. So I went inside and made sure he was comfortable and kept his fluid intake up, so in the morning he was a little brighter. … In the morning Governor … was there and some of the officers and then the ambulance arrived and they came to take him away. And he did brighten up because he knew he was going to a nice place."

34. The man was released on temporary licence (ROTL), on 31 March, and taken by ambulance to a hospice. (ROTL can be granted to permit prisoners to be released for temporary purposes. A security risk assessment must be carried out before a licence can be issued.) The security risk assessment for the man concluded that handcuffs were not

to be used and prison staff were not required to be at his bedside. The licence included a range of conditions including:

- To permanently reside at the hospice.
- Not to seek or approach or communicate with the victims without the prior approval of his supervising officer or their manager.
- To confine himself within the boundaries of the hospice.

35. The following day, hospice staff asked the man to leave the hospice. Although they knew that he was terminally ill, they did not consider that he needed hospice care. They were also concerned about the absence of an escort for him.

36. When interviewed the matron said:

> "I was quite upset the next day (1 April) because I was informed with various phone calls and e-mails that the hospice were quite unhappy. Because his condition when he actually got there, improved to the extent that he was able to sit outside on the bench and smoke his cigarettes and drink his cups of tea and look at the lovely view. And the hospice felt that they weren't happy that he didn't have an accompanying officer … they were worried with regard to young children visiting other patients and the fact that they said there was nothing to stop him wandering off and they wanted him to return to the prison."

37. The man returned to Lewes in an ambulance around 4.00pm on 1 April. An officer escorted him from the hospice and drove behind the ambulance. The officer had been given permission by the Governor to wear his own clothes whilst on the escort. As the man's cell on M wing had already been allocated to another prisoner, he was admitted to the healthcare centre when he got back to the prison.

38. With regard to his admission to healthcare, the matron said:

> "He returned to the prison and he was admitted to healthcare because we explained to him that (a) somebody else had now moved into his cell on M so he couldn't go back there and the better location for him was to be on the healthcare where there is 24 hour nursing care. So he wasn't happy about it and we did say to him that at any time if he wanted a cigarette we would provide a member of staff and if it couldn't be a nurse we have two porters as well, one of them would take him outside into the garden, obviously not at night but during the day so that he could have a cigarette."

39. The man's condition continued to deteriorate and on 6 April he was seen again by the consultant from the hospice who agreed that he should be admitted to the hospice.

40. The Governor wrote to the Public Protection Casework Section of the Ministry of Justice the same day, enclosing an application for early release on compassionate grounds.

41. On the following day, 7 April, the man returned by ambulance to the hospice accompanied by the matron. The security risk assessment for the man still concluded that handcuffs were not necessary and prison staff were not required to be at his bedside.

42. The man was visited by his family and healthcare also contacted the hospice every day to check on his condition. He died at 1.20pm on 9 April.

43. The prisoners on M wing were told the following morning about the man's death and asked whether they required anything or wanted to speak to a Listener.

44. A member of the chaplaincy at Lewes was appointed as the prison's family liaison officer and the prison gave financial assistance with the funeral costs. A memorial service was held at the chapel at Lewes.

45. A post mortem did not take place as the man died of an existing condition and there were no suspicious circumstances surrounding his death. His cause of death was stomach cancer. The Coroner decided not to hold an inquest.

ISSUES CONSIDERED

Clinical care

46. As noted above, a review of the man's medical care was undertaken by a doctor on behalf of East Sussex Downs and Weald Primary Care Trust. In his review, the doctor records that staff at Lewes carried out regular reviews and monitored the man's condition and medication.

47. The reviewer notes that the man had several major medical problems prior to being remanded into custody. He began to complain of abdominal symptoms at the beginning of July 2008, just over two months after he came into prison. He subsequently went into hospital on a number of occasions and investigations were carried out by hospital staff. The tests revealed diabetes, heart and kidney problems to which, the reviewer believes, his gastro-intestinal symptoms were apparently and quite understandably attributed.

48. According to the man's medical records there appeared to be no specific gastro-intestinal investigations carried out until he collapsed in March 2009. In the reviewer's opinion, the man's care was hampered at least to some extent by his own occasional unwillingness to comply with investigations and appointments, or be admitted to healthcare for observation. It appears that following the man's collapse in early March 2009 the hospital investigations discovered the presence of an already wide spread cancer. The man's health subsequently deteriorated very rapidly and he died within a month of the diagnosis being made.

