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 in August 2014 at HMP Exeter

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 of cancer in August 2014 at HMP Exeter. He was 73 years old. I offer my condolences to the man's family and friends.

The investigator carried out the investigation. A clinical reviewer reviewed the man's clinical care in custody. HMPs Dartmoor and Exeter cooperated fully with the investigation.

The man was sentenced to four years and eight months in prison in February 2013 and shortly afterwards transferred to HMP Dartmoor. In November, a doctor examined the man after officers were concerned about his lack of mobility. The doctor referred him for tests and, in February 2014, a neurologist diagnosed cancer in his lung and brain. In April, a doctor told the man that his condition was terminal and his prognosis was less than six months.

In May, after a short stay in hospital to manage his pain and clinical care, the man moved to the palliative care suite at HMP Exeter. The man's condition continued to decline and he died peacefully on 12 August.

The investigation identified some concerns about medical record keeping at Dartmoor which made it difficult to be sure that the man was referred to hospital at the earliest opportunity. I am also concerned that Dartmoor used restraints when the man went to hospital, despite his frailty and poor mobility. After the man arrived at Exeter, both healthcare and prison staff looked after him well and I am satisfied that he received very good end of life care.

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 **April 2015**

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SUMMARY

1. On 15 February 2013, the man was sentenced to four years and eight months and was sent to HMP Winchester. He transferred to HMP Dartmoor three weeks later.

2. In November, after officers became concerned about his lack of mobility, a prison GP examined the man and referred him for tests. A consultant neurologist examined the man and, on 26 February 2014, a scan showed he had cancer in his brain and lungs. The consultant could not give a prognosis at the time.

3. On 11 April, after receiving information from the hospital, a prison GP told the man that his diagnosis was terminal and his life expectancy was less than six months. They discussed his medication and ongoing care. On 13 May, the man decided that he did not want to be resuscitated in the case of a cardiac or respiratory arrest.

4. On 18 May, the hospital admitted the man to manage his pain and other symptoms. On 20 May, he moved from hospital to the palliative care suite at HMP Exeter. Exeter agreed comprehensive care plans with input from a Macmillan nurse and the man and his family. The man's condition deteriorated and he died peacefully on 12 August. A nursing assistant was with him when he died.

5. We consider that the man received an excellent standard of end of life care at Exeter. His symptoms, including his pain, were largely well controlled and he and his family were appropriately involved in decisions about his care. The clinical reviewer had some concerns about aspects of healthcare at Dartmoor and has made some recommendations, not directly related to the man's terminal illness, which the Head of Healthcare at Dartmoor will need to address. We are concerned that medical records at Dartmoor were not sufficiently comprehensive to assure us that the man was referred for specialist care at the earliest opportunity. We are also concerned that the man was restrained without proper justification when he attended hospital appointments from Dartmoor. We make two recommendations about these matters.

THE INVESTIGATION PROCESS

6. The investigator issued notices to staff and prisoners at HMP Exeter informing them of the investigation and inviting anyone with relevant information to contact him. No one responded.

7. The investigator obtained the man's prison medical records and relevant extracts from his prison record. He informed the prison of the preliminary findings of the investigation.

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

9. We informed HM Coroner for Exeter and Greater Devon District of the investigation, who provided the cause of death. We have sent the Coroner a copy of this report.

10. One of the Ombudsman's family liaison officers wrote to the man's family to explain the investigation process. The man's family had no specific issues for the investigation to consider and said that they appreciated the good standard of care the man had received at Exeter.

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, his location, security arrangements for hospital escorts, liaison with his family, and whether compassionate release was appropriately considered.

12. The man's family received a copy of the draft report and indicated that they were satisfied with the findings.

13. The draft report was shared with the Prison Service. The Prison Service pointed out some factual inaccuracies and this report has been amended accordingly. The action plan has been added to the end of this report.

HMP EXETER

14. HMP Exeter is a local prison holding about 500 men. Dorset Health Care University NHS Foundation Trust provides health services. There are 10 cells on F wing for prisoners who need social care and one cell for end of life palliative care. F wing opened in March 2013 and has facilities for visiting relatives.

