Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Christopher Berriman a prisoner at HMP Leeds on 26 February 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 Christopher Berriman died of bowel cancer at a hospice on 26 February 2016, while a prisoner at HMP Leeds. He was 37 years old. I offer my condolences to Mr Berriman's family and friends.

I am satisfied that Mr Berriman received a good standard of care at the prison, equivalent to that he could have expected in the community. Healthcare staff at Leeds managed his care in line with national clinical guidelines and did their best to meet his physical and emotional needs. I am concerned that restraints were used on occasions without a fully considered risk assessment, but I am pleased to note that prison staff did not use restraints at the end of Mr Berriman's life, when he was admitted to a hospice.

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 **September 2016**

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Summary

Events

1. Mr Christopher Berriman was remanded to HMP Leeds on 21 March 2015, charged with robbery. (He was subsequently sentenced to two years in prison.) During initial health screens, he said he had lost weight. Nurse weighed him, but considered his weight was within a normal and healthy range.

2. On 9 April, Mr Berriman reported stomach cramps and diarrhoea, which he said had started several days earlier. A prison GP arranged for him to be admitted to hospital that day and doctors diagnosed a perforated bowel. On 10 April, they operated to remove part of his bowel and sent tissue samples for testing. At a follow up appointment on 7 May, a hospital consultant told Mr Berriman he had bowel cancer and would need chemotherapy. Further tests showed the cancer had spread to lymph nodes and was incurable. On 9 June, doctors told him that chemotherapy would only be palliative. They estimated he had a 50 per cent chance of surviving 18-20 months.

3. Mr Berriman sometimes refused to attend hospital appointments, particularly if they coincided with family visits. He refused to be admitted to the prison's inpatient unit, to allow staff to manage his pain more effectively, but eventually agreed on 1 February 2016. Three days later, doctors told him that he was nearing the end of his life. On 11 February, Mr Berriman was moved to a hospice. The prison released him on a temporary licence, while an application for compassionate release was considered. Mr Berriman died on 26 February, before a decision was made.

Findings

4. Although Mr Berriman did not always cooperate with his treatment, prison healthcare staff looked after him well. They managed his care in line with national clinical guidelines and were sensitive about his wishes and mental health. We are satisfied that Mr Berriman received a good standard of care at Leeds, equivalent to that he could have expected in the community.

5. Prison managers did not always fully take into account Mr Berriman's condition when considering security arrangements for hospital appointments and admissions. However, we are satisfied that staff took an appropriate decision not to use restraints when he moved to a hospice, three weeks before his death.

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

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

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

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

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

10. One of the Ombudsman's family liaison officers contacted Mr Berriman's partner to explain the investigation. She did not have any specific matters for the investigation to consider. Mr Berriman's family also received a copy of the initial report. They did not make any comments.

11. The prison also considered our initial report and did not raise any factual inaccuracies. They submitted an action plan addressing our recommendations.

12. The investigation has assessed the main issues involved in Mr Berriman'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 considered.

Background Information

HMP Leeds

13. HMP Leeds is a local prison holding up to 1,219 men. Care UK runs primary healthcare services. The prison has an inpatient facility with 24-hour nursing care.

HM Inspectorate of Prisons

14. The most recent inspection of HMP Leeds was in November and December 2015. Inspectors reported that, overall, the prison had not kept up the improvements they had observed in January 2013, but they were confident that good leadership and a positive staff culture would lead to improvements. Inspectors considered that healthcare services had declined, but outcomes for prisoners remained reasonable. They found that the management of long-term conditions was impressive, prisoners had good access to hospital appointments and liaison with specialist services was effective. The healthcare team had developed palliative care pathways, and used them well.

Independent Monitoring Board

15. 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 December 2015, the IMB was concerned about major changes to staffing levels and management structures, but noted that staff continued to treat prisoners with care and respect. Overall, the IMB considered that healthcare provision had improved over the previous 12 months, although the IMB was concerned about the potential impact of a change of healthcare provider to Care UK in April 2016.

Previous deaths at HMP Leeds

16. There have been eight deaths from natural causes, at Leeds, since the beginning of 2014. Two of the other deaths are still under investigation. We have previously made recommendations to the prison about the need for properly considered risk assessments for the use of restraints.

Findings

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

17. On 21 March 2015, Mr Christopher Berriman was remanded to HMP Leeds. On 6 January 2016, he was sentenced to two years in prison for robbery.

18. Mr Berriman had been diagnosed with asthma and colitis (inflammation of the bowel). At initial and secondary health assessments, he said that he had lost weight in the previous three months. A nurse recorded that he weighed 69kg, with a body mass index of 22, which was within a healthy range. A prison GP asked for blood tests to check for colitis, blood borne viruses and hepatitis B. Mr Berriman had a history of alcohol and opiate abuse and he agreed to begin a detoxification programme.

19. On 9 April, Mr Berriman reported stomach cramps and diarrhoea, which had started about five to seven days earlier. A nurse examined him, noted his stomach was hard and tender and that he had a high temperature. She gave him paracetamol and referred him to the doctor. A prison GP reviewed him that afternoon and arranged for him to be admitted to hospital. Hospital doctors diagnosed a perforated bowel.

