Investigation into the circumstances surrounding the death of a man at HMP Elmley in July 2008

Report by the Prisons and Probation Ombudsman for England and Wales

August 2009

This is the report of an investigation into the circumstances of the death of a man at HMP Elmley. He was found hanging in his cell in July 2008. The man came to Britain in the year 2000 and was subsequently granted indefinite leave to remain as a refugee.

I extend my sincere condolences to all those affected by his loss.

The investigation was carried by my colleague. A clinical review was carried out by the local Primary Care Trust.

I would like to thank the Governor of Elmley and his staff, for their help and assistance during the course of this investigation.

At the time of his death, the man was serving an Indeterminate Public Protection (IPP) sentence with a minimum tariff of five years. The tariff was due to expire in July 2008, but he asked for a postponement of his Parole Board hearing as he did not feel prepared. At that point he had done no work relating to his sentence planning. One of the reasons was his comparatively recent re-sentencing, having been originally sentenced to 12 years imprisonment. Another factor was that in his last five years the man had spent a considerable amount of time as a detained patient in a secure mental health in-patient unit.

The man left no note to explain his actions, but there are indications that he was growing despondent about his prospects of release.

My report makes four recommendations. Three relate to the work of Elmley's lifer unit and the other concerns the prison's personal officer scheme.

Stephen Shaw CBE
Prisons and Probation Ombudsman **August 2009**

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SUMMARY

The man was born in 1975. He came to Britain in 2000 when he sought and was granted indefinite leave to remain as a refugee.

In July 2003, the man was arrested and charged with murder. He was remanded into HMP Elmley where staff soon became concerned about his mental health. He moved into the prison's healthcare unit and, towards the end of 2003, was transferred to an NHS managed psychiatric unit.

Following his conviction for murder in September 2004, the man was sentenced to life with a minimum of 12 years imprisonment. Meanwhile, he remained a detained patient in the psychiatric unit. He was discharged from the unit in October 2005 and returned to Elmley.

Claiming to have been mentally ill at the time of his offence, the man appealed against his conviction. In December 2006, the Court of Appeal quashed the conviction and ordered a retrial. While awaiting his retrial, his mental health again began to deteriorate and he was transferred back to the psychiatric unit in July 2007.

At his retrial in January 2008, the man was found guilty of manslaughter on the grounds of diminished responsibility. He was given an Indeterminate Public Protection (IPP) sentence with a minimum term of five years. (An indeterminate sentence is given to dangerous offenders convicted of violent offences for which the maximum penalty is ten years or more. The court sets the minimum tariff to be served and it is then the Parole Board's responsibility to decide whether and when it is safe to release the prisoner.) His tariff expiry date was July 2008.

With his mental health stable again, the man was transferred from the psychiatric unit back to Elmley. This happened on the same day as his retrial.

To help demonstrate to the Parole Board that they can safely be released back into the community, IPP prisoners will usually need to have shown that they have addressed their offending behaviour. Much of this work will be done at a training prison (known as a first stage prison) and not at a local prison (such as Elmley), which is essentially a holding establishment for remand prisoners and for convicted prisoners awaiting allocation.

The man's first Parole Board hearing would have occurred a short while before his expiry date, however he had asked for a postponement as he felt he needed more time to prepare.

On 11 July 2008, the man attended Friday prayers and a discussion session on Islamic teaching. After that he played table football with his friends. They all thought that he was well, as did the Imam who had spoken with him.

At 5.30am on 12 July, staff began their morning roll check of the prisoners. When the man's cell was checked he was seen to be hanging from a ligature.

Staff went into the cell, cut the ligature and checked him for a pulse. Unfortunately, it was clear from examination that he had been dead for some time.

My investigation found that there were no clear indications to staff or other prisoners that the man was contemplating taking his life.

THE INVESTIGATION PROCESS

1. The investigation was opened on 18 July 2008 when one of my colleagues visited HMP Elmley. He met Elmley's governing Governor. My colleague also met a trade union representative. Notices were issued for staff and prisoners notifying them of my investigation. No members of the Independent Monitoring Board (IMB) were available that day.

2. My colleague subsequently met the Imam who knew the man and who spoke to the man's family after his death. My colleague later returned to Elmley to interview a number of the staff. He also spoke to four prisoners who were friends of the man.

3. A clinical review of the man's care and treatment was carried out by an appointed doctor on behalf of the Primary Care Trust.

4. My former senior family liaison officer, telephoned the man's brother who lives in their home country and she posted information to him about the Ombudsman's role and responsibilities. The family's main concern was about the arrangements necessary for the man's body to be returned to the home country. The family did not raise any specific matters that they considered should form part of the investigation.

HMP ELMLEY

5. HMP Elmley is a modern purpose built male local prison on the Isle of Sheppey serving all courts in the county of Kent. It holds both adults and young men between the ages of 18 and 21. It has an operational capacity of just under 1,000.

