

**Investigation into the death of a man  
in July 2012 while a prisoner at HMP Leyhill**

**Report by the Prisons and Probation Ombudsman  
for England and Wales**

**January 2013**

This is a report into the death of a man at HMP Leyhill who died at in outside hospital in July 2012. The man died as a result of oesophageal cancer (cancer of the gullet). I offer my condolences to his family and friends.

The investigation was carried out by one of my investigators. A clinical reviewer was appointed to review the man's clinical care. Staff at Leyhill prison cooperated fully with this investigation.

The man was first diagnosed with possible cancer of the gullet in May 2012. This was confirmed the following month and the cancer was discovered to be widespread. Following his diagnosis, the man was admitted to hospital where he remained until his death. The prison tried to arrange for the man to move to a hospice or hospital nearer to his family home, but his condition deteriorated too rapidly.

The investigation has found that the man was very well looked after and received a standard of care at Leyhill at least equivalent to that which he could have expected to receive in the community. Leyhill also provided very good support to the man's family before and after his death. The prison is to be commended for the professional and compassionate way in which staff cared for the man and for the efforts made to help him to die with dignity.

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

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## SUMMARY

1. The man died in July 2012. He was convicted and sentenced to life imprisonment on 5 May 2000. He was held at a number of prisons before transferring to HMP Leyhill on 5 January 2012.
2. During his first reception health screen at Leyhill (an interview which highlights any immediate mental or physical health problems requiring referral to the doctor or other specialist service) it was recorded that he was receiving treatment for nasal blockage. This nasal condition led to his referral to hospital for treatment.
3. On 10 May, the man attended an appointment with a consultant who decided that he needed nasal surgery. At this appointment, the man told the consultant that for the previous four weeks he had experienced problems with swallowing and a feeling of a blockage in his chest when he ate. He had not reported these symptoms to any healthcare staff at Leyhill. The consultant ordered urgent tests to find out what was causing the problem. On 28 May, the man was diagnosed with possible oesophageal cancer (cancer of the gullet). He was due to have follow up tests on 18 June.
4. On 7 June, the man's condition deteriorated and he was taken to outside hospital. The initial risk assessment was that restraints were not to be used, but that two officers should remain on duty at his bedside (known as a bedwatch). The officers on bedwatch duty kept a log of activities which was checked regularly by a visiting duty governor.
5. On 13 June, the man moved to the palliative care unit at the hospital. On the following day the healthcare manager at Leyhill, visited the man. He told her that he had been given a life expectancy of six to eight months. During the afternoon of 14 June, the man was released on temporary licence (ROTL)<sup>1</sup> and the officers on bedwatch were withdrawn.
6. In the weeks that followed, the man was visited by both prison and healthcare staff from Leyhill. Leyhill tried to arrange for the man to move to a hospice or hospital closer to his home area. Unfortunately, the deterioration in his health meant he was too unwell to travel. The man was fully involved in discussions about his care and treatment.
7. During the afternoon of the day the man died, hospital staff informed Leyhill that the man had died at 3.05pm that day. The hospital also informed the man's family of his death. After his death, the prison family liaison officer maintained contact with the man's family, offered support and provided help with the funeral expenses.
8. The Coroner decided not to conduct a post mortem but confirmed that the man had died of rapidly progressive metastatic oesophageal cancer.

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<sup>1</sup> Release on temporary licence (ROTL) enables prisoners to participate in necessary activities, outside of the prison establishment; a special purpose licence allows prisoners to receive inpatient hospital treatment.

9. Prisoners were informed of the man's death during the afternoon and given appropriate support, including access to Listeners (prisoners selected and trained by the Samaritans to offer confidential emotional support to fellow prisoners in distress). Prisoners who were being monitored as at risk of self-harm and suicide were reviewed.
10. We are satisfied that the care and attention the man received at Leyhill was equivalent to what he could have expected to receive in the community. We found that staff at Leyhill cared for the man with compassion and helped him to die with dignity. Both he and his family were kept fully informed about issues relating to his health.
11. We make no recommendations.

