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 the man in July 2014 at HMP Holme House

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 kidney and lung cancer on 29 July 2014, at HMP Holme House. He was 64 years old. I offer my condolences to the man's family and friends.

One of my investigators carried out the investigation. A clinical reviewer reviewed the man's clinical care in prison. HMP Northumberland and HMP Holme House cooperated fully with the investigation.

The man was originally sentenced to prison in October 2011 and held at HMP Holme House. After a further sentence in 2013, he transferred to HMP Northumberland. The man suffered from chronic obstructive pulmonary disease (COPD) and healthcare staff at both prisons saw him frequently to manage his condition.

In April 2014, a prison GP referred the man to a specialist when his symptoms suggested cancer. Hospital doctors subsequently diagnosed incurable kidney and lung cancer. In line with his wishes, he remained at HMP Northumberland as long as possible, but transferred to the healthcare unit at HMP Holme House, which has specialist palliative care facilities, for the final six days of his life.

The clinical reviewer found that the man received a good standard of care at both prisons and his end of life care was exemplary. I agree that the man received very good care. It is therefore regrettable that he was restrained by handcuffs when he transferred from HMP Northumberland to HMP Holme House in the last days of his life. I do not consider that this was necessary or justified by a fully considered risk assessment. This is a matter I have raised with HMP Northumberland before. The Director needs to ensure that appropriate and humane decisions are made, based on a proper assessment of a prisoner's condition and actual risk at the time.

The 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 **February 2015**

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SUMMARY

1. The man was sentenced to six years in prison in 2011. In 2013, he was sentenced to nine years and six months for further offences. Initially, he was held at HMP Holme House, but was transferred to HMP Northumberland in May 2013. The man had a history of chronic obstructive disorder (COPD – lung disease) and was prescribed inhalers. He was treated for COPD throughout 2012 and 2013.

2. A doctor examined the man in April 2014, and was concerned about his weight loss. The doctor referred him urgently to hospital with suspected cancer. In May, hospital doctors diagnosed kidney and lung cancer.

3. From June 2014, specialists considered his condition was not treatable. Healthcare staff treated the man palliatively, focusing on his symptoms and pain management. The man's condition deteriorated quickly, and he moved to the specialist palliative care suite at HMP Holme House in July. The man died in July 2014.

4. We agree with the clinical reviewer that the care the man received in prison was equivalent to that he could have expected to receive in the community. However, we are not satisfied that the use of restraints to escort the man from HMP Northumberland to HMP Holme House was justified. We make one recommendation.

THE INVESTIGATION PROCESS

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

6. NHS England commissioned a clinical reviewer to review the man's clinical care in prison.

7. The investigator obtained copies of the man's prison medical records and relevant extracts from his prison record. The investigator interviewed the healthcare administrator at Northumberland in September 2014 and the security manager at Northumberland by telephone in October 2014.

8. We informed HM Coroner for Teesside of the investigation, who provided the post-mortem report. We have sent the Coroner a copy of this investigation report.

9. One of the Ombudsman's family liaison officers contacted the man's brother, his nominated next of kin, to explain the investigation. He said the man had been happy in his location and believed he had been treated well. The man's brother said they had been able to communicate by video link and they had both appreciated this.

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

11. The man's family received a copy of the draft report and had no comments to make. The prison considered our draft report and recommendation, 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.

12. HMP Northumberland was formed in 2011 by the merger of HMP Acklington and HMYOI Castington and can hold more than 1,300 men. Sodexo Justice Services has managed the prison since 1 December 2013. Care UK provide healthcare services.

HM Inspectorate of Prisons

13. The most recent inspection of HMP Northumberland in June 2012 found that the amalgamation of the two prisons had gone well. Inspectors found that healthcare provision was reasonable and the care of patients with lifelong conditions was good.

Independent Monitoring Board

14. Each prison in England and Wales 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 most recent report the IMB noted that, at a time of major change in the prison there had been no increase in complaints about healthcare.

HMP HOLME HOUSE

15. HMP Holme House is a local prison holding over 1200 men. Care UK provides health services at the prison. There is a 24 hour inpatient unit with 28 beds and palliative care facilities.

HM Inspectorate of Prisons

16. The most recent inspection of HMP Holme House was in August 2013. Inspectors found that the overall standard of healthcare was good. They described palliative care at the prison as excellent, with multi-departmental care based on Macmillan Cancer Support best practice.

Independent monitoring Board (IMB)

17. In its most recent report for Holme House for the year to December 2013, the IMB found a high standard of healthcare services, comparable to those offered in the community. The IMB noted that a new End of Life suite had opened and there was a comfortable sitting room for visiting relatives. The Board commended the care and compassion nurses and officers gave to terminally ill prisoners.