6. Elmley received a full announced inspection from Her Majesty's Chief Inspector of Prisons in December 2006. Her report said:

> "… Like all local prisons at present, [Elmley] is overcrowded: holding nearly 30 percent more prisoners than its certified normal accommodation.
>
> "In general, Elmley provided a decent environment for prisoners. Most accommodation was in good condition, and staff-prisoner relationships were in general respectful, though staff appeared too busy to engage proactively with prisoners … There were extremely good race and diversity arrangements, with strong senior management leadership, and this showed itself in our prisoner surveys, which unusually showed black and minority ethnic, and foreign national, prisoners reporting better outcomes than white prisoners in some key areas, such as treatment by staff …
>
> "Elmley, like many local prisons, suffered a mismatch between the number of prisoners and the number of activity spaces available; which reflected the population it ought to have held, rather than the number it actually did …
>
> "Prisoner feedback on the personal officer scheme was poor, with few prisoners reporting any meaningful contact with their identified personal officer …
>
> "… there were some effective systems for managing the large foreign national population. These included … fortnightly surgeries led by staff from the Immigration and Nationality Directorate [now UK Border Agency] …"

7. In its annual report for the period November 2006 to October 2007, the Independent Monitoring Board at Elmley reported a total of 773 applications received in the year. This was an 8 percent increase compared to the number received the previous year. (An application is a request by a prisoner for assistance.) A breakdown of the applications made showed that 12 were about immigration issues. In the previous year, the same issue resulted in 14 applications.

8. Prior to the man's death, there had been two apparently self-inflicted deaths at Elmley since April 2004 when I took on the responsibility for investigating all deaths in prison custody. The investigation into one of

OFFENDER ASSESSMENT, OFFENDER PROGRAMMES AND THE PAROLE BOARD

9. The Offender Assessment System (OASys) is a standardised process for the assessment and supervision of offenders. OASys takes a structured research-based approach to assessing the offender. The aims of the assessment include identification of the individual's basic personality characteristics and thinking deficits, assessment of their likelihood of re-offending if released back into the community, and the linking up of assessments with appropriate sentence planning. OASys assessments should be completed periodically as appropriate to help inform sentence planning.

10. Sentence planning will usually incorporate completion of appropriate Offending Behaviour Programmes. These are rehabilitation programmes designed to identify the reasons why prisoners offend and to reduce and monitor these factors. Elements contained in specific programmes aim to develop personal traits such as impulse control, values and moral reasoning, inter-personal problem solving and anger control. Most programmes comprise group work with other offenders.

11. Once a life-sentenced prisoner has served the minimum tariff of their sentence as set by the trial judge, it is then the responsibility of the Parole Board to decide on the prisoner's release. Before directing release, the Board must be satisfied that it is no longer necessary for the protection of the public that the prisoner should remain confined. The test to be applied is whether the prisoner presents a risk of committing further serious offences. There is a presumption that release will not be directed unless the evidence demonstrates to the Board's satisfaction that the level of risk is acceptable for release. The Board should refuse to direct release unless it is satisfied that there does not exist a risk of serious violent offending.

12. The Parole Board may make its decisions about indeterminate sentence prisoners on the papers alone, or by way of an oral hearing where the prisoner appears before three panel members. The panel will often be chaired by a judge, and where the circumstances of the case warrant it the panel will include a psychiatrist or a psychologist.

13. My investigator asked Elmley for a copy of the man's OASys records but was told that none could be located.

KEY FINDINGS

14. The man was born in 1975. He moved to Britain some time in the year 2000. It seems his reason for moving might have been fear of his home country's regime and, in June 2001, he was granted indefinite leave to remain in the UK as a refugee. He had worked as a baker in his home country and, for a period of time, worked in that trade after settling in the UK.

15. In July 2003, the man was arrested for questioning following the death of a man two days previously. He remained in police custody for several days until his remand into HMP Elmley on 22 July.

16. Within a few weeks of the man's arrival in Elmley he began refusing meals and, towards the end of August, he was moved into the prison's healthcare unit for observation. A note was made in his records that he believed it would be irreligious to accept food from a non-Muslim. One of the prison's Imams explained to him that he was mistaken in his belief; even so, he continued intermittently to refuse food, sometimes for several days on end. On other days he was noted to have consumed large amounts of food. Although there were days when he came out of his cell for association, it was much more common for him to refuse to come out and on many occasions he was noted to be totally uncommunicative. He spent much time in prayer.

17. On 12 September, the man was reviewed by one of Elmley's doctors and by a consultant psychiatrist. Both deemed him to be suffering from mental illness to a degree that warranted detention in a hospital for medical treatment. He remained in Elmley's healthcare unit until 16 December, when he was transferred to a mental health unit (MHU) under section 48/49 of the Mental Health Act. (The MHU is a medium secure psychiatric in-patient unit managed by the NHS and Social Care Partnership Trust.)

18. The man was still a patient in the MHU when his trial commenced the following September. He was subsequently convicted of murder and, in October 2004, was sentenced to a minimum of 12 years imprisonment.

19. The man remained in the MHU for almost two years. Over time, however, his mental health stabilised, and on 7 October 2005 he was discharged and transferred back to Elmley. During his time in the MHU, his IQ (intelligence quotient) had been tested. His non-verbal IQ was estimated to be between 80 and 90 (putting him in the low average bracket).

