Investigation into the circumstances surrounding the death of the man in November 2009, after compassionate release from HMP Leicester

Report by the Prisons and Probation Ombudsman for England and Wales

March 2010

This is the report of an investigation into the circumstances surrounding the death of a man. The man died at Cedar Court Nursing Home, Leicestershire, on 11 November 2009. He was 86 years old. A post mortem showed that the cause of his death was coronary artery failure and diabetic ketoacidosis (meaning a lack of insulin in the body).

I offer my sympathy and condolences to the man's family, as I do to all of his friends and acquaintances who have been touched by his death.

The investigation was carried out on my behalf by my colleague. Both he and I would like to thank the Governor of HMP Leicester and her staff, particularly the prison liaison officer for their co-operation during the course of our enquiries. I also thank Leicestershire Primary Care Trust (PCT) for the appointment of a doctor as clinical reviewer.

The Ombudsman's Terms of Reference give the discretion to investigate the death of people recently released from prison. I decided to exercise that discretion in this case to consider how compassionate release had been granted, when I am aware that it is not always possible. The man was granted compassionate release from prison on 20 October 2009 because of his deteriorating health. My report commends the actions taken by the Governor and staff for the care and dignity given to the man in the period leading up to his death. I believe that there are lessons which could be learnt across the prison estate. I also ask the Governor to share this report with the nursing home in recognition of their willingness to look after him.

Jane Webb
Deputy Prisons and Probation Ombudsman **March 2010**

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SUMMARY

The man was born in1923, and lived predominately in the London area. He was sentenced to death on 26 November 1956, having being convicted of murder. However he was granted a royal pardon on 24 January 1957 and sentenced to life imprisonment. He was granted early release under licence in 1971, but recalled to prison 25 years later following a conviction for sex offences.

The man spent time at various prisons, including HMP Norwich and HMP Elmley, before arriving at HMP Whatton on 15 May 2007. He had a medical history of diabetes, angina, high blood pressure, gastric acid and depression and was prescribed appropriate medication.

Whilst at Whatton he was seen every day by healthcare staff to ensure that he took his medication. He frequently refused to take it and there were occasions when he took his diabetes medication but refused to take the rest. He would also frequently refuse food despite encouragement from staff.

On 10 March 2009, a prison doctor saw the man and recorded that he was intermittently drowsy and appeared to have some loss of control of his right side. The doctor assessed that this was a sign of a probable acute cerebrovascular attack (commonly known as a stroke) and immediately referred him to hospital. He remained in hospital until 7 May when he was discharged back to Whatton.

Daily nursing care continued for the next three weeks when the man's condition deteriorated and he was taken back to hospital for further assessment. The Matron at Whatton asked the Governor at HMP Leicester to accept the man on his discharge from hospital, as Leicester has 24 hour healthcare facilities.

On 14 July the man was discharged from hospital to healthcare at Leicester. In consultation with the hospital, healthcare staff put a care plan in place to meet his needs and give 24 hour care. There were many occasions where he would refuse all food and drink and medication despite encouragement from staff. He would sometimes decline assistance with personal care, for example having a wash or shave.

A prison doctor saw the man on 9 October and recorded that he had refused anything to drink. The doctor considered that his health was deteriorating and he was not expected to live more than four weeks. The doctor advised the healthcare manager that a nursing home setting was more appropriate for his continuing care.

The man moved to the nursing home on 14 October. The Deputy Governor completed the compassionate release application and submitted it to the Ministry of Justice the following day. The prison liaison officer attempted to contact the man's next of kin to inform them of his transfer to a nursing home but without success. On 16 October, the Ministry of Justice granted the man

compassionate release. He was released from custody by the liaison officer on 20 October once an offender manager had been allocated by Leicestershire Probation Service. The prison liaison officer eventually contacted the man's son and arranged to meet him at the nursing home.

On 11 November, the prison was contacted by Cedar Court to say that the man had died. The prison liaison officer contacted the man's son by telephone to offer condolences. His son said he wanted the funeral to take place in the Leicester area and the governor offered to make the necessary arrangements.

In the days that followed the prison liaison officer maintained contact with the man's son, as well as liaising with the funeral directors and chaplaincy. He gave the man's belongings to his son after the funeral on 3 December. The post mortem showed the cause of death was coronary artery failure and diabetic ketoacidosis (absolute lack of insulin in the body).

This investigation commends the best practice shown by the Governor at Leicester, and her staff, both whilst the man was in prison and especially by successfully applying for compassionate release.

