The death in custody of a man at HMP Rye Hill –May 2005

Report by the Prisons and Probation Ombudsman for England and Wales

August 2005

This is the report of an investigation into the circumstances surrounding a man who died at a hospital in Coventry in May 2005, shortly after being released on compassionate grounds from HMP Rye Hill.

The cause of the man's death was due to carcinomatosis. He had suffered from cancer for a number of months, and had undergone treatment including chemotherapy and radiotherapy.

The investigation was led by one of my Fatal Incident Investigators. An independent review of the man's medical care in prison was carried out by one of my Deputy Ombudsmen, who is also a registered general nurse. I would like to thank the management and staff at HMP Rye Hill for their assistance and co-operation during the course of this investigation.

I extend my condolences to the family of this man and to all those touched by his death.

Stephen Shaw CBE **August 2005**
Prisons and Probation Ombudsman

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Summary

The man was a 54 year old who was serving a sentence of ten years and three days at HMP Rye Hill. He died on 17 May 2005 from carcinomatosis and small cell carcinoma of the lung.

He was born on 24 March 1951. He was a Driver/Guide and worked until he was convicted in January 2002. Before conviction and sentence he lived in Southampton.

Whislt in prison at Rye Hill he was located on Davies and Carling Units. On 16 May, he was transferred to a nearby hospital in Coventry where he died the following day. He had been granted a compassionate release by the Secretary of State prior to his death, but was not aware of that. His death was not connected to his imprisonment or to the level of care he received whilst in prison.

The man was diagnosed as suffering from small cell carcinoma of the lung in April 2004. During 2004 and 2005, he received treatment for the cancer at local NHS hospital oncology centres. The treatment included radio and chemo therapies.

A post mortem was carried out on 20 May 2005 and a report was prepared by a consultant pathologist, for the Coventry Coroner. The report states that the man died as a result of carcinomatosis and small cell carcinoma of the lung. The pathologist concluded that death was due to natural causes and there were no suspicious circumstances.

The clinical review was carried out by one of my Deputy Ombudsman. No concerns were raised by the clinical review regarding the medical care that the man received during his time in prison. However, she rightly draws attention to the length of time taken to expedite the application for early release on compassionate grounds.

Investigation Process

My practice in investigations into a death from apparently natural causes is to conduct an initial review to determine the extent of investigation required.

My colleagues visited Rye Hill on 2 June 2005 and met with the Director. They were given a full briefing on the circumstances surrounding the man's death, family contacts, and actions instigated by the establishment in the aftermath of the death. Notices to staff and prisoners were published in the prison, inviting anyone who might have information relating to the death to make themselves known to the inquiry team. No prisoners came forward to speak to the investigation team.

My colleagues took away with them relevant files and records relating to the man. A post mortem report from the Coventry Coroner was also requested. The family requested that no inquest be carried out and the Coroner acceded to this request. The Coroner did, however, insist on a post mortem examination taking place. This was because the man had been released from custody at the time of his death, the normal rules governing a death in custody did not apply.

One of my family liaison officers contacted the man's sister. The sister said that she had a number of concerns primarily about her brother's clinical care whilst in prison. I hope this report provides them with answers to their questions and provides reassurance that the care he received was at least comparable to that he could have expected in the community. There is no evidence to suggest that the care the man received whilst in Rye Hill compromised his life expectancy. The consultant onclogist notes that the prognosis was poor, due to relapse so quickly after a complement of radical treatment.

The sister and father travelled from where they lived when they were informed that their relative had been admitted to hospital and were present at his bedside when he died.

HMP Rye Hill

HMP Rye Hill is a privately managed category B training prison for adult male prisoners serving sentences of four years or more. It is run by Global Solutions Ltd (GSL) and has been operating for four and a half years. Rye Hill has an eight bed in-patient healthcare centre which is included in the certified normal accommodation of 600 prisoners.

Davies and Carling Units, in common with all other housing units, have 72 cells. The population was just under capacity at the time of my investigators' visit. The regime is relaxed and informal and association is available throughout the day either at work or on the accommodation units. Work is available to most prisoners. The man worked in the Summit Media workshop.

