Investigation into the circumstances surrounding the death of a man at Birmingham City Hospital in December 2007

Report by the Prisons and Probation Ombudsman for England and Wales

February 2009

This is the report of an investigation into the death of a man at Birmingham City Hospital on 25 December 2007. The man was 43 years of age and was a Vietnamese national.

The man was a prisoner in HMP Birmingham until 13 November 2007 and was sent to Birmingham City Hospital that day for investigations. He was diagnosed with metastatic gastric carcinoma (stomach cancer) on 24 November and given a very poor prognosis. The man was granted an executive release from prison custody on 14 December and he died just 11 days later while still in hospital.

The terms of reference for the Ombudsman's investigations excludes investigations into deaths of persons who have been released from custody. However, the terms of reference do permit the discretion to investigate to the extent appropriate, cases that raise issues about the care provided by the prison. The Ombudsman decided to exercise this discretion in this man's case.

I extend my sincere condolences to the man's family and friends and all those affected by his loss.

This investigation was undertaken by one of my investigators. A clinical review of the man's care and treatment has been carried out by a Consultant in Public Health at the Heart of Birmingham Primary Care Trust. A Clinical Lead doctor at HMP Birmingham, carried out her own review of the man's treatment and I have received a copy of her report in addition to that written by the Consultant in Public Health. I am grateful to them both.

In the case of a death through natural causes the findings of the clinical review are central to the report. The clinical review in this case indicates that the man received a standard of care that was at least equal to, or possibly better, than he could have expected to receive in the community. The Clinical Lead doctor at HMP Birmingham however, raises an interesting point about the greater prevalence of gastro-intestinal cancer in the Vietnamese population. I commend her intention to provide ongoing education to the medical team at Birmingham about disease profiles amongst different population groups.

I have found evidence of good practice in the use of translation services and in arranging for the man to make telephone calls to his family in Vietnam. This report makes no recommendations.

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

CONTENTS

SUMMARY

The man was a Vietnamese national who was received into HMP Birmingham on 24 July 2007 as a remand prisoner. In his First Reception Health Screening interview the man reported having no concerns about his health.

A little over a month after arriving in Birmingham, the man saw a nurse to whom he reported having experienced abdominal pains two days earlier. From that time onwards the man had repeated consultations with healthcare staff where he spoke of similar symptoms.

Although one clinician recorded that the man's English was clear enough for him to explain his symptoms, others clearly found him harder to understand and so they used a telephone interpretation service for their consultations. There were also occasions when the man was unable or unwilling to go to the treatment room where a call could be made to the interpretation service so his cell-mate acted as the interpreter.

As the man continued to complain of abdominal pain Birmingham arranged a number of blood tests at the end of August. These came back as normal. On 14 October, the man's symptoms included an episode of vomiting. His condition deteriorated during the day and he was sent out to Birmingham City Hospital for investigations. The man was returned to prison later that day with a diagnosis of constipation.

The man continued to complain about abdominal pain. Initially his treatment at prison was based upon the hospital diagnosis and laxatives were prescribed. The man continued to complain of similar symptoms. During examination on 12 November, the man was found to have an enlarged and tender liver and to be clinically anaemic. More blood samples were taken and the results later that day were highly abnormal. The man was referred back to Birmingham City Hospital. Just over a week later the man was diagnosed with widespread abdominal cancer that had spread to his liver. He remained in hospital.

All of the man's relatives live in Vietnam and towards the end of November HMP Birmingham made arrangements for him to have daily use of a prison mobile telephone so he could speak to his family.

The man was granted an executive release from prison custody on 14 December and on that day the prison bed-watch officers withdrew from the hospital. His condition began to deteriorate quite rapidly from around the middle of December and he died in the early morning of 25 December.

The clinical reviewer from Heart of Birmingham Teaching Primary Care Trust has reviewed the man's clinical care in prison. He has found that the quality of care provided to the man was equal to or possibly better than that he would have received in the outside community.

