PRISONS AND PROBATION OMBUDSMAN
for England and Wales
Independent Investigations

A Report by the Prisons and Probation Ombudsman Nigel Newcomen CBE

Investigation into the death of a man at HMP Holme House in October 2013

Our Vision

‘To be a leading, independent investigatory body,
a model to others, that makes a significant contribution
to safer, fairer custody and offender supervision’

This is the investigation report into the death of a man, who died from pneumonia caused by cancer of the neck in October 2013 at HMP Holme House. He was 85 years old. I offer my condolences to the man's family and friends.

The investigation was carried out by an investigator. A Clinical Reviewer reviewed the clinical care the man received at Holme House. The prison cooperated fully with the investigation.

The man was sentenced to prison in March 2012 and sent to HMP Durham. He transferred to HMP Northumberland in December 2012. On 15 February 2013, a prison doctor urgently referred the man to an Ear Nose and Throat specialist with a lump on his neck. Initial tests did not reveal anything abnormal, although further tests were requested. On 22 April, the hospital consultant told him that he had a cancerous tumour on his tonsils. The man was due to have surgery, but he was not well enough. In June, he received palliative radiotherapy in an attempt to slow the progression of the tumour, but this had little effect.

In July 2013, the man transferred from hospital to HMP Holme House where his nursing needs could be met. Palliative care specialists were consulted as his condition deteriorated. He remained at Holme House until he died.

The prisons have been unable to provide the risk assessments for the use of restraints when the man went to hospital, so I cannot be satisfied that their use was fully justified however, overall, I consider that the man received a good standard of care at both HMP Northumberland and HMP Holme House during his final illness, comparable to that available in the community.

Nigel Newcomen CBE
Prisons and Probation Ombudsman **April 2014**

CONTENTS

SUMMARY

1. In March 2012, the man was sentenced to prison for six and half years and sent to HMP Durham. He was in poor health when he arrived at the prison and his medical record noted that he had heart and kidney disease. His mobility was poor following a minor stroke. In December 2012, the man transferred to HMP Northumberland.

2. On 30 January 2013, a dentist treating the man noted that he had a tender neck and advised him to see the prison doctor. Two days later, a prison doctor examined the man and prescribed antibiotics. On 13 February, the dentist referred him back to the doctor as the antibiotics had not helped. On 15 February, the prison doctor urgently referred the man to an Ear, Nose and Throat (ENT) specialist at the Freeman Hospital, Newcastle upon Tyne.

3. The man had a number of tests and scans and was diagnosed with a cancerous tumour of the tonsils on 22 April. On 29 April, the man had a biopsy taken from the base of his tongue and surgery to remove the tumour was planned for 24 May. However, the man became increasingly confused and unwell as a result of a serious skin infection and a hospital consultant assessed him as unsuitable for surgery. On 18 June, the man began a course of radiotherapy at the Freeman Hospital in an attempt to slow the progression of the tumour, but this had little effect.

4. On 18 July, prison and hospital staff, and the man's daughter, attended a multi-disciplinary meeting to discuss his care. On 23 July, the man transferred to the inpatient unit at Holme House which could provide the nursing care he required. He received nursing and palliative care in the inpatient unit, with support and advice from a Macmillan Nurse. On 6 September, the man was told that the prognosis was poor. He received pain relief through a syringe driver and his cell door was left open at all times to allow prompt medical attention. On 8 October, the man was placed on an end of life care pathway. He died at 4.37pm on 11 October.

5. We agree with the clinical reviewer that the man was appropriately diagnosed and received good care at HMP Northumberland and then at HMP Holme House, with appropriate input from specialist palliative care Macmillan nurses. However, we are not satisfied that the use of restraints when the man went to hospital was supported by a fully justified risk assessment and HMP Northumberland did not liaise effectively with the man’s daughter when he was first diagnosed.

THE INVESTIGATION PROCESS

6. The investigator issued notices to staff and prisoners at HMP Holme House informing them of the investigation and inviting anyone who had relevant information to contact her. No one responded.

