



A Report by the
Prisons and
Probation
Ombudsman
Nigel Newcomen CBE

**Investigation into the death of a man in December
2013 while in the custody of HMP & YOI Moorland**

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 from lung cancer of a man in December 2013, while a prisoner at HMP Moorland. He was 66 years old. I offer my condolences to those who knew him.

A clinical reviewer assessed the clinical care the man received at Moorland. The prison cooperated fully with the investigation.

The man had been in prison since 16 February 2012 and was moved to Moorland on 3 July 2012. His initial health screen indicated that he suffered from heart disease and had limited mobility. He was a heavy smoker and, despite advice, refused to give up. He settled at Moorland and had no significant healthcare issues until September 2013 when he was treated for a pain in his chest.

The man's health deteriorated and, on 5 December 2013, he was admitted to hospital with breathing difficulties. An X-ray the next day indicated he might have lung cancer. He remained in hospital and tests confirmed he had lung cancer just an hour before his death.

I agree with the clinical reviewer that the man received a good standard of care at Moorland. However, I do not consider the use of restraints when he was taken to hospital was always justified by a fully considered risk assessment, a matter I have raised previously at Moorland.

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.

Nigel Newcomen CBE
Prisons and Probation Ombudsman

June 2014

CONTENTS

Summary

The investigation process

HMP & YOI Moorland

Issues

Recommendations

Prison Service action plan

SUMMARY

1. The man was remanded to HMP Leeds on 16 February 2012. His health was poor and he had limited mobility. He had previously had a heart by-pass operation and he suffered from vascular disease. He was a heavy cigarette smoker and an alcoholic. He was sentenced to four years in prison on 22 May. On 3 July 2012, he transferred to HMP Moorland.
2. At Moorland healthcare staff drew up care plans to monitor the man's coronary disease and reviewed him frequently. He did not report any other significant health issues until early September 2013 when he complained of pain in his chest. He was given medication to relieve the pain.
3. On 9 October, the man's chest was still painful and tender to touch. The doctor suspected a fractured rib. He prescribed antibiotic medication and referred him for a chest X-ray. He initially refused to go for an X-ray, but eventually had one on 24 October. His health declined further in the following weeks, despite treatment and medication. On 4 November, the X-ray results showed fluid on his lungs and a prison GP prescribed medication and a nebuliser to alleviate this.
4. On 4 December, a prison GP noted that the man's health had deteriorated. He was wheezy and breathless and his heartbeat was irregular. He initially refused to go to hospital, but went the next day and was admitted for tests. On 6 December, X-ray results indicated that he might have lung cancer and he had further tests. He remained in hospital and his condition continued to deteriorate. He said that he did not want any family members informed of his illness or eventual death.
5. A few days later a diagnosis of lung cancer was confirmed. He was unconscious at the time and never regained consciousness. He died one hour later.
6. The clinical reviewer found that the man received a good standard of care at Moorland, which was equivalent to that he could have expected in the community. However, we are not satisfied that the use of restraints when he was taken to hospital was always justified by fully considered risk assessments and we make one recommendation about this.

THE INVESTIGATION PROCESS

7. The investigator issued notices to staff and prisoners at HMP and YOI Moorland informing them of the investigation and inviting anyone with relevant information to contact her. No one responded.
8. The investigator obtained copies of the man's relevant prison and medical records. NHS England commissioned a clinical reviewer to assess the man's clinical care at the prison. She wrote to the Governor about the preliminary findings of the investigation,
9. We informed HM Coroner for Teesside of the investigation who provided the post-mortem results. We have sent the Coroner a copy of this investigation report.
10. The family liaison officer and staff at Moorland were unable to trace any of the man's relatives. He would not provide these details when he arrived at the prison and was adamant he did not want anyone informed of his death.
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, efforts to trace his relatives, his location, whether compassionate release was considered; and security arrangements for escorts.

HMP MOORLAND

12. HMP & YOI Moorland is a Category C training prison in South Yorkshire. It holds up to 1000 adult and young adult men.
13. Health services are commissioned by NHS England (Doncaster) and provided by Nottinghamshire Healthcare NHS Trust. Services cover primary care, mental health and substance misuse. There is no inpatient facility and no full time nursing cover.

