Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Joseph McHarg a prisoner at HMP Stocken on 25 December 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 Joseph McHarg died on 25 December 2015 of heart failure, while a prisoner of HMP Stocken. He was 70 years old. I offer my condolences to those who knew him.

Mr McHarg had a number of serious conditions, including ischaemic heart disease, angina, and chronic obstructive pulmonary disease, but he frequently refused treatment. Staff at Stocken did all they could to encourage Mr McHarg to engage with treatment, but they established that he had mental capacity to make decisions about his care and that he was aware of the likely consequences of those decisions. I am satisfied that Mr McHarg received a good standard of care at the prison and there was nothing staff could have done to prevent his death. However, I am concerned that a manager authorised the use of restraints when Mr McHarg went to hospital at the end of his life, without a fully considered risk assessment to justify their use.

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. In 1996, Mr Joseph McHarg was sentenced to life imprisonment for murder. He had been at HMP Stocken since 29 May 2014. While in prison, Mr McHarg had been diagnosed with a number of conditions including osteoarthritis, ischaemic heart disease, angina and chronic obstructive pulmonary disease. Despite advice and encouragement from healthcare staff, he frequently refused treatment. Mr McHarg continued to smoke, against advice.

2. In his first five months at Stocken, Mr McHarg frequently complained of chest pain and breathlessness, but often refused treatment or investigations. On 13 November, he agreed to hospital tests, which confirmed that he had suffered a recent heart attack and that his heart had severely impaired function. Mr McHarg refused any further tests or to have an angiogram, which doctors recommended.

3. On 9 January 2015, a mental health nurse assessed Mr McHarg and concluded that he had the mental capacity to make decisions about his care and to refuse treatment. Mr McHarg continued to experience chest pain and shortness of breath but refused to be admitted to hospital and often refused to take his medication.

4. On 2 June, Mr McHarg eventually had an angiogram. The consultant advised Mr McHarg to have a coronary artery bypass graft or a stent, but Mr McHarg refused. His symptoms continued, but as before he refused further investigation and often did not take his medication.

5. On 24 December, Mr McHarg had severe stomach pains but would not let a nurse examine him or take his clinical observations. He said he wanted to be left alone and did not want to go to hospital. However, as the pain increased he agreed to go to hospital. Hospital doctors diagnosed Mr McHarg with acute coronary syndrome (where the blood supplied to the heart muscle is suddenly blocked) and he was admitted to the coronary care unit for observation. At 11.45am on 25 December, Christmas Day, Mr McHarg stopped breathing and a hospital doctor recorded that he had died. Mr McHarg was restrained by an escort chain in hospital until shortly before his death.

Findings

6. We are satisfied that Mr McHarg received good support from healthcare staff at Stocken. Although he frequently declined to attend hospital and take his medication, staff continued to advise and encourage him to engage with his treatment. His care was at least equivalent to that he could have expected to receive in the community and there was nothing staff at Stocken could have done to prevent his death.

7. However, we are not satisfied that the use of restraints in hospital at the end of his life was based on a proper assessment of Mr McHarg's health and mobility at the time. The risk assessment was based mostly on Mr McHarg's offending history and there was no considered healthcare input to indicate how or whether his condition affected his risk of escape.

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.

The Investigation Process

8. The investigator issued notices to staff and prisoners at Stocken 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 McHarg's prison and medical records.

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

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

12. Mr McHarg had no contact with his family. He received no visitors and said he had no next of kin or other contacts in the community. The prison and the police were unable to trace any next of kin.

13. The initial report was shared with the Prison Service. The Prison Service pointed out some factual inaccuracies and this report has been amended accordingly.

Background Information

HMP Stocken

14. HMP Stocken is a medium secure training prison and holds up to 842 men. Nottinghamshire Healthcare NHS Foundation Trust provides primary physical health services and Northamptonshire Healthcare NHS Foundation Trust provides mental health services. Nurses are on duty from 7.30am until 6.30pm Monday to Friday, and from 8.30am until 6.30pm at weekends. One lead GP, supported by locum GP's, provide 12 clinics a week. An older prisoner lead nurse runs over-50s screening clinics with annual reviews.

HM Inspectorate of Prisons

15. The most recent inspection of HMP Stocken was in July 2015. Inspectors reported that health services were good, particularly in identifying and supporting prisoners with complex health needs. Waiting times for GP, nurse and dental appointments were acceptable but prisoners waited too long for most other health services.