Her Majesty's Inspectorate of Prisons

15. The most recent inspection of Exeter was in August 2013. The Inspectorate found that care for prisoners on F wing with complex needs and disabilities was impressive. Health services were available 24-hours a day with a wide range of clinics, including for chronic diseases. Two nurses led the care of older prisoners. Palliative care was supported through an excellent new suite which had been created for the care of terminally ill prisoners.

Independent Monitoring Board (IMB)

16. 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 recently published report for the year to December 2013, the IMB said GP cover had been problematic with insufficient numbers and little continuity. However, health services were generally good. The IMB noted that F wing had been refurbished and provided good care for terminally ill prisoners. .

Previous deaths at Exeter

17. The man was the fourth prisoner to die of natural causes at HMP Exeter since January 2012. In other end of life cases, we have found that Exeter provided good care.

HMP DARTMOOR

18. HMP Dartmoor is a medium secure prison holding about 660 men. In common with HMP Exeter, health services are provided by Dorset Health Care University NHS Foundation Trust. There are no inpatient facilities.

Her Majesty's Inspectorate of Prisons

19. The most recent inspection of Dartmoor was in December 2013. The Inspectorate found that seven GP led clinics were available each week and waiting times for these clinics were reasonable. Prisoners could normally see a GP within a week. Dartmoor provided healthcare that included core day cover by full time staff but a more limited service at the weekend.

Independent Monitoring Board

20. In its most recently published report for the year to September 2013, the IMB said engagement by healthcare with the prison regime had been inconsistent. However, the provision of healthcare was satisfactory.

ISSUES

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

21. The man was sentenced to four years and eight months in prison on 15 February 2013 and sent to HMP Winchester. He had had a heart attack in May 2011 and was receiving medication for high blood pressure, high cholesterol level, heart failure, and an enlarged prostate. A doctor reviewed and continued his medication. The man transferred to HMP Dartmoor on 5 March 2013.

22. Nothing significant was noted in the man's medical records until 8 November, when a prison GP examined the man after prison staff were concerned about his lack of mobility. The doctor noted that he had some difficulty with physical tests and some neurological symptoms. He was already on the waiting list for a podiatrist and the doctor referred him for thyroid, renal and liver function tests. On 18 November, a prison healthcare administrator noted that the man had been referred to the neurology department at Derriford Hospital, Plymouth, as the GP was concerned the man was suffering from the early onset of Parkinson's disease.

23. On 12 February 2014, a consultant neurologist at Derriford Hospital considered that the man might have motor neurone disease and asked for blood tests and an urgent MRI scan. The scan took place two days later. On 18 February, hospital radiology staff informed a prison GP that a brain tumour was the most likely diagnosis.

24. The same day, the GP arranged an urgent referral to the hospital's spinal and brain multidisciplinary team. A nurse manager explained the result of the scan to the man, and told him he would need further hospital treatment. The man said he understood.

25. On 23 February, the nurse discussed the scan results with the man. She recorded that his pupils were uneven and he was unsteady on his feet and had difficulty washing and dressing due to a loss of coordination and sensation in his hands.

26. On 26 February, a consultant neurologist saw the man at Derriford Hospital and explained that the MRI scan had shown that there were two cancers; one in his lung and one in his brain. On 28 February, the nurse spoke to a member of the neuro-oncology team who diagnosed a brain tumour probably secondary to lung cancer. On 12 March, a hospital consultant clinical oncologist told the man that the cancer was life limiting, but he could give no prognosis at the time. The man was not suitable for surgery, but would receive radiotherapy.

27. On 8 April, the nurse explained to the man that his outlook was poor and gave him advice and support. On 11 April, the GP informed him of his terminal diagnosis and discussed his symptoms and how they could be controlled.