20. On 10 April, Mr Berriman had surgery to remove part of his bowel and form an ileostomy (where the small bowel is diverted through an opening in the abdomen). Samples of tissue were sent for testing and he was discharged on 17 April. At an outpatient appointment on 7 May, a doctor told Mr Berriman that he had bowel cancer and would need chemotherapy. On 12 May, a consultant colorectal surgeon informed the prison that the cancer had spread to at least one lymph node and an oncologist would discuss the possibility of chemotherapy.

21. On 28 May, an oncologist told Mr Berriman that he had cancer in four lymph nodes and would need chemotherapy, which might delay progression of the cancer but would not cure it. At his next appointment on 16 June, the oncologist told him that the outcome of a CT scan had shown that his cancer had spread further and was incurable. The oncologist wrote to the prison and said that, although Mr Berriman might live for another five years, the average survival rate was shorter and he had a 50 per cent chance of living for 18-20 months.

22. We are satisfied that there was no delay in Mr Berriman's diagnosis. A prison GP sent him to hospital on the day that he first reported his symptoms. Hospital doctors investigated and informed him of his terminal diagnosis.

Mr Berriman's clinical care

23. On 19 June, healthcare staff produced a care plan for Mr Berriman. They reviewed his pain relief and gave him nutritional drinks. On 25 June, Mr Berriman began chemotherapy and a prison nurse added him to the palliative care register the next day. On 27 June, a nurse spoke to him about his diagnosis and asked a GP to explain the oncologist's letter to him. She explained the effects of chemotherapy and referred him to a Macmillan nurse for support. He did not want to be referred to the mental health team. Subsequently, Mr

Berriman postponed several hospital appointments, as they coincided with visits from his family.

24. A palliative care specialist often visited the prison to review Mr Berriman's palliative care and medication and advise staff. On 30 October, a nurse recommended an increase in oramorph (a morphine-based painkiller) and suggested a palliative care review by a hospice doctor.

25. On 19 November, Mr Berriman was due to attend a hospital appointment for a scan before he could start radiotherapy, but said he was in too much pain. The prison doctor increased his pain relief and staff re-booked the appointment for the next day but Mr Berriman still refused to go. The hospital therefore cancelled his radiotherapy appointments for that week. Over the next few days, Mr Berriman was very sick and vomited frequently. A nurse arranged for him to be admitted to hospital but he signed a treatment refusal form.

26. During December, Mr Berriman's pain increased. On 17 December, the hospice team reassessed him and prescribed pregabalin to help control his pain.

27. On 20 December, Mr Berriman agreed to start radiotherapy, which was booked from 5 January 2016. He subsequently changed his mind and signed a disclaimer to say that he no longer wanted to have the treatment.

28. On 22 December, a nurse noticed that Mr Berriman did not seem to take a night-time dose of oramorph and said that he did not like to disturb staff at night. Staff adjusted his medication and nurses routinely dispensed all doses, as Mr Berriman was still reluctant to disturb them to ask for it. On 31 December, a nurse asked a prison GP to assess Mr Berriman's pain. The GP thought he had colic and recommended an extra daily dose of oramorph.

29. On 21 January 2016, the prison GP noted that Mr Berriman seemed to be more unwell, but did not want to move to the inpatient unit. Mr Berriman said he was frightened of the future and about having radiotherapy. Mr Berriman spoke to nurses later that day, and said he would reconsider radiotherapy and moving to the inpatient unit at a later stage.

30. On 22 January, a nurse suggested that Mr Berriman should be assessed in hospital. He refused to go and said people would laugh at him, as he would be handcuffed. He declined to be admitted to the inpatient unit. Mr Berriman's pain levels seemed to stabilise but, on 26 January, a prison GP thought he had generally deteriorated. He prescribed an anti-depressant, as he seemed low. Mr Berriman still refused support from the mental health team.

31. By 1 February 2016, Mr Berriman's condition had significantly deteriorated and he was admitted to the inpatient unit for 24-hour care. On 4 February, he was taken to a hospital appointment with his consultant who said that Mr Berriman was coming to the end of his life. The consultant told a prison nurse that the aim was to keep Mr Berriman as comfortable as possible and he was happy with the arrangements prison healthcare were making to care for him. Mr Berriman's condition continued to deteriorate and on 11 February, he was transferred to a hospice. He died at the hospice on 26 February. A post-mortem report indicated

that Mr Berriman had died of metastatic cancer of the colon (bowel cancer that had spread).

32. It was sometimes difficult to manage Mr Berriman's care, as he refused to attend appointments and declined to move to the inpatient unit to allow staff to manage his pain better. However, healthcare staff did all they could to respect his wishes and at the same time give him the care he needed. We are satisfied that Mr Berriman received appropriate, compassionate and responsive care, equivalent to that he could have expected in the community.

