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 hospital in July 2013, while a prisoner in the custody of HMP Cardiff

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 report of the investigation into the death of a man at hospital in July 2013 while in the custody of HMP Cardiff. He was 51 years old. He died of lung cancer. I offer my condolences to his family and friends.

As a resident in an Approved Premises, a review of the man's clinical care was carried out by his local General Practitioner (GP). Subsequently, he was admitted to hospital. Medical care provided by GPs and hospitals is outside the remit of the Prisons and Probation Ombudsman. As a result, a clinical review of the healthcare he received was not commissioned.

The man was released from custody in March 2013 on licence after serving a life sentence for murder and became a resident in Mandeville House Approved Premises in Cardiff. In June he complained of feeling unwell and losing weight and saw his GP several times throughout the month. Those who knew him were also concerned about his deteriorating health. He was admitted to hospital on 21 June for further tests, which revealed that he was suffering from terminal lung cancer. After he threatened nursing staff with a pair of scissors, the National Offender Management Service decided to recall him to custody due to his behaviour. However, as he was receiving essential treatment and was too weak to leave his hospital bed unaided, HMP Cardiff was asked to supervise him in hospital and he was never actually admitted to Cardiff. In early July, his life expectancy was estimated to be a matter of days. He was not considered suitable for Release on Temporary Licence and an application for compassionate release was being made at the time of his death. He died in hospital.

Overall, I am satisfied that the man received an appropriate standard of care from staff at the prison. He and his family and friends were generally treated with compassion. Although he was handcuffed initially, after his condition was assessed by the prison the handcuff was removed 48 hours later and he was allowed 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 involved in my investigation.

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

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SUMMARY

1. In May 1986, the man was convicted of murder and sentenced to life imprisonment. In 2005, he absconded from HMP Sudbury, an open prison, and was convicted of escaping lawful custody. In March 2013, he was released from HMP Wolds on licence. One of the conditions of his release was that he resided at Mandeville House Approved Premises.

2. On 5 June, the man complained that he was losing weight, feeling unwell and thought he might have pleurisy. An Approved Premises Service Officer at Mandeville House was concerned about his physical appearance and made an appointment for him to see his General Practitioner. When, after a week, he was struggling to walk further than short distances, felt weak and his condition did not improve after a week, a GP visited him and prescribed antibiotics for an upper respiratory chest infection. On 20 June, a member of staff accompanied him to his GP appointment, where he was prescribed nutritional supplements. A chest x-ray appointment was made for 24 June.

3. When the man went to his local Integrated Offender Intervention Service (IOIS) on 21 June for a review of his methadone prescription, staff urged him to go to hospital and he was taken there by ambulance. He was admitted to hospital for further tests.

4. At 3.05am on 26 June, a hospital nurse telephoned Mandeville House to say that the man was refusing to go into his room, insisting on leaving the hospital and that he had threatened the nursing staff with a pair of scissors.

5. The National Offender Management Service (NOMS) took immediate steps to formally recall the man to custody by 3.50am, but he remained in hospital as he was seriously ill. He was guarded by South Wales police until 2.30pm, when staff from HMP Cardiff took over his supervision and, after an initial risk assessment, was handcuffed to an officer.

6. On 28 June, a manager at Cardiff was told by the hospital that the man had been diagnosed with advanced lung cancer and was terminally ill. Cardiff contacted NOMS for advice on releasing him from custody, but was told that the incident which had led to his licence being revoked was too recent and the risk of harm too high. Nevertheless, on 4 July his solicitors applied for him to be released early on compassionate grounds.

7. A few days later the man died. We are satisfied that Cardiff explored the possibility of compassionate release and the use of restraints was justified before the extent of his medical condition was apparent.

THE INVESTIGATION PROCESS

8. The Ombudsman's office was notified of the man's death on 11 July 2013. HMP Cardiff provided copies of his relevant prison records. As he was not admitted to Cardiff, no notices of investigation were issued to staff and prisoners.