THE INVESTIGATION PROCESS

1. Several weeks after the man's death, the Ombudsman's office received a letter asking that I consider issues surrounding the man's clinical care and treatment in Birmingham. The sender of the letter was a Buddhist chaplain at HMP Birmingham. In a telephone conversation with the investigator, the Buddhist chaplain said that the man had repeated consultations with healthcare staff reporting abdominal pain. However, the man's ability to explain his symptoms would have been severely compromised because of his poor command of English. The Buddhist chaplain did not think that translation services were used to assist the consultations. The Ombudsman therefore decided to investigate the circumstances around the man's death as a discretionary case.

2. The investigator obtained the man's clinical records from Birmingham and approached Heart of Birmingham PCT to ask them to undertake a clinical review. The review was carried out the Consultant in Public Health.

3. Notices were issued to Birmingham informing staff and prisoners about the investigation and inviting them to contact my investigator with any concerns. No staff or prisoners have come forward in response to the notices.

4. The investigator spoke to the vice chair of Birmingham's Independent Review Board (IMB). The IMB member said that the IMB had no direct knowledge or dealings with the man while he was in Birmingham. He also said that Birmingham did provide interpretation services to assist prisoners at clinical consultations. He was not aware of any prisoner complaints about the absence of such support.

5. One of the Ombudsman's Family Liaison Officers wrote to the man's family in Vietnam. The letter had been translated into Vietnamese and it explained the investigation process and it invited the family to raise any concerns or questions they would like explored or addressed. To date, no response has been received to the letter.

HMP BIRMINGHAM

6. HMP Birmingham is a local prison built in 1849 for adult male prisoners. The prison can hold up to around 1,450 prisoners.

7. In February 2007, Birmingham received an announced inspection from Her Majesty's Chief Inspector of Prisons, Ms Anne Owers. In the section of her report about Health Services Ms Owers wrote:

> "Prisoner wanting to see a member of the [primary care] team completed an application form … The waiting time to see a [General Practitioner] was 2.5 days …"

8. At the time of her inspection 35 per cent of prisoners at Birmingham were from black and minority ethnic groups. This investigation has shown that healthcare staff make use of a telephone interpretation service to assist in clinical consultations for prisoners with a poor command of English.

9. The Independent Monitoring Board's last published report (for the 2006/2007 operational year) contained nothing that was directly relevant to the circumstances surrounding the man's care and treatment.

10. Since I took on responsibility for the investigation of deaths in prison custody in April 2004, there have been nine deaths through natural causes of prisoners at Birmingham. There were no issues arising in any of those cases that were directly relevant to the circumstances of the man's case.

KEY FINDINGS

11. The man was born on 5 August 1964 and was a Vietnamese national. He was arrested on 18 July 2007 and, having spent several days in police custody, was remanded into HMP Birmingham on 24 July.

12. Documents completed during the man's reception referred to him speaking little or no English. A nurse who saw the man for the health screening aspect of his prison reception, noted that she used 'Language Line' to assist the consultation. (Language Line is a telephone interpretation service.) Information recorded by the reception nurse included that the man had not consulted a doctor in recent months and had no concerns about his physical health.

13. The man was seen by another nurse on 27 August having complained two days earlier about abdominal pain. The man said that another prisoner had given him some anti-acid tablets and he was now feeling okay, although he did have some mild back pain. The nurse noted that the man looked well and was playing cards with his cell-mate. Later on that day the man went to the medicine hatch to collect some painkillers (Ibuprofen).

14. On 31 August, the man was assessed by one of Birmingham's doctors. The man reported that he had had epigastric (upper abdominal) pain for the last six months. He also reported sometimes passing dark stools. The prison doctor prescribed medication (Lansoprazole) for the man's abdominal pain and requested that a blood sample should be sent for testing. The results were received several days later and all were noted to be normal. Several weeks later a further blood sample was taken for repeat testing of a particular bacterial infection that is especially prevalent among people in poorer countries and which causes abdominal inflammation. The result of the test was negative.

15. The man saw another of Birmingham's doctors on 1 October. The man reported that he was still suffering intermittent epigastric pain. He also reported feelings of nausea and he said that the medication he had been prescribed had not helped. The doctor prescribed some different medication (Ranitidine). He also noted that he used Language Line during the consultation.