THE INVESTIGATION PROCESS

1. The investigation was opened on 13 November 2009 when the investigator issued notices announcing the investigation to staff and prisoners. The notices included an invitation to those who wished to submit information relating to the man's death to make themselves known. No prisoners came forward as a result.

2. The investigator visited HMP Leicester on 1 December. During his visit he was given copies of all documentation relating to the man. In addition, he received excellent assistance from the doctor who was appointed as the clinical reviewer.

3. The investigator contacted HM Coroner to inform him of the nature and scope of the investigation and to request a copy of the post mortem report. Upon completion, this report will be sent to the Coroner to assist in his enquiries into the man's death.

4. The Ombudsman's senior family liaison officer contacted the man's son to inform him of the investigation. The man's son had expressed concerns about the care provided by the nursing home, but this falls outside the remit of the Prisons and Probation Ombudsman. I hope that my report provides his son with a better understanding of the treatment given to his father prior to his compassionate release.

HMP WHATTON

5. HMP Whatton is a category C training prison for prisoners convicted of a sexual offence or offences, or who have a sexual element in their offending history.

6. In response to overcrowding across the prison estate, Whatton underwent rapid expansion in 2006, increasing the operational capacity from around 400 prisoners to 841 by 2008. Up to this point, the main focus of the prison was in accepting prisoners who had been assessed as suitable for sex offender treatment programmes because they were not in denial of their offence. (These courses are designed to the lower risk of re-offending.) In response to the rapid expansion and to fill the new places, the admission criteria were changed. The prison began to accept offenders who denied their offence and so were assessed as unsuitable for undertaking specialist offending behaviour courses.

7. Healthcare at Whatton is provided by Nottinghamshire County Teaching Primary Care Trust (PCT). The Independent Monitoring Board report for the period June 2007 to May 2008 praises the healthcare department for delivering a "high level of healthcare to one of the most demanding and diverse sections of society". (It should be noted that the average age of prisoners at Whatton is far higher than elsewhere in the Prison Service.) The prison does not have 24 hour healthcare facilities and medical staff are not on site during the night or at weekends. Out of hours medical care is provided by Nottingham Emergency Medical Services (NEMS).

8. In her last inspection report dated March 2007 the HM Chief Inspector of Prisons, said that many aspects of the regime at Whatton which were applauded in a previous inspection remained in place. She acknowledged that the prison had to fully adapt to the changes it had been asked to take on so rapidly.

9. The Chief Inspector specifically commented on healthcare services at Whatton as follows:

> "Funding for health services had not kept pace with the growth in size of the establishment. The health services department was a clean and clinical environment but was at some distance from most residential wings, including those for the older population. The findings of a PCT health needs assessment were used to plan services. Health services staff were developing systems and processes in line with the health needs assessment, but waiting times for the GP and dentist were unacceptably long and were a major concern. We found some examples where a positive duty of care was absent, and also where a lack of communication had the potential to compromise patient care."

10. There have been improvements in healthcare services at Whatton since this HMCIP report, as highlighted by the IMB report.

11. **HMP LEICESTER**

12. HMP Leicester is situated close to the city centre. Originally built in the Victorian era, it has undergone extensive refurbishment. The establishment is a local prison, which generally means it is used to accommodate remand prisoners, However there are a number of sentenced prisoners. The prison has a 24 hour healthcare cover, with inpatient facilities, which are run by Serco Health.

13. Her Majesty's Chief Inspector of Prisons, Dame Anne Owers, reports on all Prison Service establishments. In June 2008, the Chief Inspector carried out an announced inspection. In the introduction to her report, she describes it as a small, crowded Victorian city centre prison, which has had to manage an ever changing population, many with significant needs, in ageing and inadequate accommodation.

14. The Chief Inspector goes on to say that, although previous inspections had been critical, she detected some early signs of improvement with a greater emphasis being placed on safety and resettlement. However, the Chief Inspector acknowledged that more needed to be done.

15. The Chief Inspector specifically commented on the in-patient facilities as follows:

> "There were a total of 11 inpatient beds available, all the beds were listed as certified normal accommodation, although health services staff told us that admission was on the basis of clinical need. At the time of the inspection, there was a mix of patients with both physical and mental health needs.
>
> "Patients were unlocked for the majority of the day and could attend the gym on request. Education staff ran sessions on the unit twice a week. The association room included a small library, electronic games and board games. The GP attended the inpatient unit daily and the detoxification nurse and Mental Health Inreach Team continued to work with those prisoners in their care who were admitted to the unit."

