Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Ernest Wilkinson a prisoner at HMP Rye Hill on 15 January 2016

A report by the Prisons and Probation Ombudsman
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Our Vision

To carry out independent investigations to make custody and community supervision safer and fairer.

Our Values

We are:

Impartial: *we do not take sides*
Respectful: *we are considerate and courteous*
Inclusive: *we value diversity*
Dedicated: *we are determined and focused*
Fair: *we are honest and act with integrity*

The Prisons and Probation Ombudsman aims to make a significant contribution to safer, fairer custody and community supervision. One of the most important ways in which we work towards that aim is by carrying out **independent** investigations into deaths, due to any cause, of prisoners, young people in detention, residents of approved premises and detainees in immigration centres.

My office carries out investigations to understand what happened and identify how the organisations whose actions we oversee can improve their work in the future.

Mr Ernest Wilkinson died on 15 January 2016, of septicaemia, secondary to treatment for testicular cancer, while a prisoner at HMP Rye Hill. He was 59 years old. I offer my condolences to Mr Wilkinson's family and friends.

There was a slight delay in referring Mr Wilkinson to a specialist, but it does not appear that this affected the outcome, as the cancer was already well advanced. Once he was diagnosed, Mr Wilkinson received appropriate clinical care.

Until shortly before his death, Mr Wilkinson was restrained in hospital, even when he was receiving chemotherapy and later when he was critically ill in intensive care. I am not satisfied that the use of restraints was justified by appropriate risk assessments which took into account Mr Wilkinson's health and limited mobility. The Director needs to make sure that his staff understand and follow legal guidance on the use of restraints for seriously ill prisoners.

This version of my report, published on my website, has been amended to remove the names of staff and prisoners involved in my investigation.

Nigel Newcomen CBE
Prisons and Probation Ombudsman **July 2016**

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Summary

Events

1. Mr Ernest Wilkinson was serving a fourteen-year prison sentence. He had been at HMP Rye Hill since 17 April 2015. He was disabled and used a walking stick.

2. On 29 July, Mr Wilkinson asked healthcare staff for pain relief for back pain. On 4 August, a prison GP reviewed him but found no concerning symptoms. On 5 August and 5 September, nurses gave Mr Wilkinson paracetamol for back pain.

3. On 6 September, Mr Wilkinson's sister told prison staff that Mr Wilkinson had said he had a swollen testicle for the previous two to three weeks. A nurse examined Mr Wilkinson and referred him to the doctor, who saw him on 9 September. The GP considered he had an infection and prescribed a course of antibiotics. Mr Wilkinson did not complain of swollen testicles again in the next month but asked nurses for pain relief for back pain almost every day. On 22 September, a nurse noted he needed to see a GP and, on 24 September, another nurse advised him to see a GP.

4. When Mr Wilkinson saw a GP on 9 October, his back pain and testicular swelling had worsened. The GP noted a lump in his left testicle and referred Mr Wilkinson for an urgent urology review and a spinal X-ray.

5. On 23 October, an X-ray showed abnormal results and he was admitted to hospital for further tests. Doctors diagnosed a fractured vertebrae and testicular cancer, which had spread to his abdomen, liver and lung. Mr Wilkinson began chemotherapy in hospital. He was restrained throughout his hospital stay, including when receiving treatment. He returned to the prison on 23 November.

6. Mr Wilkinson spent two separate weeks in hospital in December for chemotherapy. Managers decided he should be restrained both times.

7. On 11 January 2016, Mr Wilkinson was admitted to hospital urgently. He was critically ill. Officers used an escort chain but removed it when Mr Wilkinson had a blood transfusion and received intravenous fluids. The officers reapplied the chain later, when his condition improved slightly. The next morning, a prison manager decided that restraints were no longer necessary. Mr Wilkinson died at the hospital on 15 January.

Findings

8. Overall, we consider the clinical care Mr Wilkinson received at Rye Hill was equivalent to that he could have expected to receive in the community. Although it took too long for a prison GP to review Mr Wilkinson's frequent need for pain relief throughout September 2015, it is unlikely that an earlier referral would have affected the outcome, as it appears the cancer was already advanced and had spread. After his diagnosis, Mr Wilkinson received good care at the prison, with a comprehensive and detailed care plan setting out clear responsibilities for his care and treatment.

9. The risk assessments for Mr Wilkinson's hospital admissions did not have enough information about his condition and his risk of escape. We are concerned that he was restrained during chemotherapy and when he was critically ill towards the end of his life. We were not satisfied that prison staff followed, or were aware of, legal guidance for using restraints for terminally ill prisoners.

