Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr William Hopkins a prisoner at HMP Swaleside on 28 October 2015

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 William Hopkins died on 28 October 2015 of lung cancer while a prisoner at HMP Swaleside. He was 66 years old. I offer my condolences to Mr Hopkins' family and friends.

I am satisfied that Mr Hopkins received an appropriate standard of care at Swaleside after his diagnosis but I am concerned that, prior to this, two urgent appointments with a specialist for suspected cancer were postponed, apparently because of a lack of escort staff. While this does not appear to have affected the outcome for Mr Hopkins, as his cancer was very advanced at the time of diagnosis, in other cases such delays could be critical. The prison needs to ensure that such appointments are prioritised. I do not consider that the use of restraints when Mr Hopkins was seriously ill was justified by properly considered risk assessments.

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 **May 2016**

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Summary

Events

1. Mr William Hopkins was serving a life sentence and had been at HMP Swaleside since June 2003. He had poor health and suffered from rheumatoid arthritis, chronic obstructive pulmonary disease and heart problems. He had appropriate specialist care for these conditions.

2. On 4 August 2015, Mr Hopkins told a prison GP that he had trouble swallowing. The GP suspected cancer and referred him urgently to a specialist under the NHS pathway, which requires patients to be seen within two weeks. Mr Hopkins missed two appointments because of an apparent lack of prison staff to escort him and a third when he refused to attend.

3. Mr Hopkins was taken to hospital on 23 September when he appeared unwell and had blood tests and an X-ray. On 25 September, Mr Hopkins eventually saw the specialist, who referred him for further tests.

4. Mr Hopkins' condition deteriorated further and he was admitted to hospital on 5 October. On 12 October, doctors diagnosed Mr Hopkins with advanced lung cancer. At a hospital multidisciplinary meeting on 15 October, doctors decided that no active treatment was possible and Mr Hopkins had only a short time left to live.

5. On 10 October, Mr Hopkins moved to a hospice for end of life care. He died at the hospice on 28 October.

Findings

6. We are satisfied that Mr Hopkins received an appropriate standard of healthcare in prison to manage his conditions. A doctor referred him promptly to a specialist when he suspected cancer but we are concerned that, apparently because of staff shortages, the prison cancelled two hospital appointments that might have resulted in an earlier diagnosis. While the clinical reviewer considered that this would not have altered the outcome for Mr Hopkins, as the cancer was very advanced, this should not happen. This could be critical in other cases and delay life-saving treatment.

7. We are also concerned that managers authorised the use of restraints when Mr Hopkins went to hospital, without fully considered risk assessments to justify their use.

Recommendations

- The Governor should ensure that prisoners do not miss hospital appointments for suspected cancer and other urgent matters, unless there are properly justified, exceptional and fully recorded reasons.
- The Governor and Head of Healthcare 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

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

9. The investigator obtained copies of relevant extracts from Mr Hopkins' prison and medical records.

10. NHS England commissioned a doctor to review Mr Hopkins' clinical care at the prison.

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

12. One of the Ombudsman's family liaison officers contacted Mr Hopkins' daughter, his next of kin, to explain the investigation. She had no specific mater she wanted the investigation to consider and was very positive about the support the prison's family liaison officer had given her.

13. The investigation has assessed the main issues involved in Mr Hopkins' 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 considered.

14. The initial report was shared with the Prison Service. The Prison Service did not find any factual inaccuracies and their action plan is annexed to this report.

15. Mr Hopkins' family received a copy of the initial report. They did not make any comments.

Background Information

HMP Swaleside

16. HMP Swaleside forms part of the Isle of Sheppey group of prisons which also includes Elmley and Standford Hill. Swaleside's main function is to hold life-sentenced prisoners, but it also holds prisoners serving determinate sentences. The prison can hold up to 1,112 men. IC24 Integrated Care provides primary healthcare at Swaleside. There is 24-hour primary care nursing cover, and a 17-bed inpatient unit. Minster Medical Group provides GP services, backed up by an out of hours GP service.