Issues from previous deaths

18. The man was the eighth prisoner to die from natural causes at Holme House since the beginning of 2013. We have made a recommendation about risk assessment for the use of restraints at Northumberland before.

ISSUES

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

19. On 4 October 2011, the man was sentenced to six years and sent to HMP Holme House. His initial reception health screen recorded a history of chronic obstructive pulmonary disease (COPD) for which he used inhalers.

20. On 22 February 2013, he was sentenced to nine years six months in prison for further offences and, on 10 May 2013, he was transferred to HMP Northumberland. Throughout the man's first two and a half years in prison, healthcare staff saw him frequently to review his COPD and for associated chest infections. GPs treated him with antibiotics and referred him to hospital when his COPD worsened.

21. On 28 April 2014, prison GP, A, examined the man as he had developed a limp in his left leg and had lost weight. The doctor referred him to Wansbeck General Hospital, Northumberland, under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks. Three days after the referral, the hospital haematology department rang to say that the man needed a CT scan. On 13 May, the GP contacted the hospital to check what was happening and was told a hospital consultant would provide an update.

22. On 19 May, the prison GP, A, saw the man and noted that he looked unwell. He rang the hospital again to chase the appointment and found that the man had a CT scan arranged for 22 May.

23. On 22 May, the CT scan revealed a kidney tumour, which seemed to have spread. The next day, prison GP, B, told the man about his condition. She said that it looked likely his care would be palliative, to control symptoms and pain rather than to cure the condition. Nurse A, who was the man's key worker and supported him. In June, hospital doctors confirmed that the cancer had spread to the man's lungs and no active treatment was possible.

24. The clinical reviewer concluded that the doctor appropriately referred the man to specialists. There were some delays with hospital appointments, but hospital care is outside the remit of this investigation. The clinical reviewer has made a separate recommendation for the prison healthcare provider and the Local Acute Trust and Secondary Commissioner about this. We are satisfied that the prison GP referred the man quickly and he was appropriately diagnosed. We are satisfied that the man was fully informed of his condition and well supported by healthcare staff after his diagnosis.

The man's clinical care

25. After his diagnosis, the multidisciplinary cancer team at Wansbeck General Hospital supervised and managed the man's care. There was frequent contact between the prison and the hospital teams.

26. The man's cancer progressed rapidly. Healthcare staff at Northumberland monitored him, but he became steadily more ill with jaundice and swollen legs and had to use a wheelchair. Doctors prescribed painkillers and medication to help him swallow food. His key worker, Nurse A, ensured his palliative care needs were met.

27. On 13 June 2014, a community Macmillan nurse visited the man to talk about his care plans. He said that he was satisfied with his care and management in the prison. The nurse planned to see him again six weeks later, but said she was available at any time.

28. The man had open sores on his legs and was in constant pain. Nurses monitored the wounds and changed his dressings daily. They applied creams to ease his discomfort and gave him medication to help him swallow his food.

29. On 23 July, the man moved to HMP Holme House's inpatient unit. The prison left his cell permanently unlocked to allow healthcare staff easy access for full nursing care.

30. Over the following days, the man received pain relief and other palliative medication. Records show nurses looked after him well. They frequently repositioned him to try to alleviate skin sores as his condition deteriorated. Staff managed his pain well and in his final days nurses remained with him continuously. He died at 10.20am on 29 July. At the time the man died a nurse was with him.

31. A post-mortem revealed that the man had died from carcinomatosis and metastatic renal cell carcinoma (kidney and lung cancer).

32. We agree with the clinical reviewer that the man's care and treatment in prison was equivalent to that he could have expected to receive in the community. Healthcare staff liaised effectively with the hospital about his care and there were good, clear holistic care plans, which were well communicated to healthcare staff and discussed with the man. His extensive leg sores, constant pain and problems eating were challenging for staff, but they used specialist advice to deliver effective treatment. Staff looked after the man well and maintained his dignity throughout his decline. Nurses stayed with him to ensure he was not alone when he died. We are satisfied that the man received excellent support and treatment from prison healthcare staff throughout his illness.

The man's location

33. The man was at HMP Northumberland when he received his diagnosis. He stayed on the same residential wing, but shortly after his diagnosis, he moved to a larger cell with a hospital bed. Nurses visited him daily to ensure his healthcare needs were met.

34. As the man's condition deteriorated, he needed more medication and could not walk. Eventually, it became clear that he required 24 hour nursing which was not available at HMP Northumberland. Staff discussed a move to HMP Holme House (which has 24 hour healthcare and a palliative care suite) with the man. At first, the man was reluctant to move, but accepted that it was necessary. He moved to the palliative care suite at Holme House on 23 July.