HM Inspectorate of Prisons

14. The most recent inspection of Moorland, in December 2012, found that the overall quality of health services had improved since the previous inspection. There was a wide range of clinics as part of a wing based service. Inspectors noted that an initiative with prisoner healthcare representatives on wings was working well, with proactive support for older prisoners and those with disabilities.

Independent Monitoring Board

15. Each prison in England and Wales has an Independent Monitoring Board (IMB) of unpaid volunteers from the local community to help ensure that prisoners are treated fairly and decently. In its latest published annual report, the IMB noted that the healthcare workload had increased considerably with the arrival of over 300 foreign national prisoners and over 300 sex offenders, many of whom were elderly and had complex needs. All houseblocks had an allocated nurse for treatment and triage and discussions were taking place about palliative and end of life care.

Previous deaths at HMP Moorland

16. There was one other death from natural causes in the year before that of the man's in HMP Moorland's open facility. In that investigation, we also identified a need for better risk assessment for the use of restraints for older, terminally ill prisoners attending hospital.

ISSUES

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

17. On 16 February 2012, the man was remanded to HMP Leeds. It was noted that he suffered from heart disease, had had a heart bypass operation in 2008 and was prescribed warfarin. He was a heavy smoker and was an alcoholic. His mobility was poor because of vascular disease and childhood polio. On 22 May 2012, he was sentenced to four years in prison.
18. The man transferred to Moorland on 3 July 2012. Healthcare staff drew up a care plan to monitor his coronary disease, which included regular blood tests to check the dosage of his warfarin medication. He was offered smoking cessation advice, but said he did not want to give up. He declined a number of offers to help him stop during his time at Moorland and continued to smoke heavily. Healthcare staff saw him frequently for his coronary care and warfarin management over the next year.
19. On 5 September 2013, a nurse saw the man, who complained of a pain in the right side of his chest following a bout of heavy sneezing. He said he did not have a cough and was not breathless. She gave him pain relief medication and referred him to the GP for a routine review. The records do not show whether this review took place.
20. On 9 October, a nurse saw the man who said that he had a pain in his right side. He said he had been coughing up brown sputum for two weeks and was experiencing pain when he breathed in. The same day, a prison GP examined him and noted that he had a productive cough and his ribs on his right side were tender. The doctor suspected a fractured rib and requested a chest X-ray. He prescribed antibiotics and pain relief. He refused to go to hospital for the X-ray at that time.
21. A prison GP examined the man on 18 October and recorded that he had back pain and increased his pain relief. He went to hospital for a chest X-ray on 24 October.
22. On 4 November, a prison GP saw the man as he had produced blood- stained phlegm. He noted that he still had a productive cough and was having trouble lying down because he was breathless and wheezy. The doctor noted that his chest was crackly and wheezy and he had oedema (swelling because of excess fluid) on both feet and ankles. The results of the chest X-ray taken on 24 October were not on his prison medical record, so the doctor arranged for the results to be faxed to him immediately from the hospital. The X-ray indicated what appeared to be infected fluid on the lung with evidence of a small right sided plural effusion (collection of fluid next to the lung). The doctor prescribed a diuretic to reduce excess fluid, anti-inflammatory medication and a salbutamol nebuliser to aid breathing.

23. A nurse saw the man on 6 November. She noted that he continued to feel unwell and chesty, although the nebuliser was helping. His feet were less swollen. The nurse saw him again on 8 November and recorded that he seemed brighter, his feet were much better and his phlegm was clear, but thick.
24. Healthcare staff continued to monitor the man's health. On 2 December, a nurse noted that he said that he felt chesty again and that she considered that he had lost weight and looked thin and gaunt. On 4 December, a nurse recorded that he was pale and having difficulty breathing. A doctor examined him that day and noted his coughing had increased; he had an irregular heart rate and swollen ankles. The doctor advised that he should go to hospital, but he refused. The next day he was still unwell and agreed to go. He was taken to hospital at 11.15am.
25. A few days later in hospital the man had a chest X-ray which indicated the possibility of lung cancer. He remained in hospital and his health continued to decline. On 10 December at 2.45pm the diagnosis of lung cancer was confirmed, but he was unconscious and thus unable to be informed. He died just an hour later.
26. The clinical reviewer is satisfied that healthcare staff at the prison appropriately investigated the man's symptoms and referred him for hospital tests when indicated.