HM Inspectorate of Prisons

17. The most recent inspection of HMP Swaleside was in May 2014. The Inspectorate found that prisoners had good access to primary care and mental health services and there was a good inpatient unit. However, non-attendance rates at GP and nurse-led clinics were high. All clinical areas were well equipped and suited to the care and treatment of patients. Inspectors considered there were good procedures for the care and management of patients who were terminally ill. Hospital appointments were often cancelled at short notice because of a shortage of officers for escorts.

Independent Monitoring Board

18. Each prison has an Independent Monitoring Board (IMB) of unpaid volunteers from the local community who help to ensure that prisoners are treated fairly and decently. In its latest annual report, for the year to 30 April 2015, the IMB reported that the GP service provided consistency of doctors but there was a problem recruiting nurses. The IMB was concerned that too many hospital appointments were cancelled because of shortages of staff and considered that prison managers needed to give priority to them.

Previous deaths at HMP Swaleside

19. Mr Hopkins was the second prisoner to die from natural causes at HMP Swaleside since January 2014. We have raised the issue of the unjustified use of restraints before.

Findings

The diagnosis of Mr Hopkins' terminal illness and informing him of his condition

20. Mr William Hopkins was serving a life sentence for attempted murder and had been at HMP Swaleside since June 2003. He suffered from rheumatoid arthritis, acute coronary syndrome, and chronic obstructive pulmonary disease (COPD). In 2005, he had suffered a heart attack. He was a long term cigarette smoker and had declined help to give up. Between 2010 and 2015, Mr Hopkins had been referred to specialists in cardiology, respiratory medicine, endocrinology, neurology, and gastroenterology. His COPD worsened and was treated with inhalers, antibiotics, and steroids.

21. On 4 August 2015, Mr Hopkins told a prison GP that he had difficulty swallowing. The GP referred him urgently to a gastroenterologist under the NHS pathway that requires a patient with suspected cancer to be seen by a specialist within two weeks. The hospital gave an appointment for 10 August.

22. The prison cancelled the appointment for 10 August, apparently because of a shortage of prison staff to escort Mr Hopkins. A further appointment for 28 August was cancelled for the same reason. Mr Hopkins missed a third appointment on 7 September because he refused to attend. He signed a disclaimer but there was no record of his reasons. Another appointment was made for 25 September.

23. On 23 September, Mr Hopkins told a nurse that he had been unable to eat or drink properly for weeks. He was short of breath, looked very weak and pale, and told the nurse that the doctor had suspected he might have cancer of the oesophagus. A prison GP recommended Mr Hopkins should go to hospital. Doctors examined him in hospital and he had blood tests and a chest X-ray. He went back to Swaleside later that day.

24. On 25 September, Mr Hopkins saw the gastroenterologist, who referred him for further tests.

25. Mr Hopkins became weaker and, on 5 October, a prison GP sent him to hospital with suspected dehydration. In hospital, Mr Hopkins had further tests, which indicated he had advanced lung cancer. Hospital doctors informed Mr Hopkins of the diagnosis.

26. We are satisfied that a prison GP appropriately referred Mr Hopkins under the " two week wait" procedure for suspected cancer. However, we are concerned that the prison cancelled two appointments due to lack of staff. While this delayed the diagnosis, the clinical reviewer did not consider this affected the outcome for Mr Hopkins, as the cancer was too advanced for treatment. In other cases, such a delay could be crucial.

27. A prison manager told us that lack of staff was a common reason for the prison cancelling hospital appointments. She said the decision to cancel an escort was taken on a case by case basis by the duty governor and the most pressing need prevails. We consider that prisoners should be able to attend all urgent appointments, especially for suspected cancer when a specialist is expected to

examine a patient within two weeks of the initial referral. Cancelling such appointments places prisoners' lives in jeopardy. We make the following recommendation:

The Governor should ensure that prisoners do not miss hospital appointments for suspected cancer and other urgent matters, unless there are properly justified, exceptional and fully recorded reasons.

Mr Hopkins' clinical care

28. After his diagnosis, Mr Hopkins remained in hospital and doctors discussed his care at a multidisciplinary meeting on 15 October. They concluded that active treatment was not possible and that Mr Hopkins should be treated palliatively. Hospital doctors told him the same day that they were unable to operate on his cancer and he had only weeks or months to live.