20. The Muslim chaplain at Elmley told my investigator that he first met the man in 2005 on his return to Elmley from the MHU. He said that the man made himself known to him as a Muslim and came to the Friday afternoon congregation. (This entails one hour of prayers followed by one hour of Islamic teaching in the form of a question and answer session.) The chaplain said that the man would not talk to many people but he did begin to open up to him. He confessed that he had killed a person and so did not

21. The records provided to my investigator by Elmley contain no entries from wing staff for the year 2006. There is no information on record about how the man was filling his days, nothing to say whether he was or was not complying with prison rules, and no evidence of any sentence planning or engagement by lifer management staff. The clinical records for the year suggest only two minor contacts with healthcare staff: a consultation about nasal congestion in July, and then in December a healthcare worker examined him to confirm that he was fit to go to court.

22. The reason for the man's appearance at court in December 2006 was because he had earlier lodged an appeal against his murder conviction. The decision of the court was that the conviction should be quashed and a new trial held. He was to remain remanded in prison while awaiting his retrial.

23. From court, the man was taken to HMP Brixton (probably because Elmley was full). He remained in Brixton until 15 February 2007 when he was transferred back to Elmley.

24. From March 2007, sporadic entries in the man's clinical records show that he was beginning to suffer a recurrence of mental health problems. A record made on 29 April by a consultant forensic psychiatrist indicated that the psychiatrist found him to be acutely psychotic that day. He was readmitted to the MHU on 31 July, again under section 48/49 of the Mental Health Act.

25. At a case conference at the MHU in September, it was decided that the man's anti-psychotic medication should be changed from oral administration to administration via depot intramuscular injection. (A depot injection is a periodic injection where the formulation is released slowly into the body over a number of weeks.)

26. Ahead of his retrial, the man had submitted a plea of guilty to manslaughter on the grounds of diminished responsibility. His claim was that he was mentally unwell at the time of the offence.

27. The case came to court in January 2008 when the man's plea of guilty to manslaughter was accepted. He was sentenced to life imprisonment with a recommendation that he serve a minimum of five years. Taking into account the time already served, the five year term would expire on 22 July 2008. However, in his address in court to the man the judge remarked that:

> "This Court has come to the clear conclusion that the deterioration of your mental state in the community, its frequency or otherwise, and the consequent risk of serious harm to the public, which you would then

present, is entirely unpredictable at the present time … I, therefore, reject the position made on your behalf that I can properly pass a determinate sentence …"

28. The judge went on to say that, when the man's case was to come before the Parole Board, the Board would have an acutely difficult decision to make.

29. On the same day as his fresh conviction, the man was discharged from the MHU back to Elmley. At this point, he was within six months of his earliest potential release date, ahead of which he would need to appear before the Parole Board.

30. Shortly after his return to Elmley, the man attended an induction session for a course in English for Speakers of Other Languages (ESOL).

31. An offender supervisor at Elmley, wrote a progress report on 12 February in preparation for the man's Parole Board hearing. The report commented that his behaviour in prison had been very good. It also stated that he had not yet carried out any Offending Behaviour Programme course work and so was unable to demonstrate that he had reduced his level of risk. The offender supervisor also wrote that the man had explained to him that he was extremely sorry for his victim and was apologetic for the offence. He expressed the wish, upon release, to return to his family in his home country.

32. The offender supervisor told my investigator that he doubted if the man would have been considered ready for release at the five year stage. He believed a transfer to a 'lifer prison' was being considered where appropriate courses would have been more readily available than at Elmley (a local prison). Although the offender supervisor thought the man spoke reasonably good English, he felt he would probably have needed to complete an ESOL course in order to do the offender course work.

33. A psychiatric nurse working for the Prisons Mental Health In-Reach Team, became the man's primary nurse upon his return to Elmley from the MHU January 2008. (The In-Reach team had had no direct involvement in his care while he was in the MHU). The psychiatric nurse told my investigator that, by the time of his return from the MHU, the man's psychosis was under control. The psychiatric nurse first consultation with the man was on 28 January. The psychiatric nurse said that at first he had fortnightly consultations with the man, lasting between 20 minutes to an hour. As the psychiatric nurse saw him on the prison wing, other events on the wing could affect the length of a consultation. Otherwise, it would be his level of engagement on the day that would affect the length of the consultation. The psychiatric nurse said that the man was not the easiest person to engage with as he would tend to give *'yes'* and *'no'* answers without further elaboration. The psychiatric nurse thought that the man's limited English might have influenced his engagement, although he also seemed a person who took a while to start trusting others.

34. The man's second consultation with the psychiatric nurse was on 13 February 2008 after which the nurse noted that the man:

> "… appeared to be stable and well within mood and mental health presentation. He didn't report any concerns or issues. He reported good sleep and appetite. We briefly talked about his symptoms prior to admission to MHU. He told me these were too much praying, not eating or drinking or looking after himself. He is currently not experiencing [any] of these. Feels a bit sad today, he is missing his family in [his home country]. Would like to return [there] but no one has given him any assistance with this …''

35. At the next two consultations, in late February and in early March, the man spoke of being bored and that no one had approached him about lifer management or education issues. At the second of the consultations, the psychiatric nurse noted that the man had been offered a job but had declined it as it was a cleaning job. He said though that he was hoping to start education and was waiting to hear about that. The psychiatric nurse also noted that he had advised the man to take a job as it would help with his boredom. He then started a job in an assembly workshop, but he was dismissed soon afterwards for non-attendance.