35. We are satisfied that the man was appropriately located throughout his illness.

Restraints, security and escorts

36. 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.

37. 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 found that restraining a prisoner by handcuffs who was receiving chemotherapy (and by implication, other life saving treatment) was degrading and would be likely also to be regarded as inhumane unless justified by other relevant considerations.

38. When the man moved to the palliative care suite at Holme House, on 23 July, he was in the final stages of his terminal illness. Despite this, officers restrained him for the journey. The risk assessment does not show the level of assessed risk, but security staff referred to the man's offences and said he was a risk to the public and his victims. His personal officer had added a note that he had no concerns about the man who was very ill. The healthcare section indicated no medical objection to the use of restraints, but did not comment of whether the man's condition impacted on his risk of escape, as required by the High Court judgement. The officer whose name appears on the healthcare section said that she had not completed or signed the risk assessment,

but that this was completed by an administrator and not a clinician. She noted that her name had been spelt incorrectly on the form. We have not been able to find out who completed it.

39. The Head of Security at Northumberland authorised the use of restraints and completed the form as if it were a hospital admission and referred to arrangements to facilitate treatment. Officers handcuffed the man for the journey to Holme House.

40. The Head of Security at Northumberland said that he had completed the risk assessment the day before the man left. He said he had had reservations about the lack of detail in the medical assessment, but he did not seek any other information. He knew the man was very ill but he said he did not know he was moving for end of life care, although this was clear from the form. He suggested that such information would be medical in confidence.

41. It is clear that the risk assessment did not take into account the man's actual medical condition at the time, his mobility or the impact of this on his risk of escape. At the beginning of June, his medical record noted that he could mobilise only short distances and used a wheelchair to get around the wing. His mobility got worse from then on and, shortly before his transfer, records indicate that he found it difficult to get in and out of bed and could barely walk. It is difficult to see how the use of restraints was justified.

42. The Prison Service has a responsibility to protect the public, but security must be balanced with humanity and measures must be proportionate to a prisoner's individual circumstances. We have made previous recommendations to Northumberland about the unjustified use of restraints. All staff involved need to ensure that a prisoner's health and mobility are fully taken into account in risk assessments for the use of restraints in line with the guidance in the 2007 High Court judgment. Ultimately, it is the Director's responsibility to ensure that the process is managed properly, but the Head of Healthcare also needs to ensure that healthcare staff understand their responsibilities and have appropriate input into the risk assessment process. We repeat the following recommendation:

The Director and the Head of Healthcare at Northumberland should ensure 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.

Liaison with the man's family

43. After the man was diagnosed with cancer, on 4 June 2014, managers at HMP Northumberland asked a senior prison custody officer and trained family liaison officer, to speak to the man about contacting his family. The man told her that his brother was his next of kin. However, his brother also suffered from ill health and she arranged for him to speak to his brother via a video link facility at the local probation office on 22 July 2014.

44. Officer A acted as family liaison officer after the man moved to Holme House. She visited him frequently and kept in contact with his brother by telephone.

45. On 23 July, the Head of Safer Prisons and Equality contacted the man's sister-in-law and arranged a family visit for the following day. The man's sister-in-law, niece and her husband were able to visit the man in the family room at Holme House. The Head of Safer Prisons and Equality arranged to keep them updated by phone, and they arranged to visit later in the week. Sadly, the man died before this happened.

46. On 29 July, the Head of Safer Prisons and Equality and Officer A visited the man's brother and sister-in-law to inform them the man had died. Holme House arranged and paid for the funeral in line with national guidance. We are satisfied the prison kept the man's family informed when his condition deteriorated significantly, and that contact after he died was appropriate.

Compassionate release

47. 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.

48. Prison staff discussed the possibility of compassionate release with the man. He said that he did not want to apply for compassionate release because he felt well cared for at Holme House and there would be no benefit for him. We are satisfied that the prison appropriately informed the man of compassionate release.

RECOMMENDATION

1. The Director and the Head of Healthcare at Northumberland should ensure 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: Mr The man – HMP Holme House and HMP Northumberland

No	Recommendation	Accepted/ Not accepted	Response	Target date for completion and function responsible
1	The Director and the Head of Healthcare at Northumberland should ensure 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	Discussions will take place between the Head of Healthcare and the Head of Security if there are particular healthcare considerations that have a direct consequence on the security risk that a prisoner poses at a particular time and the escort risk assessment will be adjusted to reflect such conditions.	December 2014 Head of Healthcare Head of Security