7. The investigator obtained and reviewed copies of the man's prison and prison medical records. She gave the Governor initial feedback in writing.

8. NHS England appointed a clinical reviewer to review the man's clinical care at the prison.

9. The investigator informed HM Coroner for Teesside of the investigation and the Coroner provided the cause of death. We have sent the Coroner a copy of this investigation report.

10. One of the Ombudsman's family liaison officers, contacted the man's daughter, to explain the investigation. On 4 December, the family liaison officer and investigator visited the man's daughter. She asked the investigation to consider the following issues:

    - Did the man have access to see the doctor and was diagnosis timely? Would his condition have been treatable if he had been diagnosed earlier?
    - Why was the man restrained during his time in hospital when he did not have the capacity to escape?
    - The man's daughter was not satisfied she was kept informed of his admissions to hospital, and that she was not given sufficient information about his diagnosis when she requested it.

11. The investigation has assessed the main issues involved in the man's care, including his diagnosis and treatment, whether appropriate palliative care was provided, liaison with his family, his location and whether compassionate release was considered.

12. The man's family received a copy of the draft report. The man's family raised no issues that impacted on the factual accuracy of this report and have been addressed through separate correspondence. The prison considered our draft report and recommendations, which they have accepted. The prison has also submitted an action plan detailing what they have done to address the issues we raised and this is included at the end of the report.

HMP NORTHUMBERLAND

13. HMP Northumberland was formed in 2011 by the merger of two separate prisons, HMP Acklington and HMYOI Castington. HMP Northumberland can accommodate more than 1,300 prisoners. Care UK, a private company, provides health services at the prison.

Her Majesty's Inspectorate of Prisons

14. The most recent inspection was in June 2012. The Inspectorate found that the amalgamation of the two prisons had gone well, and healthcare provision was reasonable. They found the care of patients with lifelong conditions such as asthma, diabetes and heart disease was good.

Independent Monitoring Board

15. Each prison has an Independent Monitoring Board (IMB) of unpaid volunteers from the local community who help ensure that prisoners are treated fairly and decently. In its 2012 annual report, the IMB noted that prisoners had long waits in the healthcare unit before and after medical appointments.

HMP HOLME HOUSE

16. Holme House is a local prison for up to 1,212 prisoners. Care UK provide health services at Holme House. Nurses are on duty 24 hours a day.

HM Inspectorate of Prisons

17. The most recent inspection of Holme House was in August 2013. Inspectors found that the overall standard of healthcare was good with a reasonable skills mix of healthcare staff. .

.

Independent Monitoring Board

18. In its most recently published annual report for the year to December 2012, the IMB said that healthcare services were delivered to a high standard, and were at least equivalent to the services offered in the community.

Previous deaths at HMP Holme House

19. The man's death was one of four deaths from natural causes at HMP Holme House in 2013. There were no significant similarities between the findings of the investigations into those deaths and that of the man.

ISSUES

The diagnosis of the man's terminal illness and informing him of his condition

20. On 29 March 2012, the man was sentenced to prison for six and a half years and taken to HMP Durham. Records show that the man had a long history of heart disease and had been fitted with a pacemaker. His mobility was poor as a result of a minor stroke in 2010. On 18 December 2012, the man transferred to HMP Northumberland. He lived on houseblock 14, a dedicated unit for older prisoners.

21. On 30 January 2013, a prison dentist noted that the man's neck was tender and advised him to see the doctor. A prison GP examined the man on 1 February and prescribed a course of antibiotics for a suspected infection. The dentist examined the man on 13 February for follow up dental work and noted there was no improvement to the tender neck muscle. She referred the man back to the doctor.

22. The GP saw the man on 15 February. There was no improvement and the doctor made an urgent referral for the man to see an Ear, Nose and Throat (ENT) surgeon under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks.