36. The psychiatric nurses' note following his consultation with the man on 2 April included:

> "… Client appeared pleasant in mood. He came across stable in mental state. Reported good appetite and sleep. Came across poor in energy levels and client confirmed that he has poor motivation … He was given a job, but gave it up after one day. Claims that being separated from his family is hard for him …"

37. Having attended an ESOL induction session in the previous January, the man was due to start classes on 10 April. He did not attend however, and his name was subsequently removed from the class list. This information was not noted in his wing history sheet and nothing was recorded to show that he was asked about his reason for not attending.

38. An officer told my investigator that he was appointed as the man's personal officer from the time he returned to the prison from the MHU. (The personal officer should be a prisoner's first port of call if they have questions, complaints or need advice. The personal officer should also usually contribute to sentence planning and should help the prisoner in making the best use of their time in prison.) The personal officer made only one entry in the man's records and he estimated that he only met him about three times in total. The personal officer explained that at the time he was working on A spur, whereas all the prisoners for whom he was personal officer were located on B spur. He said that the arrangement has now changed so that the prisoners for whom he has personal officer responsibility are located on the spur on which he works.

39. It was on 13 April that the personal officer made his one entry in the man's records: *"Has been very quiet since I've known him. However, always complies with staff and does walk about during association. Shows no cause for concern."* The personal officer said that the man spoke English well enough to be able to engage in conversation. The personal officer said that, on the occasions they met, he asked the man how he was doing to which he replied that he was fine, that he was doing okay. At no time did the personal officer notice any signs to suggest that he might be at risk of harming himself.

40. Since his return to Elmley from the MHU, the man's clinical treatment included fortnightly intramuscular injections of an antipsychotic medicine (Flupenthixol Decanoate). On 2 May, he refused his injection. The psychiatric nurse told my investigator that it is not unusual for patients who have had a severe episode of mental illness to ask to come off their medication after they have regained their health. When he came off his medication he was transferred to Elmley's healthcare unit so he could be observed for any signs of a relapse.

41. A consultant psychiatrist visited the man in healthcare on 14 May. He had been refusing his medication for the previous month and he explained that the injections were causing him pain in his lower legs. He also said that he now felt well and so did not consider that he needed the medication any longer. The consultant psychiatrist advised that he risked deterioration in his mental health by stopping the medication.

42. One of the nurses in healthcare made a note on 16 May of a discussion with the man about medication:

> "Mood appears brighter … Offered [one to one] session with named nurse, stated that he is fine. Stated that he does not require his medication at the moment because he is well. I suggested that feeling well at the moment is a sign of the therapeutic effects of medication, and he may relapse if he stops complying … he states that he knows when he is feeling well and when he is not and he will start taking his medication if his mental health deteriorates …"

43. An healthcare assistant (HCA) made an entry in the man's records on 18 May that he was: *"Often found pacing up and down the corridor. Never appears aggressive in mood and smiles when asked [if okay]. No cause for concern."* At interview, the HCA confirmed that the man had never caused her concern that he might harm himself. When asked what she had meant by the word 'pacing', the HCA said that the man often seemed restless or distracted.

44. An entry made in the man's clinical records on 25 May says: *"… Mental health assessment; no abnormal behaviours noted. Although he is quiet he was observed interacting with others very well. Well behaved on the ward*

45. With the approach of the five year minimum term, the man was sent a letter to tell him that the Parole Board would be considering his suitability for release. Part of that process included completion of a 'sentence planning and review' report by a probation officer. In the probation officer's report, she noted that at that time the man had still not completed any sentence planning work. She noted that the reason appeared to be because he was unable to read or write English.

46. On 4 June, the man signed a letter to the Parole Board in which he said that he needed more time to prepare for the review hearing. This letter was written on his behalf, by his friend, and was countersigned by an officer.

47. The friend told my investigator that he had known the man for two years and acted as his interpreter as his English was poor. He said that the man was always depressed, saying that he missed his family and could not see how he would be able to get out of prison. The friend understood that the man had spoken to other prisoners serving indeterminate sentences about what he needed to do to obtain release. From what he had heard, he doubted that he would be able to complete the necessary courses. The friend told him to discuss the matter with Elmley's Medical Officer who would confirm that the man would not be able to complete the courses due to his mental health problems and poor English. He also spoke about the early release scheme for foreign national prisoners, but said he had been told that the British authorities would not sanction his deportation because he faced possible persecution if he returned to his home country. The friend said that it was obvious that the man was depressed. He would either walk up and down the corridor with his head down or just lie in bed with the sheets over his head.

48. The officer that endorsed the letter to the parole board told my investigator that, although he worked on B spur, he had only limited interaction with the man due to his very poor command of English. The only words he could recall him using was commenting that he was bored. The officer said that the man spent a lot of time walking up and down the landing, though he added that it was more of a shuffle than a walk. He also said that he had problems with his personal hygiene. The officer understood that the man was receiving anti-psychotic medication and he was also under the impression that he did not always accept it. The officer described him as *'withdrawn'*, although he was always polite and respectful and gave no indications that he might be at risk of self harm.