16. The Independent Monitoring Board (IMB) monitors the prison and to reports any concerns about how prisoners are treated. Board members are able to visit any area of the prison at any time and have direct access to any prisoner who they wish to see, or who requests to see them. The IMB holds regular meetings in the prison and produces an annual report for the Secretary of State for Justice.

17. The IMB's latest report, for the 12 months to 31 January 2009, made the following comments regarding healthcare:

> "The provision of Healthcare services and Clinical Governance have suffered from poor and disrupted Healthcare management during the reporting year. There has been poor communication the various

Healthcare departments, and also between Serco, the PCT, and the prison. Morale has been low amongst the staff, with a high level of absenteeism, chaotic shift patterns, and lack of discipline in hand-over meetings and clinical appointments have not always been kept.

18. This is the 17th death to have occurred at Leicester since April 2004, when the Ombudsman began investigating all deaths in prison custody in England and Wales. One of the earlier cases investigated concerned another man who also suffered from cancer. That report also commends the healthcare staff team for their dedication in delivering a high quality nursing service.

KEY FINDINGS

19. The man was born in March 1923, and lived predominately in the London area. He had been sentenced to death 26 November 1956, having being convicted of murder. However he was granted a royal pardon from execution, on 24 January 1957, on the condition that his sentence was commuted to life imprisonment. He was granted early release under licence on 28 May 1971, but was recalled to prison 25 years later on 29 March 1996 following conviction for sex offences.

20. The man spent time at various prisons, including HMP Norwich and HMP Elmley, before arriving at HMP Whatton on 15 May 2007. He had a medical history of diabetes, angina, high blood pressure, gastric acid and depression. He was prescribed Gabapetin (for pain relief and a mood stabiliser), Enalapril (for treatment of high blood pressure), Metformin (for treatment of type 2 diabetes), Simvastatin (for treatment of cholesterol), Lansoprazole (for treatment of gastric acid), Gliclazide (for treatment of diabetes), Isosorbide mononitrate (for treatment of angina), co-codamol and aspirin.

21. Throughout 2007 and 2008 the man was seen every day by healthcare staff to ensure that he took his medication. He frequently refused to take all his medication and there were occasions when he would take his diabetes medication but refuse to take any others. This happened despite encouragement from healthcare staff, who also explained the consequences of not taking his medication. The man would also say that he did not feel like eating and refused some of his meals, again despite encouragement from staff.

22. On 30 January 2009, healthcare staff were concerned about the man's condition as he had suffered a headache all day, felt dizzy, had vomited and was clearly confused. A prison doctor saw the man at 5.16pm and assessed that he needed to be referred to the Queens Medical Centre (QMC) in Nottingham. The man was taken to hospital by ambulance.

23. Two days later the man returned to Whatton after he had discharged himself from the hospital. This was against the advice of the medical staff at the QMC. Nurse Davies saw him on his return and recorded that he was rude and confrontational and said he would not take his medication.

24. Between 3 February and 8 March the man continued to be seen every day by one of the nurses from healthcare. He repeatedly took his diabetic medication but refused the others despite advice from healthcare staff. He also refused to eat on many occasions, again against medical advice.

25. On 9 March another nurse and the prison doctor responded to a request for urgent medical assistance at 4.00pm, as the man had been found on the shower floor. He did not respond to the staff and the doctor checked his blood pressure, pulse and temperature which were all normal. The paramedics had been called and their assessment was that the man was

deliberately being uncooperative. Nevertheless he was taken to hospital but discharged himself at 7.20pm and returned to Whatton.

26. Another prison doctor assessed the man the following day and recorded that he was intermittently drowsy and appeared to have some loss of control of his right side. The doctor decided that this was a sign of a probable acute cerebrovascular attack (commonly known as a stroke) and referred him immediately to the QMC.

27. The man remained at the QMC until he transferred to the Stroke Unit at the City Hospital on 20 March, where he stayed until he was discharged back to Whatton six weeks later on 7 May. During his time in hospital he developed pressure sores on both heels which were painful and made it impossible for him to stand. In advance of his discharge, prison healthcare staff liaised with the hospital to ensure that an appropriate care plan was put in place so that he had the appropriate equipment, which included a hoist, hospital bed, and commode, and that overnight and weekend care was provided by care assistants organised by ythe PCT.

28. Over the next week the man received daily care from nurses and care assistants. There were again occasions where he refused his medication, and food and he would not allow some care assistants to assist him.