16. In the late morning of 14 October, the man told wing staff that he had severe abdominal pain. Staff contacted healthcare and a nurse came to the wing to examine the man. She noted that the man asked to remain in bed so she was unable to use Language Line from the treatment room. However, the man's cell-mate was able to translate for him. The cell-mate reported that the man had vomited that morning although he was no longer feeling nauseous. Through his cell-mate the man also reported that he had no difficulty in passing urine and opening his bowels and that there had been no blood in his faeces. The healthcare nurse examined the man's abdomen which she found to be normal. She finished by noting that she would review the man in an hour's time.

17. When the healthcare nurse returned to see the man at 1.45pm she noted that he had vomited twice since she had last seen him and that his abdomen was in

spasm. The man was sent to the accident and emergency department at Birmingham City Hospital where he was diagnosed with constipation. He was sent back to the prison that afternoon with a treatment plan to include a prescription of laxatives and a more digestible diet.

18. The man was reviewed the following day by the second prison doctor using Language Line. The doctor noted that the man was improved from the day before although his abdomen was slightly tender. The doctor explained the treatment plan of laxatives for his constipation.

19. On 18 October, the man reported to the nurse that he had abdominal pain and was not opening his bowels regularly. The nurse checked the man's clinical records and saw that he was being prescribed laxatives. He advised the man to drink a lot and he gave him some pain killers.

20. Three days later the man saw a fourth nurse. The man reported that he was in constant pain and was also feeling nauseous. The nurse gave the man some painkillers and arranged for him to be reviewed by a doctor.

21. A third prison doctor saw the man for a review on 24 October. She used Language Line to assist in the consultation. The man said that he was improving, although he also reported that he had not opened his bowels for four days. The doctor changed the man's laxative.

22. On the evening of 29 October, wing staff asked healthcare to see the man who was complaining about abdominal pain. The fourth nurse visited and she noted the cell-mate reporting that the man had vomited earlier that day. The cell-mate's description indicated that the vomit might have contained blood. The man said that he felt sick whenever he ate. The nurse noted that she would arrange another appointment with a doctor.

23. The man was seen by nurses on the following two days. His epigastric pain had settled but he now had a headache. The man was told that he should drink more water. The nurse who saw the man on the second day, 31 October, noted that his English was clear enough to give information about his symptoms and she had not needed to use Language Line.

24. Just two days later, on 2 November, the man was seen in his cell by a fifth nurse who noted that he was complaining of great epigastic pain. She noted that the man was in too much pain to go to the treatment room to use Language Line so his cell-mate acted as translator. The nurse examined the man and she recorded that his abdomen was normal and that he had not been vomiting. The nurse noted that the man should be referred back to a doctor for re-assessment.

25. A week went by before the man next saw a clinician. A sixth nurse saw the man on 9 November as he was complaining of continued epigastric pain. The nurse noted that the man would be reviewed by a doctor.

26. On 12 November, the man was seen by the clinical lead doctor together with another nurse. The man's English was noted to be clear enough for him to give his clinical history. Examinations showed that the man's liver was enlarged and tender. Blood samples were taken and sent for urgent testing. The results later that day indicated that the man's haemoglobin (oxygen carrying red blood cell) levels were low and other measures were also highly abnormal. On 13 November, he was sent back to Birmingham City Hospital for further investigation.

27. The man remained in Birmingham City Hospital from that time onwards. A note was made in his prison healthcare records on 20 November that his likely diagnosis was colonic carcinoma (cancer of the colon) which had spread to his liver. The hospital also said that further tests were to be carried out the following day. A subsequent note in the man's prison healthcare records made on 24 November confirmed a diagnosis of advanced gastric carcinoma. An e-mail from the hospital several days later indicated that the man had a very poor prognosis and was only expected to survive for two or three months.

28. When a prisoner is sent to outside hospitals he will normally be accompanied by a minimum of two bed-watch officers and that happened in this case. The prisoner will also usually be handcuffed and that was again the case with the man. Handcuffing arrangements are, however, subject to review depending on individual circumstances. The man's handcuffing arrangements were reviewed on 2 December when it was decided that they should be removed due to the nature of his illness.