## THE INVESTIGATION PROCESS

12. The Ombudsman was informed of the man's death in July 2012. The investigator issued notices to staff and prisoners at Leyhill informing them of the investigation and asking anyone who had relevant information to contact him. No one came forward as a result. The investigator examined all the man's relevant prison records, including his medical records.
13. A clinical reviewer appointed to review the man's clinical care at Leyhill. The clinical reviewer was provided with a copy of the man's medical records.
14. The investigator visited HMP Leyhill on 12 July and spoke to the Acting Governor and to staff involved in the man's care. He returned to Leyhill on 11 September to interview staff. Initial feedback was given to the Head of Residential Services on 11 September and subsequently confirmed in writing.
15. HM Coroner for Avon was informed of the investigation and a copy of the post-mortem report was requested. The Coroner decided that a post-mortem examination was not needed and gave the cause of death as rapidly progressive metastatic oesophageal cancer. The Coroner will be sent a copy of this investigation report.
16. One of the Ombudsman's family liaison officers contacted the man's family. She told them about the purpose of the investigation and gave them the opportunity to raise any concerns about the man's care at Leyhill. The man's family had no concerns about this and were very positive about the support received from the prison after his death. The man's family received a copy of the draft report and they raised no further concerns in light of the findings.
17. The investigation has assessed the main issues involved in the man's care including his diagnosis and treatment, liaison with his family, his location and security arrangements, whether compassionate release was considered and whether appropriate palliative care was provided.

## **HMP LEYHILL**

18. HMP Leyhill is a category D prison in South Gloucestershire. Category D prisons are also referred to as open prisons and hold prisoners who require only minimum security. A number of its prisoners are life-sentenced prisoners preparing for release. The prison can hold up to 527 prisoners.
19. B unit, where the man lived, has mostly single rooms and each prisoner has a key to their own room. The unit allows free access to all prisoners until 8.30pm, with movement restricted to their own spurs after 11.00pm, after which they are expected to stay in their rooms until morning.
20. Healthcare at Leyhill is commissioned by South Gloucester PCT and currently provided by Bristol Community Health (primary healthcare and substance misuse service), Hanham Health (GP provision) and Avon and Wiltshire Partnership (mental health counselling service). Healthcare is staffed every weekday from 7.30am until 4.30pm. Doctors are in the prison on weekdays and run GP surgeries. Hanham Health also provides out of hours cover.
21. A day care centre known as 'The Lobster Pot' (because of its appearance), provides activities for older prisoners. The man regularly attended the day care centre and was an active participant in activities. He also acted as an advocate for other prisoners who were less able to express themselves, offering both support and advice.

### **Her Majesty's Inspectorate of Prisons report (HMIP)**

22. The last report published on Leyhill by HMIP followed an announced inspection in April 2012. The report noted that health services in the prison were good. At the time inspectors noted that older prisoners were routinely invited to an over 55's health screening clinic and dedicated nurses led arrangements for chronic disease management reviews.

### **Independent Monitoring Board (IMB) report**

23. Each prison has an Independent Monitoring Board of unpaid volunteers from the local community who monitor all aspects of prison life to help ensure that proper standards of care and decency are maintained. The most recent IMB annual report for Leyhill covers the year to January 2011.
24. The report noted that despite some concerns during the first year of a new contract with healthcare providers, healthcare continued to deliver to a good standard. In her letter to the Ombudsman's office the Chair of the IMB at Leyhill, said that they had no direct dealings with the man. She wrote:

"The Board was happy that everything that could be done for the man was being done, and communications with his family was good. We noted that ROTL was agreed and that a compassionate release was being sought, also that efforts were being made to obtain a bed in a hospice close to the man's family. Whilst he was in hospital we were

given regular bulletins and we were informed immediately when he passed away.”

### **Previous deaths at Leyhill**

25. Since 2004 when this office took over responsibility for investigating deaths in prison custody, there have been two other deaths at Leyhill. The circumstances of one were similar to those of the man, in that the prisoner had also been diagnosed with a terminal illness. After that prisoner’s death, a two bed palliative care unit was purpose built next to B unit. However, a bid for funding to provide on-site healthcare staff was not approved and the options open to the prison are to either hire agency staff (who will need to be security cleared before they can work in the prison) which will be funded by NHS South Gloucestershire on an individual basis or for the seriously ill prisoner to be cared for in hospital or a hospice.