28. By the time of his diagnosis, the man's cancer was incurable and had spread to his brain. The clinical reviewer noted that even if a diagnosis had been made shortly after the consultation on 8 November, it is unlikely to have affected the outcome for the man. However, he was concerned that the man's clinical record before his diagnosis was very limited and the notes taken during the GP's consultation with him on 8 November were too brief for him to make a judgement about whether doctors should have made an earlier urgent referral for suspected cancer. We make the following recommendation:

The Head of Healthcare at Dartmoor should ensure that healthcare staff complete medical records in line with the General Medical Council and Nursing and Midwifery Council's guidance.

The man's clinical care

29. The man began two weeks of radiotherapy on 25 March. Healthcare staff had contacted Macmillan nurses who became involved in the man's care on 31 March.

30. On 8 April, a consultant oncologist informed the prison that the man's prognosis was less than six months. On 11 April, the GP told the man, and they discussed his symptoms and medication. The doctor prescribed medication for pain and symptom relief. On 14 April, the nurse discussed his prognosis with him again and noted he was fully aware of the likely outcome. A few days later, the man told the nurse that he had decided that he did not want to be resuscitated if he had a cardiac or respiratory arrest.

31. On 29 April, staff sent the man to hospital because his blood sugar level was high. Doctors diagnosed type two diabetes and stabilised the man in hospital. He returned to Dartmoor on 2 May.

32. On 13 May, a prison GP saw the man, to discuss a Treatment Escalation Plan (TEP- for end of life care) and to discuss his decision about resuscitation. The man reiterated that he did not want to be resuscitated and signed an order to confirm this.

33. Records show that doctors prescribed oral morphine for the man on 17 May to relieve his increasing pain. The next day, he was admitted to hospital to help improve the management of his pain. He stayed in hospital until 20 May.

34. Healthcare staff at Dartmoor arranged for the man to transfer from the hospital directly to the palliative care unit at HMP Exeter on 20 May. A nurse accompanied him and, when he arrived at Exeter, healthcare staff carried out a full medical assessment and provided for his initial care needs. The next day a multidisciplinary team discussed his ongoing care and developed a comprehensive support plan. Nurses from the local hospice were closely involved in the man's ongoing care.

35. On 10 June, the man's nephew attended a multidisciplinary meeting and discussed and agreed arrangements for the man's end of life care. He confirmed again that he did not want to be resuscitated. The man's nephew said that his family considered that the man was receiving excellent care at Exeter and were happy for him to remain there.

36. On 24 July, a prison GP noted that the man was nearing the end of his life and prescribed appropriate medication to relieve his symptoms. She emailed all relevant staff in the prison to ensure that appropriate procedures were in place for when he died.

37. By 7 August, records show that the man was close to the end of his life. Healthcare staff were sensitive and thoughtful about his needs and care, and it is evident that staff looked after him compassionately. .

38. On 12 August, the man died peacefully with an ARK carer at his bedside. A doctor confirmed his death. The Coroner confirmed the cause of death was broncho-pneumonia and lung cancer which had spread to his brain
.

39. After the man's diagnosis, his treatment plans, attendance at outpatient clinics and treatment by specialists were well documented and he attended all required medical appointments. Record keeping at Exeter was excellent and healthcare staff were professional and compassionate and involved community hospice staff in his care. We are satisfied that the man's care in prison was at least equivalent to that he could have expected to receive in the community.

The man's location

40. The man was at Dartmoor when he was diagnosed with cancer in February 2014. When his condition deteriorated in April staff considered a transfer to the palliative care unit at Exeter but waited until the consultant at Derriford Hospital transferred the man's clinical care to the Royal Devon and Exeter Hospital. In the meantime, a prisoner 'buddy' supported him well with day to day living tasks. On 15 May, healthcare staff were concerned as the man had had a number of falls. They gave him a personal alarm, in case he could not reach his cell bell. Healthcare staff followed up the transfer to Exeter, but the hospital had not yet transferred the man's care.

41. On 18 May, Derriford Hospital admitted the man for pain control and nursing care. On 20 May, he moved directly to the palliative care suite at HMP Exeter. While, an earlier move to Exeter might have been preferable, overall, we are satisfied that the man's location during his illness was appropriate.

Restraints, security and escorts

42. 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 takes into account factors such as the prisoner's health and mobility.