Healthcare in Rye Hill is delivered by contract from Primecare FMS and accountability is to the Area Operational Manager for Primecare. Healthcare staff working in Rye Hill healthcare unit are all medically qualified. The local NHS Primary Care Trust is Daventry and South Northamptonshire. A local general practitioner provides a surgery daily each week day, and out of hours medical cover is provided during the weekends and evenings by the local practice. Nursing care is provided on a 24 hour basis.

Events leading up to May 17

When the man came into prison custody on 25 January 2002, he reported that he was concerned that he might have bronchitis and was treated with antibiotics and inhalers for the complaint. Other than that, he appeared fit and able bodied.

In October 2003, the man gave up smoking. He began to experience difficulty in breathing but medical examinations failed to establish a cause.

On 2 April 2004, the man collapsed with chest pains and was admitted to a local hospital where he remained for 24 hrs undergoing tests and clinical examinations. Nothing abnormal was detected, but the results from an exercise tolerance test indicated that he should be referred to a chest specialist.

On 5 April, he again complained of chest pain and headaches that were not being relieved by aspirin. His pain relief treatment was changed to paracetamol because of raised blood pressure. His blood pressure was monitored on a weekly basis and he was prescribed a low dose of bendroflurozide. On 5 May, the bendroflurozide was halted due to the results of a blood test revealing a low sodium count. The blood tests were repeated two weeks later and the sodium levels remained low.

On 25 May, the man saw a chest specialist and after a bronchoscopy examination he was diagnosed as having a 9.5 cm cancer situated in his left lung which was inoperable. During early June, he was admitted to a local hospital for exploratory surgery. He was offered counselling to support him through the emotional aspects of his diagnosis, but he declined.

Later in June, he was seen by a consultant oncologist for University Hospitals Coventry and Warwickshire. He was treated with Carboplatin and Eptoside chemotherapy, followed by consolidation radiotherapy to his chest.

He also took part voluntarily and in full knowledge of the treatment in the London Lung Cancer Group study of adjuvant Thalidomide. The active treatment continued until December 2004, and the condition apparently responded well. Rye Hill medical staff were fully briefed about the trial and the management of the man's illness.

At the beginning of July, he was re-admitted to hospital for one week to facilitate a period of assessment and clinical review during which he was on an antibiotic therapy. He was told that on return to Rye Hill he should be located in the prison healthcare centre for a period of observation, which he declined preferring to remain on the residential unit where he was settled. Between July and December, he attended hospital regularly for palliative treatment. In mid December, the man was feeling increasingly unwell and was admitted to Rye Hill healthcare centre for a period of respite care. He returned to the residential unit on 24 December. He remained there for one month before being re-admitted to the healthcare unit on 24 January 2005 after again complaining of feeling unwell.

He appeared withdrawn and his appetite was poor and he was suffering episodes of pain, but he continued to refuse analgesia from staff.

During a follow up session at hospital in February 2005, the man was tired and lethargic but no obvious signs of a relapse were noted.

By early March, he was taking mild analgesics to help control the pain. By mid March, he was suffering increased pain and the analgesia was increased to help control it.

However, on 1 April 2005, during a review appointment at the Outpatients Department, the man complained of severe pain in his spine and urinary incontinence. He was given an emergency Magnetic Resonance Imager (MRI) examination at the hospital which revealed a soft tissue mass at the upper part of the sacrum which was causing compression of the nerve roots. Further lesions were noted throughout most of the lower thoracic and lumbar vertebra areas. This was consistent with widespread secondary tumours. He then underwent an emergency course of palliative radiotherapy to the spine which resulted in an improvement in his pain control and bladder function. He was returned to Rye Hill on 12 April, and again refused admission to the healthcare unit, remaining on the residential unit. The man informed the healthcare staff that his prognosis was poor and that he had only a further three to three and a half months of life left to him. They noted that he was surprisingly bright and that his pain was under better control. He continued to attend his daily chemotherapy appointments at hospital. On 15 April, after his chemotherapy session he was admitted to the hospital for a blood transfusion where he remained until 28 April. On his return to Rye Hill, he recommenced his slow release morphine pain relief on a dose by dose basis, it being a controlled medication.

Because he had suffered a relapse within four months of the completion of radical treatment, The consultant oncologists opinion was that his prognosis was poor and that he might survive only a further three to four months. On 26 April 2005, the consultant wrote that the man was likely to experience further problems with mobility, pain and fatigue as the disease progressed.