## ISSUES

### The diagnosis of the man's terminal illness

26. The man had been experiencing problems with nasal blockage since January 2011 when he was at HMP Hewell. He was diagnosed with sinusitis<sup>2</sup> and prescribed antibiotics. In February, he was prescribed nasal decongestant drops but these did not help. In March he was prescribed steroid nose drops and referred to an ear, nose and throat (ENT) specialist. As the new drops helped significantly, the man cancelled his (ENT) hospital appointment when it came through (in May 2011). In November, when his condition deteriorated again he was prescribed an antihistamine and a further referral was made to ENT specialist. As this new treatment also helped to relieve his symptoms the man again cancelled his (ENT) hospital appointment when it came through (in December 2011).
27. Each new prisoner is given a first reception health screen interview, which should highlight any immediate mental or physical health problems requiring referral to the doctor or other specialist service. When the man arrived at Leyhill, in January 2012, it was recorded that he was receiving treatment for nasal blockage. At a subsequent appointment with the prison doctor, on 12 January, a nasal polyp was discovered in the man's right nostril. (Nasal polyps are fleshy swellings that grow inside the nose or sinuses. The most common symptoms they cause are a stuffy, runny nose.) His medication was reviewed and another referral was made to an ENT specialist on 13 February.
28. The records show that on 27 April, the man complained of upper abdominal pain which was thought to be as a result of medication he was receiving for an enlarged prostate gland. An ECG (electrocardiogram – electrical test of the heart) was carried out and results were normal. Blood tests were also taken and showed indicators of inflammation. The clinical reviewer states that this was consistent with the man's ongoing nasal inflammation.
29. On 10 May, the man attended the ENT clinic at a local hospital and was seen by a consultant who suggested that his nasal polyp required surgery and added him to the list. At this appointment the man informed the consultant that for the past four weeks he had experienced problems with swallowing and a feeling of a blockage mid sternum when he ate. He said he had to drink large amounts of water to get his food to go down. The man had not reported these symptoms to any healthcare staff at Leyhill. The consultant ordered an urgent barium swallow test (an examination of the oesophagus or food pipe) to evaluate what was causing the problem.
30. On 28 May, the results of the tests showed a narrowing at the end of the oesophagus and possible oesophageal cancer (cancer of the gullet) and an endoscopy was ordered. (An endoscopy is a procedure that looks inside the

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<sup>2</sup> Sinusitis is an infection of one or more sinuses (or air-filled chambers). Sinusitis is very common and is thought to complicate from a half to two per cent of all colds. It can occur at any age, but is more common in middle-aged people.

body. The endoscope is a long flexible tube that can be swallowed. It has a camera and light inside it.) This was booked for 18 June. However, the man's condition deteriorated rapidly and he was admitted to outside hospital on 7 June. Further tests confirmed oesophageal cancer with widespread metastatic disease (cancer) in the lungs, liver and bones.

31. Before the man's hospital appointment on 10 May 2012, he gave no indication to healthcare staff that he had difficulty swallowing and he had been referred to the ENT specialist appropriately for his nasal polyps. We are satisfied that staff at Leyhill acted quickly and appropriately in referring the man to the specialist, and the subsequent diagnosis of cancer was as a result of the additional information he shared with the specialist. The clinical reviewer says it is likely the man's cancer had spread and was therefore inoperable for some time before he saw the specialist on 10 May.

### **Communication with the man about his condition and treatment**

32. Following his appointment with the ENT specialist on 10 May, the man became very anxious about his health and the forthcoming tests. He saw a prison doctor, on 11 May and confirmed his difficulty swallowing. The doctor recorded that he was very anxious, but it is not clear whether any possible diagnosis was discussed.
33. The man was seen by a Nurse A, a mental health nurse, on 18 May to discuss his worries and anxieties. Nurse B saw him again on 23 May as he was having increased difficulty swallowing and continued to be very anxious about the tests. Nurse B checked with the hospital that the barium swallow test was booked for 28 May.
34. The results of the barium swallow test were received by the prison on 28 May, the day the tests were conducted. That day, Officer A recorded that the man appeared quite upset following a telephone conversation with his mother. She recorded: "apparently he didn't like upsetting her with what news he had regarding an update over his health which is still not conclusive". The officer also recorded that the man was keeping himself busy by writing articles to be published while waiting for his next hospital appointment. (The man had a number of letters and poems published in Inside Time, a national prisoner newspaper in the previous few years).
35. Following the further tests carried out following the man's admission to hospital on 7 June, it was confirmed that he had oesophageal cancer, which was also in his lungs, liver and bones. The man told prison healthcare staff that he was told by hospital staff that he had less than eight months to live on 13 June.
36. From information recorded (in medical, discipline and bedwatch records) it would appear that the man was informed by hospital staff regularly about his condition and treatment. The delay in the seriousness of his condition being diagnosed was quite difficult for the man. However, the sensitive and professional approach of the staff at Leyhill, and the hospital, ensured that the man was kept fully informed about his condition.