Independent Monitoring Board

16. 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 April 2015, the IMB welcomed an increase in healthcare services hours but considered that this was not sufficient to meet the needs of an expanding population. The IMB noted that healthcare staff explained the implications of their actions to prisoners who refused to go to hospital appointments. Prisoners who continued to refuse to go had to sign a disclaimer.

Previous deaths at HMP Stocken

17. Mr McHarg was the first prisoner to die of natural causes at HMP Stocken since January 2012.

Key Events

18. On 21 March 1996, Mr Joseph McHarg was sentenced to life imprisonment for murder. He spent time in a number of prisons and moved to HMP Stocken on 29 May 2014. During his time in prison, Mr McHarg was diagnosed with several medical conditions, including osteoarthritis, ischaemic heart disease, angina, and chronic obstructive lung disease (COPD – the name for a collection of long-term progressive lung diseases including chronic bronchitis and emphysema).

19. At an initial health screen at Stocken, a nurse noted Mr McHarg's medical conditions and medications. He had a family history of heart attacks and had been a heavy cigarette smoker for many years. Mr McHarg walked with the aid of a walking stick and was allocated a ground floor cell. Mr McHarg said he did not want the medication he had been prescribed for his heart conditions and refused to see a doctor. On 13 June, the nurse again tried to get Mr McHarg to see a doctor, but he refused.

20. On 15 July, Mr McHarg said he had had a 'funny turn'. A nurse found him on his back, gasping for breath and helped him sit up, after which his breathing improved. Mr McHarg refused to go to the healthcare centre for further assessment and said he felt much better.

21. On 18 July, Mr McHarg refused to attend an asthma appointment and, on 2 September, he refused to attend a clinic appointment to review his COPD.

22. On 9 September, Mr McHarg complained of tightness in his chest with a dull nagging pain. A nurse suggested he should have an electrocardiogram test (ECG – which records the activity of the heart) but he refused.

23. On 12 October, Mr McHarg told a healthcare assistant that he had pain in his chest but he had not used his GTN spray (glyceryl trinitrate – for angina pain). The nurse encouraged him to use his spray and noted he had just finished a cigarette. She booked a GP appointment for the next day, but Mr McHarg did not attend.

24. On 26 October, the healthcare assistant reviewed Mr McHarg again, after he had complained of chest pain. Mr McHarg said he had taken his GTN spray which eased the pain. The nurse noticed his cell was smoky and advised him about the dangers of smoking, but Mr McHarg declined any help to give up. She booked him an appointment with the GP for the next day.

25. On 27 October, a prison GP examined Mr McHarg, who said he had frequent chest pains which did not go away when he used his GTN spray. The GP noted that Mr McHarg was not taking any medication except his GTN spray. He considered Mr McHarg might have heart failure and sent him to hospital for investigation. After an X-ray, blood test and an ECG at hospital, a consultant concluded that Mr McHarg was suffering from angina. He returned to prison the same day with further medication for his condition.

26. On 30 October, another prison GP examined Mr McHarg after he suffered a sudden central chest pain. The doctor suspected a heart attack and called an emergency ambulance. Mr McHarg refused to go to hospital despite advice and

encouragement from the GP and healthcare assistant, and signed a disclaimer. He also declined to be referred to the hospital's rapid access chest pain clinic.

27. On 4 November, a prison GP reviewed Mr McHarg, who said he felt better on the new medication and had only used his GTN spray once that week. The doctor advised him to give up smoking. Mr McHarg refused help to give up and said he would not stop smoking. He said he did not believe in taking tablets and would stop his medication when the current supply ran out. The doctor explained the medication was ongoing and should not be stopped. Mr McHarg said he would consider it and he agreed to be referred to the rapid access chest pain clinic.

28. On 9 November, Mr McHarg went to the prison's healthcare centre and said he had chest pain. An ECG suggested he had a slight infarct (obstruction to blood supply) and a nurse said Mr McHarg should go to hospital. After considerable encouragement Mr McHarg agreed. Hospital investigations found no infarct and Mr McHarg came back to the prison with new medication for angina and a cardiology appointment.

29. On 13 November, Mr McHarg attended the chest pain clinic where an ECG showed that he had ischaemic heart disease and had suffered a recent heart attack with severely impaired function of his left ventricle. The hospital doctor said that Mr McHarg's condition needed further investigation, including a coronary angiogram (a special X-ray that shows blocked or narrowed arteries).