On 21 April 2005, the man's solicitors wrote making representations to the Director at Rye Hill for early release on compassionate grounds. The solicitors asked for confirmation that the relevant reports would be prepared by the Medical Officer and Probation Officer in order that the application for early release on compassionate grounds could be considered by the Parole Board. The representations were copied to the Parole Board, the Parole Unit at Prison Service Headquarters and the Secretary of State. They were received at Rye Hill on 26 April 2005. On 27 April, Rye Hill's Head of Resettlement, confirmed in a faxed letter to the solicitors that the paperwork for compassionate early release was being compiled for submission to the Parole Board. Later on the same day, the solicitors replied that they had obtained a medical opinion from the consultant oncologist confirming the man's prognosis and commenting on his condition. They also asked that a probation report be prepared with extreme urgency due to the short time the man had to live. This letter was also copied to the Parole Board, the Parole Unit at Prison Service Headquarters and the Secretary of State. On 4 May, the Medical Officer at Rye Hill, completed section 4 of the Compassionate Medical Condition Report (Appendix B) for an Immediate Early Release on Compassionate Grounds. He stated that he had examined the man and, on the basis of his knowledge of the man's deteriorating health, concluded that he was incapable of criminal behaviour.

The Medical Officer said the man was aware of the prognosis and the gravity of his situation. He also added that, if the man were released, medical care would be available at a hospital in Portsmouth. A Probation Officer at Rye Hill, completed section 5 confirming that the man's sister was fully aware of her brother's situation and his care needs, and was willing to care for him at home. He added that should hospital care be required the nearby hospital was only a five minute drive away from her home so that she could give support, and some dignity, to her brother in the final period of his life. Section 6 of the report, normally completed by the Governor, has been partially completed and signed on 5 May. It indicates that there were no concerns as to the man's behaviour and should he be released, and that release would allow support and contact which was not possible whilst he remained at Rye Hill.

On 10 May 2005, the Medical Director of Prison Health at the Department of Health - sent a letter of support for early release on compassionate grounds to the Prison Service Release and Recall Section. A copy was also sent to the Healthcare Manager at Rye Hill.

The day the man died

On 16 May 2005, the man's physical condition had deteriorated to such an extent that the nearby hospital's Oncology Unit were contacted by staff at Rye Hill and the decision was made to admit him for further clinical assessment. The man was released on a temporary licence and taken to hospital where he was admitted. However, Rye Hill instructed the escorting staff member to remain at the hospital as a liaison point for the man's family. After admission to hospital, nursing staff contacted prison staff to ask for the next of kin details, obtained the telephone number and called the family members to tell them that the man's condition had deteriorated. The family arrived at the hospital on the evening of 16 May. After admission, the hospital also contacted Rye Hill staff and informed them that they believed that the man was in respiratory failure.

Due to the man's deteriorating condition, the Head of Resettlement and the Duty Director for 16 May, contacted Release and Recall Section at Prison Service Headquarters with regard to the application for early release on compassionate grounds. She made it clear to them that the man's condition had deteriorated and that the release application required urgent attention. She was informed that the application was "on the Minister's desk".

The man's condition continued to deteriorate and he died at about 11 a.m. on 17 May 2005. His sister and father travelled to the hospital from their home and were at his bedside when he died. On the morning of his death, a Prison Custody Officer was at the hospital. At the time of the man's death, the officer was outside the room and was told the news by the man's relatives. Following the death, a manager at Rye Hill, also went to the hospital. The man's possessions were released immediately after his death to his sister. His property that was at Rye Hill was sent by arrangement at a later date.

Later on the morning of 17 May, a Rye Hill Records Office staff member informed the Release and Recall Section by telephone that the man had died. During the conversation, it emerged that the authorisation for the man's early release had been signed that morning.

On 20 May, a letter was received from the Release and Recall Section by the man's solicitors. It said that the man's release on compassionate grounds had been authorised at Ministerial level on the morning of Tuesday 17 May. However, the man had already died before the relevant notification and release licence could be issued.

The prison's response following the death

The man was in a nearby hospital as an in-patient when he died. Technically, he had been released by then although neither he nor his family were aware of that fact at the time of his death.