## **The man's medical appointments and treatment**

37. Following his possible diagnosis of cancer, prison healthcare staff liaised with hospital staff to ensure the man received appropriate treatment. He was seen and supported regularly by healthcare staff between 10 May and his admission to hospital on 7 June. He was prescribed Ensure (a liquid diet supplement) when it became difficult for him to swallow solids. A pureed diet was also arranged.
38. When the man's condition rapidly deteriorated, arrangements were made for his urgent admission to hospital on 7 June. The man was subsequently transferred to the Macmillan Unit (for palliative care) at the local hospital on 13 June. In her statement to the Coroner, a specialist registrar at the Macmillan Unit, wrote that the man's cancer was "extremely advanced and it was not possible to offer a cure". The specialist registrar said that, following his terminal diagnosis, the man declined the option to have palliative chemotherapy (a treatment which can slow the progression of the cancer, make the patient more comfortable and may prolong life).
39. The opinion of the clinical reviewer is:

"It appears from the record that he [the man] received an excellent level of care. His case was discussed at a multi-disciplinary meeting [at the hospital] and when his condition deteriorated he was appropriately transferred to a palliative care unit [in the hospital]. There was regular contact between the hospital and prison health services."

## **The man's pain relief and medication**

40. Following the possible diagnosis on 10 May, the man was prescribed medication by prison healthcare as directed by hospital staff, for his nasal problems and weight loss. Once he was admitted to hospital and following his terminal diagnosis, he received morphine by mouth initially then later by syringe driver when he became unable to swallow. We are satisfied that the man was offered appropriate medication and pain relief.

## **Palliative care plans**

41. Palliative care is the active holistic care of patients with an advanced progressive illness, such as cancer. A palliative care or end of life pathway is used to help manage a patient's pain and any other symptoms that they may be experiencing. It also helps to provide psychological, social and spiritual support. Among the benefits of an end of life pathway are that it helps carers to plan when and how care will be delivered, and helps patients make choices about how they are cared for towards the end of their lives.
42. It is clear that the man was fully consulted on palliative care and end of life plans to ensure his wishes were complied with. The hospital and the prison

worked together well to ensure an effective plan was in place for both the man's time in hospital and should he return to the prison.

43. In his report the clinical reviewer states that:

“The records indicate he received excellent palliative care. Appropriate plans were beginning to be made for his transfer back to HMP Leyhill, but his rapid deterioration overtook these.”

44. We agree with the comments made by the clinical reviewer and consider that Leyhill's sensitive handling of the man's end of life care was commendable.

### **Liaison with the man's family**

45. The man's family visited him regularly throughout his time in custody and he regularly telephoned his mother. The man, as well as hospital staff, kept his family informed about his condition. Prison and healthcare staff from Leyhill also contacted his family.

46. Leyhill appointed a prison family liaison officer, Senior Officer (SO) A as soon as it was clear that the man was seriously ill. She ensured that the man's family was informed and consistently updated about his condition. After the man's death, the SO visited the man's family to offer support and guidance. In the days that followed she maintained contact with the man's family to provide continuing support and, in line with national policy, offered financial assistance towards funeral expenses.

### **The man's living arrangements**

47. The man wanted to remain on his wing with his friends for as long as possible. While he remained on the wing, healthcare staff maintained regular contact with the man to monitor his condition and health needs. He had a cell on the ground floor, quite near to the wing office. A prisoner carer (a fellow prisoner to assist with day to day living needs) was appointed to assist the man in cleaning his cell and collect his meals when he felt unwell.

48. On 7 June, the man went to hospital and on 13 June, moved to the hospital's palliative care unit where he died on 9 July. The prison tried to arrange for the man to move to a hospital or hospice nearer to his home but his health deteriorated too quickly for this to be done.