Recommendations

- The Head of Healthcare should ensure that prisoners who frequently request pain relief for an undiagnosed condition are referred to a GP promptly.
- The Director 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 Investigation Process

10. The investigator issued notices to staff and prisoners at HMP Rye Hill informing them of the investigation and asking anyone with relevant information to contact her. No one responded.

11. The investigator obtained copies of relevant extracts from Mr Wilkinson's prison and medical records.

12. NHS England commissioned a clinical reviewer to review Mr Wilkinson's clinical care at the prison.

13. We informed HM Coroner for Northamptonshire of the investigation who gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.

14. One of the Ombudsman's family liaison officers contacted Mr Wilkinson's sister, to explain the investigation and to ask if she had any matters she wanted the investigation to consider. Mr Wilkinson's sister was concerned about the apparent lack of access to a doctor and wanted to know whether there was a delay in diagnosis and treatment. She also wanted to know if Mr Wilkinson's location, specialist equipment and pain relief were appropriate.

15. The initial report was shared with the Prison Service. The Prison Service did not find any factual inaccuracies.

16. Mr Wilkinson's sister received a copy of the initial report. She did not raise any further issues, or comment on the factual accuracy of the report.

Background Information

HMP Rye Hill

17. HMP Rye Hill is run by G4S and holds more than 600 men convicted of sex offences. G4S Forensic and Medical Services provides primary physical and mental health services, and Northamptonshire Healthcare NHS Foundation Trust (NHFT) provides secondary mental health services. The prison does not have an inpatient facility.

HM Inspectorate of Prisons

18. The most recent inspection of HMP Rye Hill was in August 2015. Inspectors noted that the prison held a complex mix of serious offenders and some frail older men who needed significant levels of care. The inspection found that the quality of healthcare services was the weakest area of the prison. Services had not sufficiently adapted to meet the needs of the new population, when the prison had changed it role to take sex offenders in 2014. There were staff shortages and the available staff were not deployed efficiently. There were long waiting times for most clinics. A small group of regular GPs had run daily clinics since January 2015, which had improved consistency and prisoners' perceptions of service provision. However, prisoners waited up to three weeks for routine GP appointments. Prisoners had good access to pharmacy staff for advice.

Independent Monitoring Board

19. 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 annual report for the year to March 2015, the IMB noted that the an increase in older and disabled prisoners and the number taking medication, meant that distribution of medication took up a disproportionate amount of healthcare staff time. The IMB considered that most waiting times for healthcare appointments were acceptable, but hoped that a health needs analysis would result in extra resources to meet the additional needs of the changed population at the prison.

Previous deaths at HMP Rye Hill

20. Mr Wilkinson was the second prisoner to die from natural causes at HMP Rye Hill since January 2014. There were no significant similarities with the circumstances of the previous death.

Key Events

21. In April 2012, Mr Ernest Wilkinson was sentenced to fourteen years in prison for sexual offences. He had been at Rye Hill since 17 April 2015. About 15 years earlier, Mr Wilkinson had had a knee replaced, which affected his mobility and he was regarded as disabled. He used a stick to support him when walking and took pain relief for knee and joint pain.

22. On 29 July, Mr Wilkinson asked a nurse at the wing medication hatch for pain relief for back pain. The nurse gave him paracetamol. Mr Wilkinson asked for further pain relief on 30 and 31 July, and 3 August. Each time a nurse gave him either paracetamol or ibuprofen. On 4 August, prison GP examined Mr Wilkinson but did not find any significant symptoms to prompt further investigation of Mr Wilkinson's back pain. He referred him for exercise therapy. Nurses gave Mr Wilkinson paracetamol for back pain again on 5 August and 5 September.

23. On 6 September, Mr Wilkinson's sister phoned the prison and said that Mr Wilkinson had told her his testicles had been swollen for the last two to three weeks. Mr Wilkinson had not reported this to healthcare staff. A nurse examined Mr Wilkinson that day and referred him to the doctor. On 9 September, a prison GP examined Mr Wilkinson and considered the swelling was caused by an infection. He prescribed a five-day course of antibiotics.

24. On 9 September, a nurse gave Mr Wilkinson paracetamol for back pain. On 11 September, Mr Wilkinson told a nurse at the wing medication hatch that he had back and stomach pain. The nurse said the stomach pain could be due to the antibiotics and gave him paracetamol.

25. Mr Wilkinson continued to ask for pain relief for back pain, almost daily. On 22 September, a nurse was concerned about the frequency of his requests and said she would put him on the list to see a GP. However, there was no record this was done. On 24 September, a nurse gave Mr Wilkinson more paracetamol and advised him to make a GP appointment, as he said the pain was keeping him awake at night.