The man's medical treatment

27. The clinical reviewer noted that the treatment the man received at Moorland was compassionate and dignified and his care was equal to that he could have expected in the community. His short period of care after his diagnosis was the responsibility of the hospital. (Hospital care is not within the Ombudsman's remit.)
28. A Senior Officer supported him in the final hours of his life. Another Senior Officer, who was also escorting the man, recorded that he fell asleep at around 12.30pm. At 2.45pm, hospital staff put in place a palliative care plan after the diagnosis of lung cancer, but he never regained consciousness. His death was confirmed at 3.45pm.
29. A post-mortem examination gave the cause of death as disseminated non-small cell carcinoma (lung cancer).

The man's location

30. The man had a shared cell on the ground floor at Moorland. He had a 'buddy carer', a trained prisoner who assists older or disabled prisoners with their day-to-day living. Other prisoners and staff at Moorland were aware of his ill health and assisted him. He was able to manage his personal care, with some help from healthcare staff.

31. As the man's condition deteriorated, he was admitted to hospital and remained there until his death.
32. We are satisfied that the man was appropriately located and transferred to hospital when his health declined.

Restraints, security and escorts

33. The Prison Service has a duty to protect the public when escorting prisoners outside prison, such as 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.
34. When the man was taken to hospital on 5 December, a nurse completed the healthcare section of the escort risk assessment. She noted there was no healthcare objection to the use of restraints, which is not the test required by the court judgement. There is little detail about his medical condition and nothing about how it impacted on his risk of escape. A senior manager authorised that he should be accompanied by two officers and an escort chain should be used to restrain him. (An escort chain is a long chain with a handcuff at each end, one of which is attached to the prisoners and the other to an officer.)
44. The next day, 6 December, it was noted that the man was in poor health, had no mobility and was receiving oxygen therapy. An operational manager, reviewed the risk assessment and the escort chain was removed at 1.30pm and not reapplied.
45. When he was taken to hospital, the man was very unwell, breathless and weak. There is no evidence that the decision that he should be restrained was justified by a fully considered risk assessment that took into account his medical condition and mobility and therefore his risk of escape, as the 2007 High Court judgement requires. We have raised this matter with Moorland before. We make the following recommendation:

The Governor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, and that assessments fully take into account the health of a prisoner and are based on the actual risk the prisoner presents at the time

The man's next of kin

46. The man did not register any next of kin in his personal prison file and did not have any visits or make telephone calls while in prison. On 6 December, he told an officer in hospital that he had no family and did not want anyone informed of his illness or his eventual death. The officer asked the man's offender manager and Bradford Probation Services to try to trace his next of kin, but they had no records of any family.
47. An officer visited the man in hospital and he was again adamant that he did not want any family contacted. Later that day, the officer visited the man's cellmate and his prisoner carer and told them that he was very ill. The next day, wing staff informed them that he had died.
48. After the man's death the prison informed the Coroner that the man had requested no family contact. Further enquires have been unable to establish any next of kin.
49. The prison arranged and paid for the funeral, which was held on 8 January 2014. The prison chaplain officiated at the service, which was attended by prison staff.

Compassionate release

50. 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. The man's late diagnosis of a terminal illness would have made an application for compassionate release unachievable.

RECOMMENDATION

The Governor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, and that assessments fully take into account the health of a prisoner and are based on the actual risk the prisoner presents at the time

ACTION PLAN:

No	Recommendation	Accepted/Not accepted	Response	Target date for completion and Function Responsible	Progress (to be updated after 6 months)
1	The Governor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, and that assessments fully take into account the health of a prisoner and are based on the actual risk the prisoner presents at the time.	Accepted	<p>All relevant staff are now aware of the need to provide evidence that medical assessments of mobility have been taken into consideration when undertaking risk assessments prior to a prisoner attending outside hospital.</p> <p>Risk assessments for prisoners in hospital are dynamic and the use of restraints is reviewed, as necessary, to take into account any significant changes in the prisoner's condition.</p>	<p>Completed and ongoing</p> <p>Head of Operations/Healthcare</p>	