Prison contingency plans for a death in custody were not implemented. All necessary people were informed of the death and the Coroner's office was informed by the hospital.

The Director issued a notice to prisoners informing them of the man's death and a memorial service was held in the multi-faith centre. Prisoners on the unit where the man resided made a collection, which they subsequently donated to a cancer charity. Prisoners whom the investigation team spoke to told them that they had supported each other and that some staff had also shown concern for their well being.

Because there is no mandatory requirement for an inquest once someone has been released from custody, the Coroner acceded to the wishes of the family that there would be no inquest into his death. However, he did insist on a post mortem examination. The examination was carried out by a pathologist at the hospital mortuary on at 9:30 a.m. on 20 May. The conclusion was that death had resulted from carcinomatosis and small cell carcinoma of the lung and that there were no suspicious circumstances surrounding the death. The Coroner confirms that the death was due to natural causes.

Compassionate release

The man was considered by Rye Hill as appropriate for Early Release on Compassionate Grounds (under section 30 of the Crime (Sentences) Act 1997). The general principles governing early release on compassionate grounds are:

- the release of the prisoner will not put the safety of the public at risk;
- a decision to approve release would not normally be made on the basis of facts of which the sentencing or appeal court was aware;
- there is some specific purpose to be served by early release.

The rules governing early release go on to say that, where early release is to be considered on medical grounds, the prisoner should be suffering from a terminal illness and likely to die soon (the guideline is that death is likely within the next three months). The Secretary of State (via the Parole Board) must also be satisfied that the risk of re-offending is past and that there are adequate arrangements for the prisoner's care and treatment outside prison.

The early release on compassionate grounds paperwork was completed by staff at Rye Hill on 5 May 2005. The Prison Medical Officer, Probation Officer and Director felt able to recommend early release at that time. Their reasons were that the man's condition was so severe as to make him incapable of committing further criminal acts and that his family could care for and support him in the final stages of his life. The oncology consultant at the hospital, who cared for the man, supported the early release application due to his belief that he had only a few months of life left to him.

The probation officer stated in his report that the man's sister, was well aware of his condition and its final outcome and that she would be able to support and care him should he be released. It was further stated that a hospital in Portsmouth, which would take over the clinical aspects of this man's case was only five minutes away by car from her home. The suitability of the accommodation for the management of this man's care at his sister's home was not known.

Conclusions

A 54 year old man in poor health having suffered widespread cancer in the last year of his life. He had undergone radio and chemo therapies and palliative care which made him feel very unwell. He had continued to live as active a life as he could under the circumstances in which he found himself, but with increasing constraints imposed by the disease.

Rye Hill cared for the man to the best of their abilities. That care compared favourably with that which he would have received in the mainstream community. The management of his health was sensitive to his needs given the disease he had and his medical history. He was regularly released on temporary licence to attend hospital for treatment, and the exchange of information between the hospital and the prison healthcare unit regarding any progress was good and should be commended.

Having suffered shortness of breath on 16 May 2005, the man was treated in a speedy and professional manner by Rye Hill healthcare staff who contacted the hospital's Oncology Unit and, on their advice, took him there for admission. He did not require a Rye Hill staff member on constant bed watch having been released on temporary licence. However, Rye Hill instructed the escorting staff member to remain at the hospital as a liaison point for visiting family. This is good practice and should also be commended.

Following the death the response by Rye Hill was sensitive.

The death of the man has raised questions about the provision of Early Release on Compassionate Grounds. There was real support for the early release application from all concerned, and it is disappointing that it took until the day of the death for it to have been authorised. The delay caused the family the added pressure and stress of having to make an unnecessary emergency drive from their home to Coventry to be there at the end of his life.

The nature of the circumstances with which Early Release on Compassionate Grounds is concerned dictates that actions must be speedier than was the case on this occasion.

Recommendations

In light of this report, Release and Recall Section should review the decision making process for Early Release on Compassionate Grounds to ensure that it is responsive to the needs of prisoners and their families and that the decisions made are timely.

Good Practice

The exchange of information between the hospital and the Rye Hill healthcare unit regarding the man's progress was good and should be commended.

It was also good practice to instruct the escorting staff member to remain at the hospital as a liaison point for visiting family.