29. All of the man's family live in Vietnam and the records made by the bed-watch officers make reference to that fact. The man was noted to have declined an opportunity to speak to his family on a hospital telephone due to the high call charges. It was decided therefore that the man should be allowed daily use of a prison mobile telephone to allow him to speak to his family at the prison's expense. The records show that the man was able to speak to his family almost every day from 29 November until the middle of December. He was initially permitted to speak for five minutes per day but that was soon increased to 15 minutes per day.

30. On 14 December, the man was granted an executive release from prison custody and on that day the bed-watch officers withdrew from the hospital. The withdrawal of the bed-watch officers resulted in the man losing use of the prison mobile telephone. It would seem that any prospect that the man might be able to return to his homeland was no longer an option as by now he was too ill to travel.

31. The Buddhist chaplain told my investigator that he first met the man in the previous August and shortly after arriving in HMP Birmingham. The Buddhist chaplain said that he visited the man in hospital almost every day after he was diagnosed as terminally ill.

32. Despite treatment at Birmingham City Hospital, the man's condition began to deteriorate as December progressed and he died in the early morning of 25 December.

33. After the man's death, the Buddhist chaplain made contact with the local Vietnamese community who arranged a funeral which was financed by social services. Five staff from Birmingham, including the Buddhist chaplain, Birmingham's Head of Safer Custody and the IMB vice-chair, attended the funeral. In keeping with Buddhist tradition, the man's body was cremated and his ashes returned to his family in Vietnam.

ISSUES

The man's clinical care in Birmingham

34. The man was received into HMP Birmingham on 24 July 2007 and a little more than a month later made his first complaint of abdominal pain. The review of the man's clinical care and treatment was carried out by the Consultant in Public Health. The clinical reviewer indicates in his review that the records suggest that the man's complaints were managed appropriately. This included undertaking appropriate blood tests to investigate the possibility of serious abdominal diseases.

35. The clinical reviewer has mentioned the man's referral to Birmingham City Hospital on 14 October where he was diagnosed with constipation. The clinical reviewer notes that that diagnosis was accepted by the healthcare staff at Birmingham prison and initially used by them as the basis for the man's clinical management. The clinical reviewer accepts that it could be argued that prison healthcare gave undue regard to the diagnosis of constipation made at the City Hospital, but he goes on to point out that within three weeks prison healthcare staff realised that the diagnosis was inappropriate and ordered further tests.

36. The clinical reviewer refers to an issue contained in a report about the man's care written by the Clinical Lead General Practitioner in Birmingham prison[1]. The matter raised by the clinical lead is the differences in the disease profile for populations from different areas of the world. She reports that a man of 43 with normal blood results and no weight loss would not meet the British criteria for urgent referral for gastro-intestinal investigations. However, gastric cancer is much more common in South East Asia and screening programmes are in place in some countries for early detection. The Clinical Lead goes on to say that if the healthcare team had been more aware of the higher risk profile posed by this population group it is likely that the man would have been referred for further investigation sooner. She also felt that the continuing symptoms of gastric pain during September should have led to a routine referral for endoscopy. The Clinical Lead concludes that the man's case raises the importance of continuing education regarding different disease profiles and disease presentation in different population groups. The Clinical Lead writes that she intends to deal with this issue at the monthly healthcare department learning session.

37. In responding to the Clinical Lead's observation, the clinical reviewer wrote that he carried out research showing that in England, only about 12 people aged 45 and under are diagnosed with gastric cancer. He went on to say that while the rate for the Vietnamese is probably three times that of the English race, that still represents a small number in clinical terms. He concludes on this point by suggesting that even in Vietnam, the man would not have been considered at high risk for gastric cancer.

[1] The clinical lead's report appears in full at annex B.

38. As a non clinician I am in no position to enter into a debate on the merits of the respective arguments put forward by the Clinical Lead and the clinical reviewer. However, given the diverse nationalities found within a prison such as Birmingham I am certainly in favour of the Clinical Lead's intention to promote learning about the differing disease profiles within differing populations. Whether or not possession of such knowledge would have made very much difference in the man's case is of course a separate consideration. On this point the Clinical Lead indicates that given the advanced stage of the man's disease on diagnosis, it is highly unlikely that the cancer would have been treatable even if diagnosed in October.