Mr Berriman's location

33. Healthcare staff frequently offered to admit Mr Berriman to the prison's inpatient unit. Initially, Mr Berriman shared a cell with his brother and preferred to stay with him for support. Afterwards, he wanted to stay on the wing with his friends. He had a prisoner carer to help with tasks, such as keeping his cell clean and collecting his meals. The prison provided a comfortable chair for his cell. Healthcare staff respected his preference to stay on the wing for as long as it was safe.

41. By 1 February 2016, when Mr Berriman's condition deteriorated, he was admitted to the healthcare unit for 24-hour care. On 3 February, he said that he did not want to die in prison. On 11 February, Mr Berriman transferred to a hospice for specialist end of life care.

42. We are satisfied that Mr Berriman's location was appropriate and in line with his wishes throughout his time at the prison.

Restraints, security and escorts

34. 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.

35. 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. The judgment found that the using handcuffs or other restraints on terminally or seriously ill prisoners was inhumane, unless justified by security considerations. Restraining a prisoner receiving chemotherapy (and, by implication, other life saving treatment) was considered degrading.

36. Mr Berriman was taken to a number of hospital appointments between 25 June 2015 and 4 February 2016. On 28 September 2015, he was admitted to hospital suffering from abdominal pain, vomiting and stoma problems. He had been unable to walk or get into a wheelchair to go the prison's healthcare centre. Apart from one appointment for a scan on 22 October 2015, healthcare staff did

not object to the use of restraints. His security risk was always assessed as low for all categories, including his potential to escape and risk of harm to others. However, each time, prison managers decided that he should be restrained by double handcuffs or an escort chain, even during some treatment sessions. (Double cuffing is when the prisoner's wrists are handcuffed in front of him and one wrist is attached to a prison officer by an additional set of handcuffs. An escort chain is a long chain with a handcuff at each end, one of which is attached to the prisoner and the other to an officer).

37. On 11 February, when Mr Berriman was taken to the hospice, a nurse completed the medical portion of the risk assessment and objected to the use of restraints, but did not give any further detail about Mr Berriman's condition. Mr Matt Cunningham, a prison manager decided that two officers in civilian clothes should accompany him but should not use restraints.

38. Public protection is fundamental, but security measures must be proportionate to a prisoner's individual circumstances, which must be fully considered, taken into account, and balanced against the security risks. The use of double handcuffs appears to have been excessive, in the light of his low risk and weakened condition. It is difficult to see how restraints were justified when he was admitted to hospital in September 2015.

39. We are concerned that Mr Berriman's risk was not assessed using the tests required by the High Court judgment and that senior managers agreed to the use of double handcuffs, usually used for high risk prisoners in good health. The prison appropriately took Mr Berriman's condition into account when he was admitted to the hospice two weeks before his death, but we are not satisfied that the use of restraints was justified by fully considered risk assessments when Mr Berriman was receiving chemotherapy and scans and when he was admitted to hospital as an inpatient. 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 Berriman's family

40. Shortly after Mr Berriman's diagnosis of terminal cancer, a Supervising Officer was appointed as the prison's family liaison officer. He checked on Mr Berriman while he was on his wing and made sure that he had sufficient telephone credit to speak to his family.

41. Another officer took over as the family liaison officer on 2 February. She arranged for Mr Berriman's partner to visit on 3 February to meet staff caring for Mr Berriman. From 5 February, the prison agreed that members of Mr Berriman's family could visit every day. The officer continued to support Mr Berriman's partner and other family members throughout his time at Leeds and in the hospice, by arranging visits, involving them in his care planning and keeping them informed of his progress.

42. Mr Berriman's funeral was on 22 March 2016 and the prison contributed to the funeral costs, in line with national policy. On 4 April, the prison held a memorial service for Mr Berriman. We are satisfied that there was good liaison between the prison and Mr Berriman's family.

Compassionate release

43. Prisoners can be released 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. Unsentenced prisoners are not eligible for compassionate release.

44. Mr Berriman's records show that staff first considered the possibility of early release on compassionate grounds at an early stage. On 26 June 2015, it was noted that he did not meet the criteria, as his life expectancy was likely to be more than a year. On 26 November, they discussed it again at a multidisciplinary team meeting and the Head of Safer Custody asked healthcare staff to obtain a prognosis. A prison GP wrote to the oncologist about this, but he could not provide a firm prognosis. However, as Mr Berriman was not sentenced until 6 January 2016, he would not have been eligible for release before then.

45. At the beginning of February, it became clear that Mr Berriman was near the end of his life. On 3 February, at a multidisciplinary meeting with prison staff and his family, he said that he wanted to die at home. The Head of Safer Custody said that the prison had started an application for compassionate release. The prison passed the application to the Public Protection Casework Team of the National Offender Management Service, on 9 February. In the meantime, on 13 February, the Governor authorised Mr Berriman's temporary release on special licence. Mr Berriman died before the prison received a decision. We note that early release on compassionate grounds is not normally allowed if it is based on facts of which the sentencing court was aware. As Mr Berriman had been sentenced just the month before he died, it seems unlikely that he would have met the criteria for compassionate release.

46. We are satisfied that that the prison appropriately considered and applied for compassionate release.

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