23. On 27 February, an ENT consultant at Freeman's Hospital, examined the man. He used an endoscope (a flexible tube) to examine the man's throat, but did not detect anything abnormal. The ENT consultant arranged for the man to have an ultrasound scan and fine needle aspiration (removal of fluid from area) on 7 March. A further scan was completed on 8 April. Another ENT consultant saw the man at Freeman's Hospital on 22 April, and told him these tests had revealed he had cancer (squamous cell carcinoma) in the left side of his neck.

24. A prison GP discussed the man's condition and treatment with him when he returned to the prison. On 23 April, a Macmillan nurse visited the man and ensured he understood his diagnosis and offered him her support, in addition to the support from nurses in the healthcare unit.

25. The clinical reviewer concluded that the GP made an appropriate and timely referral and the man was seen within the national target time for cancer referrals. The man had a lengthy discussion with the GP and had the support of a Macmillan nurse. The clinical reviewer noted that communication between healthcare staff and Macmillan nurses was excellent, which ensured The man fully understood his condition. As his disease progressed, staff supported him and gave appropriate information to him and his family. We are satisfied that the man's illness was diagnosed in a timely way and he was fully informed and supported.

The man's medical treatment

26. After he was diagnosed, the hospital consultant told the man that surgery to remove the tumour would be considered. On 29 April, the man underwent biopsies and surgery was planned for 24 May. However, the man developed an infection of the deeper layers of skin in his neck, which caused him to become confused. On 18 May, the man was admitted to Wansbeck Hospital, Ashington for five days to treat the infection. His condition improved with intravenous antibiotics, but doctors considered the man was not well enough for the surgery.

27. The man was admitted to the Freeman Hospital on 18 June, as his condition continued to deteriorate. The tumour in his neck was growing and surgery was considered too risky as it was close to major blood vessels. The man had five sessions of palliative radiotherapy in an effort to slow the progress of the tumour, but this was not successful.

28. Once it becomes evident that a serious medical condition will not be responsive to active treatment, it is appropriate that a palliative care plan is put into place. The NHS document 'The route to success in end of life care – achieving quality in prisons and for prisoners' sets out how an end of life care pathway might be implemented in prisons. Among the benefits of an end of life pathway are that it helps carers 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.

29. On 4 July, an entry in the man's medical record noted that hospital staff had discussed Do Not Attempt Resuscitation (DNAR) with the man and a DNAR order had been agreed and recorded. (A DNAR order means that in the event of cardiac or respiratory arrest no attempt at resuscitation will be made. All other appropriate treatment and care will continue to be provided).

30. A multi-disciplinary meeting was held at the hospital on18 July, with staff from the hospital, a Macmillan Nurse, Northumberland and Holme House healthcare staff and the man's daughter, to discuss the man's ongoing care. The meeting agreed that the man should move to HMP Holme House, as he required 24 hour nursing care. The man moved to the healthcare unit of Holme House on 23 July. A holistic care plan including palliative care was developed. The plan included personal hygiene care, monitored diet and fluid intake and medication. Oramorph and fentanyl patches (morphine based pain relief) were prescribed to help the man manage his pain and he was prescribed fortisip nutritional drinks.

31. The man's health steadily deteriorated. On 8 October, in agreement with the man's daughter, the Macmillan Nurse placed the man on an end of life pathway. The man died at 4.37pm on 11 October.

32. The Coroner provided the cause of death as pneumonia caused by cancer of the neck.

33. We agree with the clinical reviewer, that healthcare staff at both prisons closely monitored the man's condition, and he received the appropriate

treatment to try and slow the progress of his tumour. The clinical reviewer comments that there is clear evidence of discussion regarding the man's needs and of a patient centred approach. Where possible, staff delivered care that met the man's wishes. We are satisfied that the care the man received was equivalent to that he could have expected in the community.

The man's location

34. On 18 December, the man transferred to HMP Northumberland and lived in a unit specifically for elderly prisoners. Prisoners assisted the man with his day to day living and officers supported him on the wing until he was admitted to hospital on 18 June.