29. Mr Hopkins remained in hospital until 19 October when he moved to Wisdom Hospice, Rochester for end of life care. He died there on 28 October.

30. All of Mr Hopkins' treatment after his diagnosis was in hospital and a hospice and we are therefore satisfied that his care reflected community standards.

Mr Hopkins' location

31. Mr Hopkins declined to be admitted to the prison's healthcare unit several times at the beginning of October, as he wanted to stay in his cell with his pet birds. However, by 5 October, Mr Hopkin's condition deteriorated to such an extent that a doctor sent him to hospital. On 19 October, he moved to a hospice for end of life care.

32. We are satisfied that staff at Swaleside did their best to let Mr Hopkins remain in his preferred location, until his health would no longer allow it. He was able to spend his last days in a hospice environment, where he was able to have a dignified death. We consider he was appropriately located throughout his last illness.

Restraints, security, and escorts

33. 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. 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.

34. On 1 October, a prison GP noted that Mr Hopkins was unable to walk any distance and needed to use a wheelchair. The next day, the doctor described Mr

Hopkins as too weak to leave his cell. On 5 October, a nurse recorded that Mr Hopkins needed help to stand and could not stand for more than two minutes.

35. Despite Mr Hopkins' poor health, weakness and limited mobility, the medical section of the escort risk assessment for Mr Hopkins' admission to hospital on 5 October showed no objections to the use of restraints. The risk assessment concluded that Mr Hopkins was a medium risk of escape and a medium risk to the public. A prison manager initially approved the use of double handcuffs but another prison manager changed this to 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). Mr Hopkins remained restrained while he was in hospital.

36. When Mr Hopkins moved to Wisdom Hospice on 19 October, the prison security manager authorised the removal of the escort chain, which was not reapplied.

37. By 5 October, Mr Hopkins was very ill. He had poor mobility and his physical condition had been in serious decline for some days before. It is difficult to see how any objective assessment could have concluded that Mr Hopkins was a risk of escape and that the prison followed the tests given in the 2007 High Court judgment. We are also concerned that no one reviewed the use of restraints when Mr Hopkins was in hospital. He remained restrained for two weeks until he moved to the hospice. We have raised this matter with the prison before. We make the following recommendation:

The Governor and Head of Healthcare 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.

Liaison with Mr Hopkins' family

38. The prison appointed a prison manager as the prison's family liaison officer, and she went to see Mr Hopkins on 12 October 2015 to discuss his wishes about contacting his next of kin. Mr Hopkins asked for his daughter, his next of kin, to be informed of his condition. The manager rang her the same day and arranged for her to visit him. She remained in contact and supported Mr Hopkins' daughter.

39. When Mr Hopkins moved to the hospice, it was agreed that hospice staff would inform Mr Hopkins' daughter of his death. At around 8.35am on 28 October, the manager was told that Mr Hopkins had died. She telephoned Mr Hopkins' daughter straight away to offer her condolences and support. Unfortunately, hospice staff had not yet informed Mr Hopkins' daughter and it was the manager who broke news of her father's death.

40. After Mr Hopkins' death, the manager remained in contact with his daughter. Mr Hopkins' funeral was on 26 November and the prison contributed to the costs in line with national instructions. Mr Hopkins' daughter was very positive about the support she received from the manager and we are satisfied that there was a good standard of family liaison.

Compassionate release

41. Prisoners can be released before their sentence has finished on compassionate grounds. This is usually when they are suffering from a terminal illness and have a life expectancy of less than three months.

42. After Mr Hopkins' terminal diagnosis on 15 October, a prison GP completed the medical section of the compassionate release application. On 21 October, a palliative care consultant at Wisdom Hospice said that Mr Hopkins' condition was stable and he did not consider his death was imminent, although his condition could deteriorate suddenly.

43. Despite his serious medical conditions and declining health, the palliative care consultant was unable to give a life expectancy for Mr Hopkins. His death was foreseeable, but the time of it was not predictable. Without a clear life expectancy, the prison was unable to complete an application for early release. We are satisfied that the prison appropriately considered Mr Hopkins' compassionate release application.

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