49. The psychiatric nurses' first consultation with the man following his discharge from healthcare was on 11 June. He noted that the man:

> "… appears to be stable in mood, pleasant upon approach. He reported no symptoms of mental illness and none were observed despite him not

taking any form of medication at present. Good appetite and sleep and energy levels observed and reported."

50. From this point the psychiatric nurse increased the frequency of consultations with the man from fortnightly to weekly. His reason was to ensure closer monitoring of any signs of a relapse in his mental health due to his continued refusal of medication. Potential relapse indicators, he told my investigator, could be behaviours such as excessive praying, refusal of food and pre-occupation with religion.

51. On 12 June, the man was visited by a probation officer. She found that he appeared to have no information on file about the assessment of his risk factors and sentence planning. She noted that it seemed that the man was not engaging with the sentence planning process largely because of his inability to read or write in English. She recorded that she had been told that he had applied to attend an English course.

52. The man started a new job on 16 June. This was a packing job (an entry made in the clinical records by the psychiatric nurse indicates that the man gave up his previous job in the assembly workshop because he found it too difficult). It is not clear how many shifts he completed in his new job. When the psychiatric nurse attempted to visit the man on 25 June, he was not on the wing and was apparently at work. However, when the psychiatric nurse visited on 1 July, it appears that he was once again unemployed. A student nurse accompanied the psychiatric nurse at that consultation after which she made the following note:

"… Approximately [four] months ago [the man] stopped his depot injection. Upon stopping he has remained mentally stable. Today he was visited in his cell where we found him in bed. He appears to lack motivation. Prison work was discussed and he told us that he would apply for a job this evening … [the man] said sentence should expire on 22 July 2008 however [the psychiatric nurse] has spoken to [a probation officer] who has informed him that this is not the expiry date but [the] probation date … Today [the man] appeared lethargic and unmotivated. He maintained good eye contact throughout the review … No evidence of any deterioration in his mental health. [The man] stated that he is due to be deported … Requires clarification … of this."

53. The psychiatric nurses' last consultation with the man was on 8 July. He was again accompanied by the student nurse who made the following record of the consultation:

" … [the man] was seen in his cell. When we arrived he was on his bed watching TV which seems to be a usual occurrence. As discussed last week, he was due to look into possibly obtaining a job although this does not seem to have been achieved ... He appears to lack motivation. He does not appear to want to do anything and wants to stay in his cell watching television. He has been strongly advised that this is not healthy and that it is important for him to organise a better

routine. There was no evidence of any visual or auditory hallucination whilst in conversation."

54. The psychiatric nurse told my investigator that he was very surprised at the man's subsequent death. He said that uncertainty over his future certainly affected his mood. His strong desire was to return to his homeland and he asked a lot of questions about that. The psychiatric nurse said that he asked some of the other foreign national prisoners whether they could advise the man, but he did not seem able to clarify his situation. Despite this, he did not seem significantly distressed or depressed. He did not express any suicidal ideas or give any indication that he might harm himself. The psychiatric nurse said that he did not notice any indicators to suggest that he was becoming mentally ill again. Nor had wing staff reported any concerns about him when he asked how he was faring (something that he did as a matter of routine). The psychiatric nurse said that, if he had had any concerns, he would have arranged either for him to be monitored and supported through the ACCT process[1] or would have admitted him to healthcare.

55. My investigator spoke with a senior officer (SO) about her role as lifer manager and offender management officer and about the management of prisoners serving IPP sentences. The SO explained that a prisoner serving a five year IPP sentence (as was the case with the man) would always have to serve at least five years. The prisoner will be set objectives (for instance, completion of courses such as victim awareness or enhanced thinking skills). It is then for the Parole Board to consider whether the prisoner should be released. The Board might decide that it is safe to release the prisoner, or that the prisoner needed to do more course work before their release could be sanctioned. Another option is for the prisoner to spend some time in an open prison[2].

56. The SO said that, when the man returned to Elmley from the MHU in January 2008, he only had six months remaining of his IPP sentence. She explained that that time span was insufficient for him to do the work necessary to prove to the Parole Board that it was safe for him to be released. However, she did not think it would have been detrimental to his prospects of parole that he faced a number of potential barriers in undertaking course work, such as his mental health problems, the amount of time he had spent in hospital, and that English was not his first language. She thought that the Parole Board would have made some allowances for those factors. She added that, if the parole hearing concluded that the man needed courses which he could not have in Elmley, they might have recommended his transfer to another prison that could offer what was

[1] ACCT (Assessment, Care in Custody and Teamwork) is the process used for monitoring and supporting prisoners at risk of self-harm or suicide.

[2] An open prison is one with limited physical barriers to prevent escape. They are used for those who can be trusted to serve their sentence without likelihood of escape and of being a threat to the public.

needed. However, he would not have been transferred before his parole hearing.

57. My investigator spoke to several other prisoners who knew the man. One prisoner said that he had known the man for four months. They spoke every day in the last month before his death. The man was a quiet person who tended not to make much conversation and the prisoner would always be the one to introduce topics. He would tell jokes and the man would laugh. The man always spoke about his release and mentioned that he had only one month left of his sentence. The prisoner said that the UK Border Agency visited Elmley on 28 June. However, prison officers failed to collect the man so he did not see the immigration officers that day. The prisoner understood that several months earlier the UK Border Agency had told the man that they would only sanction his return to his home country if he could prove that his life was not in danger. He was pessimistic about ever being released from prison although the prisoner tried to reassure him. They played table football on Friday 11 July and he seemed happy that day. The prisoner said that he saw no signs that the man was mentally ill or that he would harm himself.