26. Mr Wilkinson continued to suffer back pain and frequently received paracetamol. On 9 October, a prison GP reviewed him and Mr Wilkinson told him the back pain and testicular swelling were getting worse. Mr Wilkinson's left testicle was almost double the size of the right, with a 2cm lump. The doctor prescribed another course of antibiotics and a stronger pain relief. He referred Mr Wilkinson for an urgent review by an urologist under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks and for an X-ray.

27. On 23 October, Mr Wilkinson had an X-ray of his spine. The result was abnormal and he was admitted to hospital for additional tests. Two officers escorted Mr Wilkinson and used double handcuffs to restrain him. (This means the prisoner's hands are handcuffed in front of him and one wrist is attached to a prison officer by an additional set of handcuffs.) Once he was in hospital, the officers replaced the handcuffs with 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).

28. On 25 October, Mr Wilkinson had a CT scan of his spine, which showed an unstable fracture of the vertebrae, (which had been caused by pressure from an abdominal tumour). On 26 October, a hospital doctor told Mr Wilkinson the CT scan had showed masses in his abdomen, liver and lung and it was possible he had secondary bone metastases (cancer that has spread). Mr Wilkinson remained in hospital for further tests.

29. On 29 October, a hospital doctor told Mr Wilkinson that tests had confirmed he had testicular cancer. On 31 October, he was transferred to hospital for chemotherapy. Doctors told Mr Wilkinson there was no guarantee the chemotherapy would cure the cancer. Officers continued to use an escort chain to restrain Mr Wilkinson.

30. On 23 November, the hospital discharged Mr Wilkinson to Rye Hill. The discharge letter noted that hospital doctors had diagnosed him with testicular cancer, a lesion in his lung and multiple liver metastases. He also had a hydronephrotic kidney (swelling of the kidney due to build up of urine) and had a nephrostomy (a tube to drain urine from the kidney into a bag outside the body). Mr Wilkinson continued to have chemotherapy every three weeks. Prison healthcare staff began a comprehensive care plan for his care and treatment.

31. Mr Wilkinson spent a week in hospital for chemotherapy from 7 to 14 December. Officers used double handcuffs for the journey and single handcuffs in hospital. The handcuffs were not removed for treatment. After he got back to the prison, nurses checked Mr Wilkinson at least twice daily. They noted he was eating and drinking, and his pain was well controlled.

32. Mr Wilkinson went into hospital for chemotherapy again from 29 December to 7 January 2016. The records show officers used double handcuffs for the journey and an escort chain during treatment. When he arrived back at the prison, he was in good spirits, but said he experienced waves of nausea and vomiting. He had some back pain, but did not want additional pain relief.

33. On 11 January, Mr Wilkinson said he did not feel well and had back pain. A nurse gave him pain relief. She took his basic observations, including temperature and blood pressure, which were outside the normal range and asked a GP to review him. The GP saw Mr Wilkinson immediately, noted he had a fever and a rapid heart rate, and arranged for him to be admitted to hospital urgently. Escort officers restrained Mr Wilkinson with an escort chain.

34. At about 3.00pm, a hospital doctor said Mr Wilkinson was critically ill. At 3.20pm, the prison's duty manager agreed that the officers should remove the escort chain. Mr Wilkinson had a blood transfusion and was given intravenous fluids. Afterwards his condition improved slightly; he was able to talk coherently and move around a little using his walking stick. At 7.05pm, the escort officers reapplied the escort chain and noted that a prison manager would review the risk assessment in the morning. Mr Wilkinson's condition deteriorated again and he was moved to the intensive care unit at 9.51pm that evening.

35. At 10.50am on 12 January, the prison's duty manager reviewed the risk assessment and asked the escort officers to remove the escort chain.

36. Mr Wilkinson's condition continued to deteriorate. At 11.00am on 15 January, doctors withdrew all treatment and, at 11.55am, a doctor recorded that Mr Wilkinson had died.

Contact with Mr Wilkinson's family

37. After Mr Wilkinson went to hospital in October, when he was first diagnosed with cancer, he kept his sister up to date about his condition.

38. On 11 January, when Mr Wilkinson was admitted to hospital, the prison's family liaison officer, a prison manager, contacted Mr Wilkinson's sister to let her know Mr Wilkinson was in hospital. He kept her updated about his condition when he was in hospital and his sister asked him to telephone her if Mr Wilkinson died.

39. The family liaison officer telephoned Mr Wilkinson's sister shortly after midday on 15 January but the hospital had already informed her that Mr Wilkinson had died. He offered condolences and on-going support.

40. Mr Wilkinson's funeral was on 10 February. The prison contributed to the costs, in line with national policy.

Support for prisoners and staff

41. After Mr Wilkinson's death, a prison manager debriefed the escort staff, the prison family liaison officer and other prison staff to offer support. The staff care team also offered support.