39. Returning to the clinical reviewer's review, his overall conclusions on the man's care in Birmingham prison were that his access to care was at least as good as that available to a member of the general community. The quality of his care was equal to or possibly better than would generally have been offered in a typical general practice.

Use of interpretation services

40. One of the issues raised by the Buddhist chaplain was whether the man's care at Birmingham might have been compromised because of his poor command of English. The man's clinical records contain a number of entries that are relevant to this matter. For a number of the consultations it was noted that Language Line was used. On other occasions the man's cell-mate was noted to have acted as an interpreter to help explain his symptoms. However one nurse noted that she found the man's English clear enough for her not to have to make use of any interpretation support. And I note that that nurse's entries are among the most detailed of those found in the man's records.

41. I have already commented on the clinical reviewer's findings about the standard of care provided to the man. I find no evidence that the man's standard or command of English resulted in his care being compromised in any way.

Decision to remove the handcuffs

42. On 2 December, an assessment was made about whether to remove the man's handcuffs. By then it was known that the man was terminally ill, although it was thought that he might live another two or three months. As part of the assessment, consideration was given to whether the man might try to escape and the risk he would pose to the public if he were to escape. The man was not deemed to pose a high risk so it was decided the handcuffs should be removed. Two bed-watch officers remained at the hospital with the man until he was later released from custody.

43. In my opinion, the decision to remove the handcuffs following the risk assessment was the correct decision in the circumstances. The presence of two bed-watch officer was entirely sufficient to ensure appropriate public protection.

Provision of a mobile telephone

44. The man's second and final transfer to hospital was made on 13 November. Shortly after that date it was realised that he was terminally ill and at most only had a few months to live. All of the man's family live in Vietnam and bed-watch officers recorded one occasion when he declined to contact them on a hospital telephone due to the prohibitive charges. To overcome the problem of contact the man was allowed the use of a prison mobile telephone. He was initially allowed a daily five minute call but within days was being allowed a 15 minute call each day. When the man was released from prison custody on 14 December the bed-watch officers came away so the man no longer had access to a prison mobile telephone.

45. The Buddhist chaplain said that he continued to visit on an almost daily basis, but it was not a good outcome for the man to have lost the support of the bed-watch officers and the use of the prison mobile telephone.

46. Prison Service Order (PSO) 4400 deals with the provision of telephone services for prisoners. Ordinarily, prisoners will make their telephone calls from 'public' PIN-phones located on the prison wing and they will usually bear the full cost of all calls that they make. PSO 4400 refers, however, to circumstances where prisons should consider providing assistance. For instance:

> "Where there are urgent legal or compassionate circumstances, such as … a domestic crisis, Operational Managers have discretion to allow [use of an official telephone]. Before agreeing to such an application, *Operational Managers must satisfy themselves that the need could not adequately be met by means of a visit or letter. The costs of these calls must be at public expense.*
>
> "Foreign national prisoners or those with close family abroad must be permitted a free five minute call once a month where the prisoner has had no domestic visits during the preceding month."

47. I consider it to have been good practice on HMP Birmingham's part to have provided the man with an official (mobile) telephone to make daily telephone calls to his family. This is especially so given that the permitted duration for the calls was quickly increased from five minutes to 15 minutes per day. It must then have been quite a blow to the man for him to lose this provision when he received his executive release. At that point the man ceased to be a prisoner and so HMP Birmingham ceased to have any responsibility towards him. This was a comparatively rare instance of an individual being disadvantaged as a direct result of his release from prison custody. I do not believe that HMP Birmingham warrant criticism for this somewhat anomalous outcome.

48. I can find no evidence, however, that the prison sought to put in place alternative support arrangements for the man. Birmingham City Hospital has a social service team as well as a patient advice and liaison team. I consider that best practice would have been for those teams to have been approached by the prison and asked to help support the man after his release from custody.