43. 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 the 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 said that restraining a prisoner by handcuffs receiving chemotherapy (and by implication, other life saving treatment) was degrading and that this would be likely to be regarded as inhumane, unless justified by other relevant considerations.

44. The man attended hospital a number of times while at Dartmoor. Records show that from 12 February, each time the man attended hospital, two officers escorted him and he was either handcuffed or restrained by an escort chain (a long chain with a handcuff at each end, one of which is attached to the prisoner and the other to an officer).

45. The risk assessments show that Dartmoor considered the man a high risk to children because of his offence but a 'normal' risk in all other categories, including risk of escape. There was no input from healthcare staff about how the man's condition impacted on his risk of escape, as the High Court judgement requires.

46. Public protection is fundamental, but security measures must be proportionate to a prisoner's individual circumstances. The man was 73 years old and frail. He suffered neurological problems which made it difficult to walk. He was in pain, clearly unwell and needed help with day-to-day tasks. His condition clearly affected his ability to escape unaided, and the presence of two escorting officers would have mitigated this risk further.

47. Ultimately, it is the Governor'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 are not satisfied that the use of restraints was justified by a fully considered risk assessment. We make the following recommendation.

The Governor and Head of Healthcare at Dartmoor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, 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

48. The man's family were aware of his initial cancer diagnosis in February 2014 and both prison and nursing staff at Dartmoor supported them.

49. Soon after the man arrived at Exeter, on 23 May, the doctor met his family to discuss his condition and his care. Nurses and prison officers, including the prison's family liaison team, supported the man's family. The prison's family liaison officer met the man's brother and nephew on 31 May when they visited him. The man's nephew attended multidisciplinary team meetings on behalf of his family and their views were recorded and taken into account.

50. The man's family asked to be telephoned during the day when he died. The duty governor informed his family by telephone on the day he died, as agreed.

51. The man's funeral was on 28 August and a family liaison officer attended. Exeter contributed to the cost of the funeral, in line with national guidelines.

Compassionate release

52. 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

53. In May, staff at Dartmoor made a compassionate release application for the man. However, on 10 June. The man and his family said they preferred him to remain at Exeter where he was well cared for and settled. A doctor also said that moving the man was not in his best interests. The application was therefore discontinued.

54. We are satisfied that the prison appropriately considered and discussed the possibility of compassionate release with the man and his family, and his decision to remain in prison until his death was respected.

RECOMMENDATIONS

1. The Head of Healthcare at Dartmoor should ensure that healthcare staff complete medical records in line with the General Medical Council and Nursing and Midwifery Council's guidance.

2. The Governor and Head of Healthcare at Dartmoor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, 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
1	The Head of Healthcare at Dartmoor should ensure that healthcare staff complete medical records in line with the General Medical Council and Nursing and Midwifery Council's guidance.	Accepted	The Healthcare Manager checks regularly and randomly nursing entries made in patient files. All entries that do not comply with Nursing and Midwifery Council (NMC) guidance are discussed with the staff involved through Management Supervision and if necessary reported as incidents and/or appropriate training arranged. The NMC guidance has been circulated to all staff. An audit of clinical record keeping at HMP Dartmoor will be undertaken to ensure medical records are complete in line with General Medical Council (GMC) and NMC guidelines and shared with the Devon Prisons Delivery Group and Joint Governance Group.	May 2015 Head of Healthcare
2	The Governor and Head of Healthcare at Dartmoor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position,	Accepted	All operational managers will be briefed on the PPO "lessons learned" documents, all future risk assessments will consider and evidence the "actual risk posed" at the time of escort. A briefing has taken place and guidance	Completed Head of Security and Intelligence/ Head of Healthcare

	that assessments fully take into account the health of a prisoner, and are based on the actual risk the prisoner presents at the time.		issued. Prison and clinical staff have also been reminded of the following: "All managers are to be reminded of the judgement in the High Court in 2007 which 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 the risk posed by the same prisoner when suffering from a serious medical condition. All Duty Governors will ensure the above is considered in all future risk assessments especially for all emergency escorts during patrol times".	