49. The reviewer comments that it is a matter for speculation whether earlier investigation of the man's gastro-intestinal tract might have affected his life expectancy. In the reviewer's opinion, the man's general symptoms of nausea and vomiting were probably related to a combination of his upset body biochemistry and the secondary spread of his primary tumour. The reviewer believes that the man's death could not have been avoided. He concludes that a fatal outcome was inevitable when it became apparent that the man's cancer was so widespread. The reviewer wrote in his clinical review:

> "The non-specific symptoms of nausea, vomiting and abdominal pain can be features of generalised biochemical disturbance, and this was certainly true of the man with his history of renal disease, calcium and magnesium disturbances and diabetes. Also, the primary cancer was "silent" producing no specific symptoms and indeed has never been located, no post mortem having been carried out. … I am of the opinion that even with gastro-intestinal investigation at an earlier stage, when for example he first complained of nausea and vomiting, the outcome would have been the same."

50. I am pleased to concur with the reviewer's conclusion that the man was referred, investigated, treated and cared for by staff at Lewes in a manner equalling, if not surpassing, standards that would be expected in the community. After receipt of the draft report the man's family gave their thanks for the support and help their father received from the nursing staff at Lewes.

Transfer to the hospice

51. When the man was admitted to the hospice on 31 March, he had been granted release on temporary licence (ROTL). This meant that restraints were not used and that no officers were on bedwatch duty. On the following day staff at the hospice contacted Lewes and requested that he should return to the prison. The hospice staff said that, although the man's condition was terminal he was not in need of hospice care. His condition continued to deteriorate and after a further assessment by the consultant from the hospice, the man returned to spend his last few days at the hospice. Restraints were still not used and there were no officers on bedwatch duty.

52. When interviewed as part of this investigation, a member if staff from the chaplaincy at Lewes said:

> "I actually saw him at the hospice on 1 April, and he'd actually improved his condition to such an extent that he'd eaten the best breakfast he'd had in some time and he was walking and enjoying the grounds. So he was much improved physically and in his mood as well."

53. The member of chaplaincy staff spoke to the man after his return to Lewes. He confirmed that the man did not expect to return and it had been a shock for him. The member of chaplaincy staff said:

> "I spoke to him subsequently, to explain that often people don't die at the hospice, they prefer to die in their own homes and so people come to the hospice, get their pain relief and symptom control right and then go back home. So he wasn't too pleased to come back to home here [to Lewes]."

54. When interviewed as part of this investigation, a matron from Lewes said:

> "You know I just wish that they'd kept him the first time so that he could have had his last week in the hospice because certainly it was just the psychological impact I think of, of when he got out to the hospice, it's in a beautiful place and lovely fields with animals, donkeys and flowers and I'm sure that had such a positive effect on him that he did perk up. And he admitted to me when he came back, he said I did it myself, you know he said it was my fault but you know I said, there was

nothing he could do about that. … when he was sent back it had the opposite effect because he didn't think he would come back to prison, he just lost the will to fight anymore I think and he deteriorated very quickly."

55. It is commendable that the Governor of Lewes had assessed that the man would be allowed to stay at the hospice without an escort. I am also pleased to note that the prison officer was out of uniform when he took the man back to Lewes. This again displayed sensitivity with regard to how the man was treated by Lewes.

56. It is pleasing that the man improved, albeit temporarily, when he went to the hospice on the first occasion. However it is unfortunate that hospice staff then raised concerns about the absence of an escort. Their worries would have been better dealt with if they had been considered before the man's arrival. In the event, Lewes was obliged to return the man to the prison. Although I make no recommendation, the Governor and matron will wish to ensure that the hospice has a complete understanding of a prisoner's situation before any others are moved.

57. It is sad that the man had to endure this additional distress in the last days of his life. As mentioned by the matron in her interview, the man's spirits were lifted by leaving the prison and going to the hospice. Unfortunately he then appeared too well to staff at the hospice and had to return to custody. After the man returned to Lewes his condition deteriorated very rapidly and this led to his return to the hospice. When he returned to the hospice for the last time he was confined to bed as his condition had progressed to such an extent that he was no longer mobile. I am pleased to note that his family were able to visit him there in his final days. After receipt of the draft report the man's family said that they were concerned about a comment made by a nurse at the hospice. The comment was about why the man was at the hospice. The family felt that this was more to do with his offence rather than about his care.

CONCLUSION

58. The man arrived in HMP Lewes on 8 August 2008. He moved to a hospice on 7 April 2009 and he died there of natural causes two days later.

59. As I have already mentioned, it is sad that a very poorly man's health improved when he left prison and then he had to return as he appeared too well. I am sure that his subsequent return to custody was difficult and did not slow the decline in his health.

60. In light of the findings of this investigation and the clinical review, I conclude that the care provided to the man was entirely appropriate. Indeed, I think that staff at Lewes treated the man with sensitivity and professionalism. I am encouraged by the conclusion reached by the clinical reviewer, that "the man was referred, investigated, treated and cared for by all concerned in an exemplary manner, equalling, if not surpassing standards that would be expected in the community".