9. HM Coroner for Cardiff and The Vale of Glamorgan was informed of the investigation. She will be provided with a copy of this investigation report for her information.

10. One of the Ombudsman's family liaison officers attempted to contact the man's father by telephone and letter to inform him of the purpose of the investigation. To date, he has not responded to raise any issues or concerns.

11. The investigation has considered whether the decision to recall the man was justified, whether appropriate security arrangements put in place at the hospital and whether compassionate release was properly considered.

KEY EVENTS

12. In May 1986, the man was convicted of murder and sentenced to life imprisonment. He spent time in several prisons, progressing to lower security prisons in the latter part of his sentence. In 2005, he absconded from HMP Sudbury, an open prison. He was convicted of escaping lawful custody and given a conditional discharge for 12 months.

13. On 12 March 2013, the man was released from HMP Wolds in Yorkshire on life licence. This meant that he could be recalled to prison at any time in the future if he breached the conditions of his licence or if his behaviour was causing concern.

14. The man was required to live at Mandeville House Approved Premises (AP) in Cardiff. Arrangements were made for him to continue to receive his daily prescription of methadone at a local Integrated Offender Intervention Service (IOIS). IOIS is commissioned by the Wales Probation Trust and the Drug Intervention regional board to provide a service for those recently released from prison or in contact with criminal justice services in the Cardiff, Vale of Glamorgan Rhondda Cynon Taff and Merthyr Tydfil area.

15. On 5 June, the man's keyworker[1], met him for a weekly review. Their session was shorter than usual because he said he felt unwell and thought he might have pleurisy (an inflammation of the lung lining). She made an appointment for him to see his General Practitioner later that morning. He told her he had last seen his GP three weeks previously, that he had lost weight and planned to ask the doctor for protein drinks to help build himself up. He added that he struggled sometimes to walk the distance to collect his methadone. According to the AP log, he spoke to his GP about only being able to manage small amounts of food and that the GP said his stomach had shrunk.

16. An entry in the AP log on 12 June at 10.00am described the man as seeming unwell. It is not clear who made the entry but notes are usually made in the log by the duty AP worker. He described feeling "wheezy and breathless" and said that although he was planning to go back to his GP, he did not feel strong enough to walk there. The member of staff who wrote the entry consulted another colleague who advised that the GP should be asked to assess his chest on a home visit. At 2.40pm, a doctor examined him and prescribed him antibiotics for an upper respiratory infection, Omeprazole to reduce acid reflux and paracetamol as he had a temperature. At 9.50pm, the evening duty AP worker wrote in the log that he seemed confused and had spoken of seeing the doctor the previous day rather than earlier that afternoon.

17. The man and his keyworker met again on 14 June. In her weekly keywork review summary, she wrote that it seemed an effort for him to speak and that he said he felt drained.

18. At 6.45am on 16 June, the duty AP worker wrote in the log that the man asked to be let out. When it was explained to him that the overnight curfew

[1] A keyworker is an Approved Premises Service Officer who monitors an offender's behaviour and acts as their first point of contact for any queries or concerns. In addition, the man had regular contact with the National Probation Service through his Offender Manager.

was still in place, he looked very ill and confused as he thought it was evening. The duty AP worker wrote that they had not seen him for several weeks and were concerned to see how much weight he had lost.

19. During a check at 1.15am on 18 June that all the residents were present, the duty AP worker noted that the man's speech was slurred. The following evening at about midnight, a different duty worker speculated that his "slurred speech" might have been drug induced as that he had spoken rationally to them.

20. The following day, 19 June, after seeing the man for an appointment, his Offender Manager telephoned Mandeville House to express his concerns about his health. He asked them to contact him with the outcome of his GP appointment the next day. His father contacted Mandeville House to say that he would encourage his son to see a doctor or go to hospital.