35. From July, the man needed 24 hour nursing care and was transferred to the inpatient unit at HMP Holme House on 23 July to provide such care. The possibility of a move to a hospice was discussed with the man and his family. However they were satisfied with his care at Holme House and it was agreed that a move was not in the man's best interests.

36. The clinical reviewer noted that respecting the man's wish to remain on his unit at HMP Northumberland as long as possible was in line with the approach taken in the community and we are satisfied he was appropriately accommodated during his illness. Once he required 24 hour healthcare, he was transferred to Holme House where his needs could be met.

Restraints, security and escorts

37. When prisoners have to travel outside of the prison to a hospital or hospice, a risk assessment is conducted to determine the nature and level of any security arrangements, including any restraints.

38. The Prison Service has a duty to protect the public when escorting prisoners to hospital, and a responsibility to balance this by treating prisoners with humanity and maintaining their dignity. The level of restraints used should be necessary in all the circumstances and based on a risk assessment which considers the risk of escape, the risk to the public and which also takes into account factors such as the prisoner's health and mobility. A judgement in the High Court in 2007 made it clear that a distinction needs to be made between the risk of escape (and the risk to the public in the event of an escape) posed by a prisoner when fit and those risks posed by the same prisoner when suffering from a serious medical condition. The judgement indicated that medical opinion about the prisoner's ability to escape must be considered as part of the assessment process. It also deemed that restraining by handcuffs of a prisoner receiving chemotherapy (and by implication, other life saving treatment) was degrading and that such restraint would be likely also to be regarded as inhumane unless justified by other relevant considerations.

39. The man's daughter told the investigator that her father was restrained by an escort chain while he was an inpatient at the Freeman Hospital (an escort chain is a long chain with a handcuff at each end, one of which is attached to

the prisoner and the other to an officer). Despite a number of requests to HMP Holme House and HMP Northumberland, the prisons did not provide escort risk assessments and logs for the time the man was in hospital from 18 June to 23 July 2013.

40. The only available document was the person escort record when the man was admitted to hospital from Northumberland prison on 18 June 2013. The document noted that the man was regarded as a risk to others as, on 13 December 2012, he had been punished by spending 21 days cellular confinement in the segregation unit for inappropriate behaviour towards a female nurse. The sexual nature of his offence was also noted. The same document was used when the man transferred from the Freeman Hospital to Holme House on 23 July 2013.

41. Without reviewing the escort risk assessment and bed watch logs we are unable to assess whether the man's medical condition was fully considered and whether the use of restraints was appropriate. However, at least by July 2013 the man was very elderly, frail and seriously ill and it appears unlikely that he posed much of a risk to the public or of escape at that time. In the absence of any evidence to the contrary, we cannot be satisfied that the use of restraints for the man was justified by a fully considered risk assessment as the court judgement requires. We make the following recommendation:

The Director of HMP Northumberland should ensure that risk assessments for prisoners in hospital fully take into account individual circumstances, including how their health and mobility impacts on their risk of escape, and are based on the actual risk the prisoner presents at the time.

Liaison with the man's family

42. The man's daughter was critical of the lack of information provided by staff at Northumberland prison about her father's illness. She contacted the prison on 21 May as she was concerned that she had not heard from her father and was told he was in hospital. The prison then arranged for her to have unrestricted visits to the hospital.

43. The man's daughter said that she had asked the Head of Healthcare from HMP Northumberland about her father's diagnosis, treatment and care at the multi-disciplinary meeting held at the Freeman Hospital on 18 July. She said the Head of Healthcare had agreed to contact her after the meeting, but she did not receive any more contact from HMP Northumberland. The man was moved to Holme House just a few days later.

44. We are satisfied that the man's daughter had a number of opportunities to speak to the hospital and the Macmillan Nurse. The records show that the man's daughter visited him frequently when he was at HMP Northumberland and was included in meetings about his care at the hospital and with the Macmillan Nurse working at the prison. However, there is no record that prison healthcare staff or other staff from the prison actively engaged with the

man's daughter to keep her informed. This resulted in some poor communication, including neglecting the man's daughter not being told when he was admitted to hospital in May.