42. The prison posted notices informing staff and prisoners of Mr Wilkinson's death, and offered support. Staff reviewed all prisoners assessed as at risk of suicide or self-harm, in case they had been adversely affected by Mr Wilkinson's death.

Post-mortem report

43. The post-mortem report indicated that Mr Wilkinson died of septicaemia, caused by suppression of his immune system after chemotherapy treatment for testicular cancer.

Findings

Clinical care

44. Mr Wilkinson had little contact with healthcare staff in prison until mid 2015, but from 29 July 2015, he began to complain of back pain. On 4 August, a prison GP reviewed him, but did not find any concerning symptoms to warrant a referral for investigative tests.

45. A nurse and a doctor examined Mr Wilkinson promptly in early September, when his sister reported to prison staff that he was concerned he had a swollen testicle. The doctor diagnosed an infection. During September, Mr Wilkinson complained of back pain more frequently and nurses gave him pain relief almost daily, but he did not see a GP again until 9 October. Although two nurses had noted he should see a GP on 22 and 24 September, they did not regard this as urgent. Mr Wilkinson did not complain of testicular swelling again until he saw the GP on 9 October, who then referred him for urgent investigative tests. This led to the diagnosis of cancer.

46. The clinical reviewer concluded that, overall, the clinical care Mr Wilkinson received at Rye Hill was equivalent to that he might have expected to receive in the community. He noted that after his diagnosis, healthcare staff completed a very comprehensive and detailed care plan setting out clear responsibilities in relation to his cancer care and chemotherapy. The clinical reviewer considered that he received appropriate pain relief in line with advice from specialists and we are satisfied that he was appropriately accommodated at Rye Hill throughout his illness. When he needed inpatient treatment he was referred to hospital for specialist care, as would have happened in the community.

47. Although Mr Wilkinson's general care was good, we consider that he should have been seen by a GP earlier in September when he continued to report pain. The clinical reviewer did not consider that this affected the outcome for Mr Wilkinson, as it appears that the cancer had already spread. However, an earlier GP appointment might have led to an earlier specialist referral and earlier, more effective, pain management. We make the following recommendation:

    The Head of Healthcare should ensure that prisoners who frequently request pain relief for an undiagnosed condition are referred to a GP promptly.

Restraints, security and escorts

48. The Prison Service has a duty to protect the public when escorting prisoners outside prison, such as to hospital. It also has a responsibility to balance this by treating prisoners with humanity. 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 takes into account the prisoner's health and mobility. A judgment in the High Court in 2007 made it clear that prison staff need to distinguish between a prisoner's risk of escape when fit (and the risk to the public in the event of an escape) and the prisoner's risk when suffering from a serious medical condition. It said that restraining a prisoner by handcuffs who was 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. The judgment indicated that medical opinion about the prisoner's ability to escape must be considered as part of the assessment process and kept under review as circumstances change.

49. The risk assessments for all of Mr Wilkinson's hospital admissions were the same. The healthcare section had limited information about his current medical and physical condition. Healthcare staff noted that he used a walking stick to mobilise, gave no objections to restraints being used and said that his condition did not restrict his ability to escape. Mr Wilkinson was considered a normal risk to the public, staff and of escape or hostage taking. A prison manager decided that double handcuffs should be used for the journey, and then an escort chain or single handcuffs while in hospital. Mr Wilkinson continued to be restrained, even when he was receiving chemotherapy.

50. On 11 January 2016, when Mr Wilkinson was taken to hospital very unwell, no one amended the risk assessment, but officers used an escort chain rather than handcuffs. Shortly after he arrived at hospital, a prison manager decided that officers should remove the chain, as a hospital doctor had said Mr Wilkinson was critically ill. About four hours later, the officers restrained Mr Wilkinson again, when his condition had improved a little, although he was still critically ill. Later that evening, he was taken to the hospital's intensive care unit, but no one reviewed the risk assessment until the next day, when a manager decided restraints were no longer needed.

51. The Head of Security at Rye Hill told us that a prisoner would have to be 'bedbound' before they would remove restraints. She said any able bodied category B prisoner would have some form of restraint, which would be downgraded to an escort chain for treatment, but not removed. She told us that Mr Wilkinson was restrained while having chemotherapy, because he was a category B prisoner and mobile (although he was disabled and used a walking stick). She said this was necessary for public protection.

52. 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. Mr Wilkinson was disabled with limited mobility. He had a very serious illness and on his last admission to hospital was critically ill but the risk assessments did not adequately reflect this information. We are concerned that he was restrained while receiving chemotherapy treatment, despite the 2007 High Court judgment, and when he was critically ill on 11 and 12 January. There appeared to be little awareness of the finding of the High Court judgment or subsequent Prison Service guidance. We make the following recommendation:

The Director 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.

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