29. On 15 May a prison doctor reviewed the man's condition. The doctor recorded that since his stroke he had become increasingly frail and rehabilitation was not a realistic option. He was effectively bed bound and likely to remain so. The doctor noted that it was too soon to decide how he was likely to decline as it was complicated by the man's erratic behaviour in taking his medication. The doctor also recorded that the man was turned over in his bed every three to four hours to help relieve the pressure sores, and that he consistently refused food and food supplement drinks. The doctor assessed that he would need a 24 hour nursing facility and that there would be chronic care issues, potentially for many months.

30. Daily nursing care continued for the next eight days until 23 May, when the man's condition deteriorated and he returned to the QMC for further assessment. Following a request from the Clinical lead/Matron at Whatton, the Governor at HMP Leicester agreed to accept the man to their 24 healthcare facility. The transfer would take place once Leicester had everything in place to meet his needs.

31. On 25 May the man was discharged from the QMC and returned to Whatton. His daily nursing care continued, pending his transfer to Leicester, until on 30 May his condition deteriorated further. A nurse recorded that the area around his pressure sores was red and swollen, he was very pale, complained of pain and asked to be sent to hospital. The nurse sought advice from the Nottingham Emergency Medical Service who agreed that the man should be re-admitted to hospital. He was taken later that day back to the QMC.

32. The man remained at the QMC until 14 July. Whatton healthcare kept in regular contact with the hospital to enquire about the man's condition. They were informed that he continued to refuse medication and food despite being told of the seriousness of his actions by both the medical consultant and the dietician. On 23 June, the hospital confirmed that the senior physiotherapist had assessed the man as not suitable for any rehabilitation and he was now permanently confined to bed.

33. The man was discharged from hospital on 14 July to healthcare at Leicester. The staff had arranged for a hospital bed and special bi-wave mattress to be in place for his arrival. In consultation with the hospital healthcare staff prepared a care plan to meet his needs. He complained that he felt sick and did not eat anything on his first day at Leicester.

34. The following day the man suffered from sickness and diarrhoea, and healthcare staff questioned whether this was an infection contracted whilst at the QMC. As a precaution the man was barrier nursed (avoiding contact with the patient's skin and body fluids by using medical gloves, face masks, goggles and gowns) and samples were sent to the local hospital for analysis. Five days later it was confirmed that the man had clostridium difficile (bacterial infection that can cause bloating, constipation, and diarrhoea with abdominal pain). As a consequence the prison doctor prescribed Metronidazole (for treatment of clostridium difficile). He continued to be barrier nursed until 6 August when the prison doctor was satisfied that the infection had cleared.

35. From 7 August to 8 October the man continued to receive 24 hour care. There were many occasions where he would refuse all food and drink and medication despite encouragement from staff. He sometimes would decline assistance with personal care, for example having a wash or shave.

36. A prison doctor, saw the man on 9 October, and recorded that he had declined fluids. In the doctor's opinion, his health was deteriorating and he was not expected to live more than four weeks. The doctor advised the healthcare manager that a nursing home setting was now more appropriate his continuing care. Discussion took place between the doctor and the prison liaison officer, head of residence, with regard to applying for compassionate release for the man.

37. On 13 October the prison doctor and the Head of Healthcare approached the manager of Cedar Court Nursing Home, Wigston Leicestershire, about a place for the man, who said that an assessment was required before they could accept him. The following day a member of staff from Cedar Court came to Leicester, and agreed that they would be able to provide the care that he required. The man was moved that afternoon to Cedar Court by ambulance. A full risk assessment was undertaken. Due to the man's poor state of health and because he was confined to bed, it was

assessed that no restraints were required and one officer, in plain clothes, would be on duty at Cedar Court and remain in the day room.

38. The Deputy Governor completed the compassionate release application and submitted it to the Ministry of Justice for consideration on 15 October. The man was now at Cedar Court, the prison liaison officer wrote to his son to inform him where his father had been moved to, and also attempted to contact him by telephone but without success.

39. On 16 October, the Ministry of Justice granted the man compassionate release. It took three days to organise the allocation of an offender manager at Leicestershire Probation Service, as the man's original offender manager was based in Kent. During this period the prison continued try and contact the man's son but without success. As the last known contact details were an address in Kent, the decision was taken to approach Kent Constabulary to locate his son and ask him to contact the prison.

40. The man's son contacted the prison's liaison officer on 19 October, and confirmed that he had received the letter from Leicester but had not made contact straight away. The prison liaison officer had a long conversation with his son giving a full account of the treatment that his father had received the doctor's prognosis of life expectancy, and his compassionate release. The prison liaison officer assured him that the Prison Service would assist with the funeral costs in due course. The man's son said that he would visit his father in two days, and the prison liaison officer arranged to meet him at Cedar Court.