58. A second prisoner had also known the man for four months. He described him as a very quiet man who spent a lot of time walking up and down the corridors not speaking to anyone. The man complained about immigration matters but the prison never got back to him. He had said that: *"all doors were closed"* to him and that he *"cannot get out".* However, he also said that he hoped he would be able to go home one day. He came to Friday prayers on 11 July and played table football afterwards. He seemed fine.

59. A third prisoner said that he had known the man for many years as they came from the same town in their home country. They were in different houseblocks at Elmley but the third prisoner told the man that he would ask for a transfer to his houseblock. Unfortunately, this did not happen before the man's death. The third prisoner said that the man could read and write in his own language but thought the courses he would have to do in prison were *"a big wall"* that he would never be able to break through. The third prisoner saw him at Friday prayers on 11 July. He asked him how he was and he replied that he was fine.

60. The Imam said that the man attended Friday prayers on the afternoon of 11 July. That was the first time in around two months that he had joined the congregation. In the interval between prayers and the question and answer session, the Imam went over to the man to say how nice it was to see him again. He was drinking tea with his friends and he replied: *"Thank you Imam."* The Imam told my investigator that the man seemed fine. He added that he was shocked when he heard of his death the following day.

61. The evening meal would have been served that day between around 4.30pm to 5.15pm. Nothing is recorded to show whether the man took a meal or declined to do so. The cells were then locked for the night at around 5.30pm.

62. At 5.30am on 12 July, an officer support grade (OSG) began carrying out a prisoner roll check on B spur. When she reached the man's cell she saw him hanging by a ligature tied to the cell locker. The OSG shouted to her OSG colleague. Her OSG colleague set off the emergency alarm and then ran to the man's cell. She broke the key pouch[3] and, as the other OSG supported his body, cut the ligature with her anti-ligature knife. A senior officer, together with three officers, was in the administration office and they all responded to the alarm. On arrival, one of the responding officer's checked the man's neck and wrist for a pulse but found none. They told my investigator that the man's body was cold and it was clear that he was dead.

63. In Elmley, nurses on duty at night time do not carry keys, so the second responding officer went to healthcare to collect two of the nurses. The note made by one of the nurses showed that the clinical signs were that the man had been dead for some time. Ambulance paramedics and the out-of-hours doctor were called. He was officially pronounced dead by the doctor. He had not left a note explaining his actions.

64. All of the man's family live in his home country. On the day of his death the Muslim chaplain telephoned the man's brother to inform him of the sad news. Elmley made arrangements with a local funeral director for the man's body to be repatriated to his homeland and met the costs.

[3] At night time, staff hold keys in sealed pouches. The seal is to be broken only in the case of an emergency.

ISSUES

The man's location in a local prison.

65. The man first arrived at Elmley (a local prison) on 22 July 2003 as a remand prisoner charged with murder. And it was at Elmley that he died, very nearly five years later, without having carried out any offending behaviour work.

66. Ordinarily, the man would have been transferred to a (first stage lifer) training prison following his conviction for murder. The Prison Service aims to transfer prisoners to a first stage prison within approximately six months of sentencing, subject to the availability of places. At that first stage prison, a sentence plan would be formed to set out the offending behaviour that would need to be addressed during the prisoner's time in custody. In due course, the prisoner would begin to carry out offending behaviour work until he demonstrated significant and sustained improvement. The next move is to a category C prison followed, in due course, by transfer to a category D, open prison.

67. By the time of his death, the man had not progressed at all in terms of his journey through the lifer system. There were several features about his circumstances that contributed to this. One was the fact that during this period he spent two separate and substantial spells in a mental health in-patient unit having been sectioned under the Mental Health Act. He was in the MHU from 16 December 2003 to 7 October 2005 and again from 31 July 2007 to 22 January 2008. In addition, he spent a reasonable amount of time in Elmley's healthcare unit either for close observation of any signs that he was becoming mentally ill or because he was indeed mentally ill.

68. The other significant factor was that, following a successful appeal, the man's conviction for murder was quashed at the Court of Appeal in December 2006. This meant that his legal status was again that of an unconvicted remand prisoner. It was not until 22 January 2008 that he was retried and convicted of the lesser charge of manslaughter with an IPP sentence and a five year tariff. When that happened, he was within six months of his first Parole Board hearing. It is deemed best to avoid a prison transfer in that period as staff at the new prison will not have time to get to know the prisoner and be able to complete reports for the parole hearing. The day that the man was re-sentenced was the same day that he returned to Elmley following his second spell in the mental health in-patient unit. It is arguable, therefore, whether he would have been able to do very much effective work in terms of sentence planning ahead of his parole hearing regardless of which prison he was in at the time.