30. Healthcare staff continued to review Mr McHarg frequently. On 22 December, he initially refused to attend a hospital cardiology appointment, but the healthcare assistant persuaded him to attend. When he got to hospital he refused to have blood samples taken or to have an angiogram. The cardiologist offered to rebook this, but Mr McHarg turned down a further appointment and said he would let them know if he changed his mind. The consultant prescribed an anti-diuretic (used to treat fluid build up due to heart failure).

31. The next day, a prison GP assessed Mr McHarg's mental capacity and considered that he had the mental capacity to refuse treatment. The doctor was concerned about Mr McHarg's memory, but Mr McHarg declined a referral to a memory clinic. The doctor referred Mr McHarg to the mental health team for a further assessment.

32. On 2 January 2015, a pharmacy technician took Mr McHarg's medication to him. He said he did not want it and showed her three days' supply of tablets he had not taken. The pharmacy technician explained that he would become ill if he did not take his medication. Mr McHarg accepted the tablets but insisted he would throw them away.

33. Mr McHarg continued to complain of chest pain but refused to attend appointments with the GP, refused to take his medication and continued to smoke. On 7 January, he refused to go the hospital.

34. On 9 January, a mental health nurse assessed Mr McHarg and considered he had mental capacity to take decisions about his care and treatment and no further mental health input was required. During the assessment, Mr McHarg said he no longer had any contact with any family members, including his son.

35. On 13 January, Mr McHarg complained of chest pain again. A prison GP examined him and noted he was pale, unwell and slightly confused. He arranged an emergency ambulance but Mr McHarg refused to go to hospital and signed a disclaimer. He also declined any treatment and signed another disclaimer about this. The healthcare assistant asked wing staff to check Mr McHarg every two hours and nurses checked him twice a day.

36. On 15 February, Mr McHarg told the healthcare assistant that he had not been feeling well all day with intermittent central chest pain. Mr McHarg agreed to go to hospital but when he got there he refused to be assessed and discharged himself against medical advice.

37. On 18 February, a prison GP examined Mr McHarg, who said he felt unwell. He told the doctor he had stopped taking his heart medication, apart from GTN spray, as he had become immune to them. The doctor encouraged him to restart his medications and noted Mr McHarg was mentally stable but non-compliant.

38. Throughout March, nurses noted that Mr McHarg was not taking his medication. However, on 27 March, he told a nurse that he was taking all his medications.

39. On 9 April, Mr McHarg refused to attend a hospital cardiac appointment and said he did not want it rebooked. On 24 April, he became short of breath and agreed to go to hospital by emergency ambulance but discharged himself the same day. He told healthcare staff that this was because he did not like hospitals, as they could not do much for him. On 26 April, Mr McHarg complained of chest discomfort and agreed to go to hospital. Staff called an ambulance, but Mr McHarg changed his mind and said he was not going to hospital after all.

40. The next day, a prison GP examined Mr McHarg, who was pale and unwell. His oxygen saturation was low and he had a productive cough. Mr McHarg went to hospital where he had an X-ray, blood tests and cardiac monitoring which were all normal. The hospital discharged him the same day.

41. Throughout May, Mr McHarg continued to suffer from chest pain and shortness of breath but refused to go to hospital or take his medication. On 2 June, he went to hospital for an angiogram. The consultant advised Mr McHarg to have a coronary artery bypass graft or a stent (a tube inserted inside the artery) but he refused any intervention.

42. Healthcare staff continued to monitor Mr McHarg over the next four months. Against advice, he refused to go to hospital on several occasions when he was having chest pains, despite advice. Each time signed a disclaimer. He took his medication intermittently during this time.

43. On 5 November, a prison GP saw Mr McHarg for a medication review. Mr McHarg said he had stopped taking his medication for the last week as he did not need it. The doctor stressed the importance of taking all his prescribed medication but Mr McHarg was adamant he would not take them. Against advice, he said that he would continue to smoke.

44. The prison GP reviewed Mr McHarg on 30 November and 14 December. Each time, Mr McHarg said he was not taking his tablets or using his GTN spray. The

GP was satisfied that Mr McHarg had the capacity to make that decision. On 22 December, Mr McHarg returned some of his medication to the pharmacy.

45. At 5.30pm on 24 December, a nurse went to Mr McHarg's cell and found him clutching his stomach. Mr McHarg said he was in a lot of pain since he had eaten a jacket potato and said it felt like the potato was stuck. She noted Mr McHarg was sweaty and pale. She tried to take his clinical observations, but Mr McHarg refused. He said he wanted to be left alone and continually swore at her. She advised him that to get him sufficient pain relief he would need to go to hospital but Mr McHarg said a number of times that he did not want to go to hospital. Eventually, Mr McHarg agreed and staff requested an ambulance at 6.20pm.