21. On 20 June, the man fell on the stairs. He was helped back to his room by a member of staff and said he was sick during the night and had not eaten since the previous day. The same member of staff accompanied him to the GP appointment. The GP weighed him and said he had lost six pounds in a month. He prescribed nutritional milkshakes and an appointment for a chest x-ray was made for 24 June. Mandeville House arranged for an ambulance to take him for the appointment and his offender manager was updated.

22. The man attended IOIS, who dispensed his methadone, for a medication review on 21 June. A nurse from IOIS telephoned Mandeville House to ask why he was not in hospital. She said they would contact his GP to persuade him that he needed to be hospitalised. He was taken to hospital by ambulance and was admitted for further tests.

23. On 26 June at 3.05am, a nurse telephoned Mandeville House to say that the man was refusing to go into his room and was insisting on leaving the hospital. She said he had a pair of scissors and had threatened the nursing staff on his ward. He had also removed a drip which had been fitted on his arm.

24. As a result of the man's behaviour at the hospital, Mandeville House telephoned the duty manager to activate the National Offender Management Service's process of recalling him to custody. When the process was complete, Mandeville House telephoned the police, who agreed to contact the hospital for further updates on the situation. His licence was revoked and he was formally recalled to custody due to poor behaviour. However, he remained in hospital due to his deteriorating health.

25. As the man was now in the custody of HMP Cardiff, at 2.30pm, two officers from the prison took over the security of him from the police. His condition had continued to deteriorate and he remained sedated in bed at the hospital but was handcuffed to an officer using an escort chain (a metal link chain approximately two metres long with a handcuff at either end. One handcuff is attached to an officer and the other to an officer). A senior officer at HMP Cardiff contacted Mandeville House at 6.30pm to say that they had taken over responsibility for his custody and that he was not expected to live much

longer. The bedwatch logs from his time in hospital show that his father and siblings were able to visit him regularly.

26. Also on 26 June, a Custodial Manager from Cardiff prepared an escort risk assessment for the man. The risk assessment does not indicate whether its author had access to his prison security file. The Custodial Manager noted that the Police National Computer showed that he had absconded in 2005 and that he was on ViSOR, a database used by criminal justice agencies to assess and manage risks presented by known violent and sexual offenders. The section asking 'is the prisoner terminally or critically ill?' was not completed. His risk to the public, risk of hostage taking, escape potential and likelihood of outside assistance were assessed as medium. The Custodial Manager also noted that he had a known abscond history and history of violence but that there were no known issues with drug or alcohol abuse. The result of the assessment was that restraints should be used, although they could be removed for medical treatment or emergencies and that the level of restraint should be double cuff with escort chain. This means that the wrists of the person being restrained should be handcuffed together and then an escort chain attached to an officer should be applied to one of the prisoner's handcuffed wrists.

27. A manager from Cardiff visited the hospital on 28 June with a senior nurse to speak to clinical staff about the man's condition. They were told that he had a malignant tumour of the lung which had spread to his bones [metastasis]. Although his condition had improved slightly after eating and drinking a small amount, his disease was so extensive that even palliative treatment might not be possible due to his poor condition. The calcium levels in his blood had been very high, making him confused and he might only be fit enough to be transferred to a hospice.

28. The manager concluded that the restraints should be removed as the man had very little movement, the man had asked for the handcuffs to be removed and he was satisfied that his risk was low. The escort was also reduced to a single officer.

29. On 2 July, the Custodial Manager prepared an updated Escort Risk Assessment. It confirmed that he did not have access to the man's security file. The section headed 'medical information' was signed by the senior nurse. It indicated no medical objections to the use of restraints but acknowledged that he was terminally or critically ill. His risk to the public, risk of hostage taking, escape potential and likelihood of outside assistance were graded as low. It confirmed that no handcuffs should be used and that an escort with one officer was adequate. The decision was authorised by a senior manager.

30. Also on 2 July an Offender Supervisor visited the man in hospital to carry out a Recall Notification and Induction Interview as required by NOMS when a prisoner has been recalled to custody. However, she saw that he was not able to communicate with her and was barely conscious. She decided that no useful purpose would be gained by continuing with the process.