69. In fact, the man asked for a postponement of his parole hearing as he felt he needed more time to prepare. If the hearing had gone ahead, the parole panel would have paid regard to the remarks made by the trial judge that January. The judge had said it was clear that a potential deterioration in his mental state in the community and consequent risk of serious harm to the

70. My investigator made an enquiry of the Parole Board about how it might have viewed a case such as this man's. In particular, the fact that he had done no offending behaviour work while, at the same time, having a reasonably low IQ and poor command of English. The Parole Board were not familiar with the man's case, but from the basic facts my investigator gave, said that offending behaviour work did not seem to be a significant issue. This would be because completion of any such courses would not necessarily demonstrate a reduced risk to the public. Instead, the focus with him, the Parole Board suggested, would be past and future psychiatric assessments.

71. Based upon those remarks, it is likely that the man was some considerable way from any prospect of being granted release on licence. If that is the case, it follows that he had not been materially disadvantaged by the fact that he was still awaiting a move to a first stage prison after his conviction for manslaughter in January 2008. Moreover, the evidence of the Parole Board would indicate that the key factor for his prospects of release would not be offending behaviour work but the likelihood or otherwise of the recurrence of psychotic episodes.

72. What is very clear, however, is that the man remained confused about his IPP sentence, about his potential progress through the lifer system and about what work he should be doing and about his prospects of returning to his homeland. I shall deal in the following section with contact with the man by wing staff, but there seems to have been very little contact with him by staff from the lifer unit and no evidence of any contact at all in the period he served in connection with his original sentence. Whether or not the focus for him would be his psychiatric prognosis rather than offending behaviour work, it would seem that no proper plans were formulated. There does appear to have been a half-hearted attempt to enlist him onto an ESOL course, but when he failed to attend no more came of it.

73. As a minimum there would seem to be staff development needs within Elmley's lifer unit.

I recommend that the Governor ensures that relevant staff attend the Management of Indeterminate Sentence Prisoners and Risk training course.

I recommend that the Governor reviews and addresses any other developmental needs within the lifer unit team.

I also recommend that the Governor reviews the arrangements for provision of information to prisoners about the operation of the lifer system. This should include a review of the effectiveness of delivery

of information to those with English as a second language or other difficulties of understanding.

Staff interaction with the man

74. In total, the man spent around 24 months on the houseblocks at Elmley. The remainder of his time he spent in the prison's healthcare unit and in the MHU. In addition, he spent two months in HMP Brixton during late 2006 to early 2007 and he spent one night in HMP Pentonville. For all his time on the houseblocks in Elmley, the records provided to my investigator included less than one side of entries by wing staff in the man's history book. (The history book is meant to comprise a running record about the prisoner where any matters of significance should be recorded.) All of the entries were made in 2008 which suggests that previous history books have been lost. Even if this was the case, the man seems to have remained an extremely anonymous individual to those responsible for dealing with him on a daily basis. (And I note that his personal officer from January to July 2008 only met him around three times during that period because he worked on a different houseblock to that where the man was located.)

75. Elmley's Personal Officer Scheme when the man first arrived in the prison required that all prisoners be allocated a personal officer upon arrival on a residential unit. The personal officer was expected to make initial contact with newly allocated prisoners within 48 hours of the prisoner's arrival[4]. Thereafter, the personal officer was required to make contact with each of their allocated prisoners at least weekly and to make a record of that contact in the prisoner's file. The Scheme espoused the principle that comments about behaviour, attitude to sentence, and employment, help to build up a picture of the prisoner. The Scheme also included a provision for managerial checks to ensure that staff were making the contact as prescribed.

76. Whether or not some of the man's records have been lost, it is manifest that Elmley's Personal Officer Scheme was not operating properly at the time and this would, or at least should, have been recognised at a managerial level. Had the Scheme been operating as required, there would have been at least one officer who should have established a relationship with him and been better able to assist his understanding of prison life, including the meaning of IPP sentences and sentence planning. Such an officer would have been in a better position to notice if there was anything to suggest he was becoming increasingly dejected about his prospects. Such an officer would certainly have been able to speak to my investigator with some authority about how the man appeared to be getting on.

77. I hear repeatedly that a disproportionate amount of officers' time in any prison is taken up by a comparatively low number of the more demanding

[4] Elmley's Scheme as revised in December 2007 requires the initial contact to be made within one week of the prisoner's arrival on a residential unit.

prisoners. The unfortunate consequence is that prisoners who are quiet and undemanding may not always receive the support they need. The evidence of the other prisoners originating from the man's home country, and the Imam, was that the man was a quiet and reticent individual. Moreover, although my investigator received mixed messages about the standard of his spoken English, the evidence certainly points to him lacking confidence in his ability to speak the language.

78. The inescapable conclusion would seem to be that the man received little attention from staff because his behaviour was not disruptive to the running of the wing. There is some evidence too that he was someone who could easily grow discouraged. He had mentioned to the psychiatric nurse that he was bored but, in addition to declining a wing cleaning job, he later started a job in the assembly workshop and subsequently a packing job, in neither of which he remained long. Similarly, he had been due to commence an ESOL course in April 2007 but failed to attend and his name was removed from the list. Nothing is recorded to show that he was ever asked or challenged by wing staff about his reasons for failing to take up or abandoning these opportunities.

79. A reticent prisoner, a prisoner such as this man, probably has the most to gain from the proper operation of a personal officer scheme. All the matters mentioned above are matters I would have expected a personal officer to have pursued.