41. The next day the prison liaison officer went to Cedar Court and released the man from custody, having completed the necessary documentation. The escort officer returned to the prison. The prison liaison officer also contacted his son to inform him that his father had been released from custody. Arrangements were confirmed for the meeting the following day at Cedar Court.

42. On 21 October the man's son met the Governor at Cedar Court. After introductions with the nursing home staff the prison liaison officer left the man to be alone with his son.

43. Three weeks later, on 11 November, Leicester were contacted by Cedar Court to say that the man had died at 6.45pm. The prison liaison officer contacted the man's son by telephone to offer condolences, and arranged for the Roman Catholic chaplain to contact him. The man's son wanted the funeral to take place in the Leicester area and the prison liaison officer offered to make the necessary arrangements. In the days that followed the Governor stayed in contact with the man's son, as well as liaising with the funeral directors and the chaplaincy. The prison liaison officer handed over the man's money and belongings to his son after the funeral on 3 December.

ISSUES

Clinical care

44. I believe that the care received by the man during his imprisonment at both Whatton and Leicester prisons was well organised and of a high standard. He was skilfully and compassionately looked after by doctors, nurses and other healthcare and related staff, with an appropriate and detailed care plan put in place. There is strong evidence of team working within the prison healthcare unit but also effective partnership working with the PCT and senior management at Leicester.

45. The man frequently, despite encouragement, refused all his medication, personal care, food and fluids. He discharged himself from hospital on two occasions. The man had a responsibility for his own health and could have sought medical attention but was entitled to exercise his right to refuse treatment. The clinical review specifically stated:

> "The man's age and diabetes meant that he had a very high risk of stroke. Once he had had a stroke and became immobile his prognosis was very poor."

46. The clinical reviewer summarised the man's care as follows:

> "The man's medical and nursing care was challenging and healthcare staff at both HMP Whatton and HMP Leicester appear to have risen to the challenge. My review of the man's records suggests that the Prison Service has effective mechanisms in place for dealing with elderly prisoners with chronic illnesses and with terminal conditions and that the healthcare staff have the skills to deal with them."

Compassionate release

47. Senior management and the doctor at Leicester acted swiftly and appropriately in making representations to the Secretary of State regarding the man's compassionate release. I have often found that prison's encounter problems finding somewhere suitable for a terminally ill prisoner to live outside of prison, which in turn are prepared to accept them. The doctor's and Head of Healthcare's close and prompt liaison with Cedar Court is also a matter to be commended. The outcome ensured that the man was treated sympathetically and with dignity during his last few days in the nursing home.

> **I commend the actions taken by the Governor, Doctor, Head of Healthcare and staff at HMP Leicester for the care and dignity given to the man in the period leading up to his death.**
>
> **I recommend that the Governor draws by report to the attention of the nursing home in recognition of their acceptance of the man as a patient.**

Contact with the man's family

48. Leicester ensured that the man's next of kin was informed about his transfer to a nursing home, the seriousness of his illness and his compassionate release from custody. The prison liaison officer met the man's son face to face on his first visit to the nursing home. The prison appropriately followed the guidance given in Prison Service Order (PSO) 2710, "Follow up to death in custody". The prison liaison officer also made the arrangements for his funeral. The Governor maintained contact with the man's son to update him on the progress of the funeral arrangements to ensure his wishes were complied with.

    I commend the work carried out by the Governor in following the best practice contained in PSO 2710 and undertaking additional work on behalf of the man's and his family.

CONCLUSION

49. This investigation was undertaken using the Ombudsman's discretionary pwers to consider the deaths of prisoners after their release from custody. I decided to carry out the investigation as, unfortunately it is relatively unusual, for a nursing home to be found and compassionate release to be granted particularly for prisoners who have committed serious offences.

50. I have found that at every stage of his deteriorating health the man was looked after professionally and with dignity. The care provided firstly at Whatton and then at Leicester is a credit to both prisons. I hope that the National Offender Management Service will draw these examples of good practice to the rest of the prison estate.

GOOD PRACTICE

1. I commend the actions taken by the Governor, Doctor, Head of Healthcare and staff at HMP Leicester for the care and dignity given to the man in the period leading up to his death.

2. I recommend that the Governor draws my report to the attention of the nursing home in recognition of their acceptance of the man as a patient.

3. I commend the work carried out by the Governor in following the best practice contained in PSO 2710 and undertaking additional work on behalf of the man.