46. The ambulance arrived at 6.35pm, and paramedics gave Mr McHarg medication for heartburn. His pain did not ease so the paramedics took him to hospital. Two prison officers escorted him and used an escort chain to restrain him. (An escort chain is a long chain with a handcuff at each end, one attached to the prisoner and the other to an officer.) Hospital doctors diagnosed acute coronary syndrome and admitted him to the coronary care unit for observation. Officers continued to restrain him with the escort chain.

47. At 7.00am on Christmas Day, 25 December, Mr McHarg's blood pressure dropped. At 9.00am, a doctor noted his body was mottled and cold. The doctor explained to Mr McHarg that he was dying and hospital staff began end of life care. At 9.40am, the doctor asked officers to remove the escort chain, which was eventually removed at 10.20am. At 11.45am, Mr McHarg stopped breathing and a doctor recorded that he had died.

48. Mr McHarg had never received any visitors in prison and had told a nurse that he had no contact with any family members, including his son. The prison and police tried to trace Mr McHarg's son, but were not successful. The prison arranged and paid for Mr McHarg's funeral, which was held on 8 February 2016.

Support for prisoners and staff

49. After Mr McHarg's death, a senior prison manager debriefed the escort staff and to offered support. The staff care team also offered support.

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

Post-mortem report

51. A post-mortem examination concluded that Mr McHarg died as a result of the overall effects of coronary artery atherosclerosis (hardening of the arteries) and thrombosis (formation of a blood clot).

Findings

Clinical care

52. Mr McHarg had several significant long standing health conditions including ischaemic heart disease, chronic obstructive pulmonary disease and angina. In November 2014, he suffered a heart attack, which left his heart with severely impaired function. Mr McHarg was aware of the seriousness of his condition as doctors and nurses frequently explained this to him. Despite encouragement and advice from healthcare staff he often refused to take medication, accept treatment or hospital care. Against advice, he continued to smoke.

53. We are satisfied that throughout his time at Stocken, healthcare staff did their best to encourage Mr McHarg to take his medication and receive treatment. Clinicians appropriately assessed his mental capacity several times and established that he had capacity to take decisions about his care and treatment.

54. The clinical reviewer considered that Mr McHarg had excellent care at Stocken, at least equivalent to that he could have expected to receive in the community. We consider that there is nothing that staff at Stocken could have done to prevent Mr McHarg's death.

Restraints, security and escorts

55. 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.

56. Mr McHarg was elderly, used a walking stick and had a number of long standing medical conditions. When he went to hospital on 24 December, he was in severe pain and had difficulty breathing. An officer recorded that Mr McHarg was a high risk to the public and a low risk of escape. A nurse recorded there were no medical objections to the use of restraints but did not give any information about Mr McHarg's medical condition at the time or whether this affected his risk of escape. A prison manager decided that two prison officers should accompany Mr McHarg and restrain him with an escort chain.

57. At 9.00am on Christmas Day, a doctor told Mr McHarg he was dying and, at 9.40am, asked officers to remove the escort chain. At 10.20am, another prison manager eventually gave officers permission to remove the restraints. Mr McHarg died just over an hour and a half later.

58. The first prison manager explained he authorised the use of an escort chain rather than handcuffs, based on the decency for Mr McHarg, his original index

offence, his current condition, access for ambulance staff and the overall safety to the public. He said that this was based on his own observation of Mr McHarg and his conversation with healthcare partners. He was aware that Mr McHarg's risk to the public was marked as high so felt that some form of restraint was still required.

59. Despite the justification from the prison manager, we are not satisfied that written decisions about the use of restraints were based on a proper assessment of Mr McHarg's health and mobility at the time, as the court judgment requires. The risk assessments focused mainly on Mr McHarg's offending history rather than on his risk at the time. There was no written healthcare input and nothing to indicate whether his condition impacted on his risk of escape, as the court judgment and subsequent Prison Service guidance requires. We are also concerned that it took so long for a manager to agree the removal of restraints after it was established that Mr McHarg was dying. Ultimately, it is the Governor's responsibility to ensure that the risk assessment process is managed properly, but the Head of Healthcare also needs to ensure that healthcare staff have appropriate input into risk assessments. 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.

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