31. On the same day, the Head of Cardiff's Offender Management Unit and Cardiff''s Healthcare Manager visited the hospital to discuss the man's

condition with clinical staff. Medical staff said that he was terminally ill and expected to pass away within days. He was too ill to move to a hospice and his pain was being managed with a morphine syringe.

32. The Head of OMU then sought advice from NOMS. She was told that Release on Temporary Licence was not suitable as he was expected to die within days. In addition, the incident of potential violence which caused his licence to be revoked would negate the possibility of release because it was too recent and the risk of harm to the public was too high.

33. On 4 July, the man's solicitors made an application for compassionate release on medical grounds. They argued that his behaviour towards staff with a pair of scissors should be seen in the context of the high amounts of calcium in his body of which violent outbursts is a known side effect. They also argued that his illness was terminal and he was likely to die shortly, his risk of reoffending was minimal, there were adequate facilities for him to be treated in the community and early release would bring significant benefit to his family.

34. An officer was appointed as the man's Family Liaison Officer on 4 July. He met with the man's father at the hospital and explained his role, the support the prison would offer and what would happen after his son's death.

35. The Offender Manager provided a report as part of the compassionate release process. He wrote on 9 July that he had spoken to staff at the hospital and was aware that the man had received visits from his family. He said the nursing staff were still nervous of him and the possibility that he could be capable of causing harm despite his apparent weakness. They felt that having a prison officer in his room was appropriate. The Offender Supervisor wrote that he was suitable to be released early on the grounds of ill health and it would allow him to die with dignity without a prison officer being present. His family would be able to spend more quality time with him. A governor submitted the application with all the relevant reports to NOMS on 10 July.

36. At 4.10pm, a doctor noticed that the man's breathing had become slight and she said she would contact his family. He died at hospital at 4.20pm. The Family Liaison Officer remained in contact with his family and in line with national guidance the prison offered an appropriate financial contribution towards the funeral expenses.

ISSUES

37. The Prison Service has a duty to protect the public which should be balanced by treating prisoners with humanity and maintaining their dignity. The level of restraints used should be based on a risk assessment which considers the risk of escape, the risk to the public and takes into account factors such as the prisoner's health and mobility.

38. 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 a serious medical condition. The judgement indicated that medical opinion regarding the prisoner's ability to escape must be considered as part of the assessment process. It deemed that restraining by handcuffs of a prisoner receiving chemotherapy (and by implication, other life saving treatment) was degrading and that such restraint would likely also be regarded as inhumane unless justified by other relevant considerations.

39. The man only came to the attention of HMP Cardiff because, as a recently released life sentenced prisoner, he had threatened nursing staff with scissors while in hospital. We are not in a position to say what exactly happened or whether his actions were definitively because of a chemical imbalance.

40. Cardiff took over his custody from the police on 26 June at very short notice and with minimal information. I consider it reasonable that in the absence of detailed information about his health, his security record and with knowledge that he was a licence recalled prisoner who had been convicted of murder , was on ViSOR and had absconded from custody albeit eight years previously, minimal restraints were appropriate. The nursing staff treating the man considered him a risk and he could have left the hospital, however unlikely.

41. Mandeville House's log of 26 June says that when Cardiff telephoned them to say they were taking over his custody, they had been told by the hospital that he was not expected to live much longer. I am satisfied that a risk assessment was completed within an acceptable time frame and that the removal of handcuffs on 28 June was reasonable.

    I do note that those who knew the man well were concerned about his health and his apparently dramatic weight loss. He saw his GP regularly in the weeks prior to his death and a referral had been made for a chest X-ray. However, his admission to hospital was actually initiated by a nurse at his IOIS rather than his GP. As his clinical care was provided by his community GP, and latterly medical staff in hospital, it is outside the remit of the investigation and I therefore make no comment on the appropriateness of this.