45. PSI 64/2011 Safer Custody requires: "*Prisons must ensure that arrangements are in place for an appropriate member of staff to engage with the next of kin or nominated person of prisoners who are either terminally or seriously ill*". It suggests that it is good practice to meet families where the prisoner is hospitalised to give information including about escort arrangements". Prison Rule 22 also requires governors to notify families when a prisoner is seriously ill.

46. The man was told his diagnosis on 22 April, and was admitted to hospital on 18 May to treat an associated infection. Staff at HMP Northumberland should have informed his daughter, as his next of kin, of his serious illness and his subsequent hospital admission. We make the following recommendation:

The Director of HMP Northumberland should ensure, in line with PSI 64/2011 and Prison Rule 22, the next of kin of seriously or terminally ill prisoners are informed as soon as possible of their condition and any hospital admission.

47. On 23 July, a prison family liaison officer from Holme House was appointed to assist and support the man and his daughter. She met the man's daughter at the hospital before her father was discharged to Holme House.

48. The family liaison officer kept in close contact with the man's daughter until her father's death and in the days leading up to his funeral. All the man's property was returned to his daughter and funeral expenses offered to the family in line with national guidance. The man's daughter told us she was grateful for the support from the family liaison officer and we are satisfied that family liaison was more effective after the man moved to Holme House.

Compassionate release

49. Prisoners can be released from custody before their sentence has expired on compassionate grounds for medical reasons. This is usually when they are suffering from a terminal illness and have a life expectancy of less than three months.

50. The man was diagnosed with cancer in April 2013. In July, he was told that surgery was no longer an option and he would receive palliative care. On 6 September during a discussion with a Macmillan Nurse, the man was told the prognosis was poor and he had only weeks or months to live. The man said he would prefer to spend time out of prison with his family before he died.

51. On 9 September, the Healthcare manager discussed with a Macmillan nurse whether this would be an appropriate time to begin a compassionate release application for the man. However, as there was no clear prognosis of life expectancy at that stage they decided that an application could not proceed.

52. On 15 September, a nurse spoke to the man's daughter about her views about an application for release on compassionate grounds for her father. The man's daughter said she was satisfied with her father's care at Holme House and told the nurse she would prefer him to remain there.

53. Without a clear prognosis of three months or less, it is unlikely that an application for compassionate release would have been approved. We are satisfied that compassionate release was considered by healthcare staff and not progressed for this reason.

RECOMMENDATIONS

1. The Director of HMP Northumberland should ensure that risk assessments for prisoners in hospital fully take into account individual circumstances, including how their health and mobility impacts on their risk of escape, and are based on the actual risk the prisoner presents at the time.

2. The Director of HMP Northumberland should ensure, in line with PSI 64/2011 and Prison Rule 22, the next of kin of seriously or terminally ill prisoners are informed as soon as possible of their condition and any hospital admission.

ACTION PLAN

No	Recommendation	Accepted/Not accepted	Response
1	The Director of HMP Northumberland should ensure that risk assessments for prisoners in hospital fully take into account individual circumstances, including how their health and mobility impacts on their risk of escape, and are based on the actual risk the prisoner presents at the time.	Accepted	The Head of Security and Operations has b consulted over the process of assessing the level of restraints used when managing the of a prisoner that requires hospital treatmen This includes the need for regular managem checks to ensure all risks are identified and managed correctly according to individual circumstances. This will be cascaded to all managers responsible for authorising hospital/escort ri assessments.
2	The Director of HMP Northumberland should ensure, in line with PSI 64/2011 and Prison Rule 22, the next of kin of seriously or terminally ill prisoners are informed as soon as possible of their condition and any hospital admission.	Accepted	Due to the sensitive nature of this action an the implications of 'Medical Confidentiality', Head of Healthcare will be made aware of th requirement along with the palliative care manager to ensure that when a serious or terminal illness has been diagnosed, the family/NOK are notified as soon as practical possible.