49. We are satisfied that Leyhill responded appropriately and sympathetically to the man's wish to continue to live on his wing as long as possible where he had the support and company of friends. Appropriate attempts were also made to move him nearer his family.

## Compassionate release

50. Early release on compassionate grounds is a means by which prisoners who are seriously ill can be permanently released from custody before their sentence has expired. The criteria for early release for indeterminate sentenced prisoners are set out as follows in Prison Service Order (PSO) 4700:
- the prisoner is suffering from a terminal illness and death is likely to occur very shortly (although there are no set time limits, three months may be considered an appropriate period for an application), or the prisoner is bedridden or similarly incapacitated, for example, those paralysed or suffering from a severe stroke; and
  - the risk of re-offending (particularly of a violent or sexual nature) is minimal; and
  - further imprisonment would reduce the prisoner's life expectancy; and
  - there are adequate arrangements for the prisoner's care and treatment outside prison; and
  - early release will bring some significant benefit to the prisoner or his/her family.
51. An application for early release on compassionate grounds must be submitted to the Public Protection Casework Section (PPCS) within the National Offender Management Service (NOMS). Caseworkers in the unit consider the application and have a target of advising the prison of the outcome within two weeks of receipt (or sooner if the application is very urgent). Various reports are required to make up the application, including reports by the prison doctor (usually supported by further information from the hospital consultant or equivalent expert), the prisoner's offender manager (probation officer) and the Governor.
52. On 13 June, the man was informed by hospital staff of his the prognosis that he had less than eight months to live. On the following day, 14 June, the bedwatch duty was ended and the man was released on temporary licence. On 20 June, the prison received a written request from the man requesting early release. All relevant parties were asked to complete their parts of the application for compassionate release which was sent to the Public Protect Casework Section of the National Offender Management Service on 5 July. A decision was not received before the man died. At the draft report stage, the National Offender Management Service (NOMS) provided the following response:
- “The man was released on ROTL as soon as he went out to hospital. He was accompanied by one officer for this initial period. The function of the officer being present was to exercise the prison's duty of care, to provide support and to ensure the man's behaviour was consistent with HMP Leyhill's expectations (this would be the same for any prisoner

who had yet to achieve a pattern of successful ROTL). Once further information had been received, staff were able to undertake a further risk assessment and withdrew the officer and substituted this with daily support visits from staff who knew the man.”

53. Although it is unfortunate, given the man’s sudden deterioration, that a decision was not able to be made more quickly, the application for compassionate release was satisfactorily handled.

#### **Restraints, security and bedwatch**

54. When the man was taken to hospital he was escorted by prison officers but restraints were not used. While he was attending hospital appointments and during his admissions to hospital the man was accompanied by two officers but was not restrained. After the man’s moved to the palliative care unit he was released on temporary licence (ROTL) and officers no longer supervised him. Staff from Leyhill continued to visit him and the prison kept in regular contact with hospital staff.
55. The investigator found that the notes of the escort officers in the accompanying log were concise with appropriate entries. When interviewed, staff spoke perceptively and compassionately about their relationship with the man. This reflects well on the care offered to him by prison staff during his time in custody.

## CONCLUSION

56. During his time at Leyhill, the man had well documented regular interventions with doctors and other healthcare staff. Following the discovery of a nasal polyp it was suspected that he might have a more serious underlying condition. Subsequent tests indicated the man had cancer of the gullet. A definitive diagnosis indicated that the cancer was widespread and inoperable. The man was actively involved in the discussions about his end of life care and his wishes were considered at every stage.
57. The man's family were in regular contact with him and a family liaison officer was appointed when he was diagnosed as terminally ill. The family liaison officer appropriately supported the man's family.
58. In his summary of the care provided to the man, the clinical reviewer states:

“The man died peacefully in the palliative care unit ... The cause of death was a rapidly progressing cancer of the oesophagus for which no active treatment was possible. He did not reveal any symptoms relating to his cancer until his hospital appointment on 10th May, by which time the cancer was incurable. The care he received in hospital was entirely appropriate and does not seem to have been influenced by his status as a prisoner.”
59. We would add that staff at Leyhill were professional and compassionate and we are satisfied that the man was well cared for during his time at the prison.