I recommend that the Governor satisfies himself that the Personal Officer Scheme is now operating properly and in accordance with the local protocol.

Were there any identifiable signs that the man was at risk?

80. A consequence of the man's decision to refuse his depot medication was that the mental health in-reach team began to monitor him even more closely than was already the case – seeing him weekly rather than fortnightly. I am pleased that the team recognised his vulnerability and so increased their contact with him. The psychiatric nurse told my investigator that he observed no signs that the man was at risk. Nor did the wing staff bring any concerns to him which, he said, they would have done if appropriate.

81. However, the psychiatric nurse told my investigator that the man's mood was affected to an extent by his preoccupation with his family and his desire to return to his homeland. This is reflected in the records made by the nurse, which also reflect the man's lack of motivation to take up any occupation.

82. The man's friends also said that his hope was to return to his home country. One friend in particular implied that the man was despondent about his prospects of being able to do the necessary courses to obtain parole. The evidence from his friends would suggest that he remained

83. Despite any possible frustration or despondency about his future, the man seemed well to all his friends when he attended Friday prayers on the day before his death. He had not attended the service for around two months and the Imam spoke to him to say how nice it was to see him there. Afterwards he played table football with his friends, and his subsequent death came as a surprise to all of them.

84. I have already remarked upon the scant wing records for the man. It is impossible from what little is documented to assess any potential warning signs that might have been missed. I take a good deal of comfort, however, from the evidence of the psychiatric nurse about his practice in speaking to wing staff about any concerns they might have and the fact that no concerns were relayed to him about the man. The nurse also said that the man was a person with whom it took time to build a relationship.

85. I conclude that there were no obvious recognisable signs to suggest that the man was about to take his life.

The man's clinical care and treatment

86. As noted earlier, the man's clinical care and treatment has been reviewed by an appointed doctor on behalf of the PCT. In brief, the clinical reviewer says that the man improved from the appropriate treatment and support provided for his psychotic illness. The clinical reviewer adds that, in his experience, the improvement produced by treatment in patients such as the man often results in them believing that medication is no longer required. Their refusal of medication in turn often results in a subsequent relapse. However, the clinical reviewer identifies no evidence of an apparent relapse of the man's psychosis in the final months of his life following his refusal of depot medication in May 2008. The clinical reviewer refers to the support provided to the man through weekly assessments by the mental health in-reach service, through referral for psychiatric assessment as deemed necessary, and through the spiritual advice and guidance provided by the Imam.

87. The clinical reviewer concludes that it would be difficult to find fault with the very frequent thorough assessments, treatments and support provided by the prison and particularly the prison mental health services.

CONCLUSION

88. There were a number of areas where support from Elmley to the man was deficient. He clearly remained confused about his status as an IPP prisoner and that it would have been advisable for him to have engaged in at least some purposeful activity, in particular, taking ESOL classes. He also suffered the effects of what was a poorly functioning Personal Officer Scheme.

89. That said, the man received intensive input from a nurse from the Mental Health In-Reach Team and his evidence indicated that the man was not an easy person to get to know and nor, perhaps, an easy person to help. Moreover, not even his close friends, nor the Imam, recognised that he was at risk. It might therefore be that the ultimate outcome would have been the same regardless of any further support that could have been provided.

RECOMMENDATIONS

The following recommendations were made in the draft version of this report. The Prison Service's responses appear in italics following each recommendation:

1. The Governor should ensure that relevant staff attend the Management of Indeterminate Sentence Prisoners and Risk training course.

   Recommendation accepted: Management of Indeterminate Sentence Prisoners courses and Introduction to Risk Assessment and Management courses will be focussed at staff who have not received the Lifer in the 21st century training which has now been superceded. Available dates are scarce so current development issues are being addressed through the staff performance and development system. Review date is December 2009.

2. The Governor should review and address any other developmental needs within the lifer unit team.

   Recommendation accepted: As in 1 above. Review date is December 2009

3. The Governor should review the arrangements for provision of information to prisoners about the operation of the lifer system. This should include a review of the effectiveness of delivery of information to those with English as a second language or other difficulties of understanding.

   Recommendation partially accepted: IPP sentenced offenders are managed on the 'Offender Management Model'. They have an identified officer available to them to support the induction information and to answer any ad-hoc matters that may arise. The OM team does on a rotational basis attend each House Block to answer any OM related enquiries weekly. OM Phase 3 introduced contact arrangements between the offender and his offender supervisor. Such arrangements are in place.

   When an offender whose first language is not English receives an IPP sentence, the Head of Reducing Re-offending will endeavour to ensure that the offender is provided with written information about his sentence in a language he understands. Further support will be made available for the offender through the use of the 'Big Word', peer advisors, Listeners and Foreign National representatives across the establishment who speak a number of foreign languages. Review date is December 2009.

4. The Governor should satisfy himself that the Personal Officer Scheme is now operating properly and in accordance with the local protocol.

   Recommendation accepted: While the recent (April 2009) HMCIP report is very positive, it does criticise the working of the personal officer scheme. The establishment does accept that the scheme needs revamping in Elmley and the new Head of Residence is reviewing the scheme to make it fit for purpose. Review date is October 2009.