Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Michael Burton a prisoner at HMP Altcourse on 12 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 Michael Burton died on 12 December 2015 of lung cancer, while a prisoner at HMP Altcourse. He was 50 years old. I offer my condolences to Mr Burton's family and friends.

Mr Burton generally received a good standard of clinical care at HMP Altcourse and healthcare staff frequently monitored his long-term health conditions. While it is unlikely to have affected the eventual outcome, as Mr Burton had very advanced cancer, an earlier hospital referral might have been appropriate, when Mr Burton reported persistent symptoms.

I am concerned that Mr Burton was subject to a high level of restraint when he was taken to hospital without appropriate risk assessments to justify this level of security. I have raised this issue a number of times with the prison. The Director needs to make sure that staff understand the legal position and follow guidance about 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 the investigation.

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

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Summary

Events

1. On 16 February 2011, Mr Michael Burton received an indeterminate prison sentence for aggravated burglary. He had been at HMP Altcourse since 20 June 2013.

2. On 26 April 2014, Mr Burton had a minor operation. A pre-operative blood test identified that he had a raised white blood cell count and a prison doctor referred him for specialist investigation. On 25 May, a hospital consultant reviewed Mr Burton and diagnosed early stage chronic lymphatic leukaemia. Prison healthcare staff monitored Mr Burton and he attended hospital appointments to review his condition.

3. In April 2015, Mr Burton had a persistent cough and a doctor prescribed antibiotics for a chest infection. In October and early November, Mr Burton complained of chest and shoulder pain several times. Doctors again prescribed antibiotics for a chest infection and, in line with guidelines for suspected cancer, referred Mr Burton for an X-ray.

4. On 11 November, a doctor noted that the results of the chest X-ray, taken on 4 November, were normal. The next day, another doctor examined Mr Burton's chest after he reported extensive pain. The doctor suspected pneumonia or pleurisy and he was admitted to hospital for investigations. On 16 November, a hospital nurse informed the doctor that Mr Burton had been diagnosed with terminal lung cancer. Active treatment was not possible.

5. Mr Burton's health deteriorated rapidly. On 25 November, he was moved to a hospice and died there on 12 December.

Findings

6. We are satisfied that Mr Burton received generally good care in prison. The clinical reviewer noted that a number of locum doctors dealt with Mr Burton, who were not trained to use SystmOne (the computerised prison medical record system) and were unable to review and consider his previous history and presentations. It is possible that better continuity of care might have resulted in a slightly earlier referral to a specialist when he reported concerning symptoms during October, but a chest X-ray requested at the end of October had been clear. There is no evidence that an earlier referral would have affected the eventual outcome, as the cancer was advanced when diagnosed.

7. Mr Burton was restrained by double handcuffs when he was taken to hospital in November. This level of restraint was not justified by his security category. This was reduced to an escort chain in hospital but there is no record of risk assessments to justify the further use of restraints in hospital until 23 November, when restraints were removed.

Recommendations

- The Head of Healthcare should ensure that all healthcare staff are trained in the use of SystmOne to allow appropriate continuity of care and prompt specialist referrals when necessary.
- The Director 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 the 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 Altcourse 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 Burton's prison and medical records.

10. NHS England commissioned a clinical reviewer to review Mr Burton's clinical care at the prison. She interviewed two prison doctors at Altcourse on 26 and 27 January.

11. We informed HM Coroner for Liverpool and Wirral 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 one of Mr Burton's sons, to explain the investigation. He did not have any specific matters or concerns for the investigation to consider.

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

14. Mr Burton's family received a copy of the initial report. They did not raise any further issues, or comment on the factual accuracy of the report.

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

Background Information

HMP Altcourse

16. HMP Altcourse is a local prison in Liverpool, which takes prisoners from the courts in Merseyside, Cheshire and North Wales. It holds up to 1,324 sentenced and remanded adult and young adult men. G4S Custodial and Detention Services manage the prison and G4S Justice Health Services provide primary healthcare services.

HM Inspectorate of Prisons

17. The most recent inspection of HMP Altcourse was in June 2014. Inspectors reported that prisoners had satisfactory access to most health services. There was a good range of clinical and screening services. Prisoners were generally positive about the care provided, especially in the inpatient unit. There were good arrangements for palliative and end of life care.

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 June 2015, the IMB reported that the 12 bed inpatient unit continued to manage and care for a diverse range of men. The healthcare management structure had been reformed and a new triage system had been introduced to reduce the length of waiting lists.

Previous deaths at HMP Altcourse

19. Mr Burton was the fifth prisoner to die of natural causes at Altcourse since May 2014. We have previously raised the need for appropriate risk assessments to justify the use of restraints.

Findings

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

20. On 16 February 2011, Mr Michael Burton received an indeterminate prison sentence for aggravated burglary. He had been at HMP Altcourse since 20 June 2013. His health and mobility were poor and he frequently used a crutch to get around. He had a history of drug misuse and smoked cigarettes.

21. On 26 April 2014, a routine pre-operative blood test for a minor operation showed a raised white blood cell count and on 25 May, a consultant haematologist diagnosed Mr Burton with stage A (first stage) chronic lymphatic leukaemia (CLL - cancer of the white blood cells), which would need active monitoring. He attended all hospital reviews but needed no treatment. In late January 2015, he reported hip pain and on 24 February, at a hospital review, a nurse noted that a recent X-ray had not identified anything abnormal.

22. On 15 April 2015, a prison GP examined Mr Burton who said he had a persistent cough. The GP noted that he had difficulty breathing and had a fast heart rate. He diagnosed a chest infection and prescribed antibiotics.

23. In July and August Mr Burton received pain relief for further hip pain and also reported stomach and neck pain at the end of August. On 1 September, at a hospital review of his leukaemia, a nurse noted he had had a chest infection in April and that he was experiencing day and night sweats. She arranged to review him again in six months.

24. On 3 October, a nurse listed Mr Burton for a GP appointment when he told her he had been experiencing right shoulder pain for a number of weeks. On 7 October, Mr Burton reported continued shoulder pain and the nurse arranged an urgent GP appointment. Later that day, a locum GP examined Mr Burton and noted that he had crackles in his chest and pain while deep breathing. He diagnosed a chest infection and prescribed amoxicillin and naproxen (an antibiotic and an anti-inflammatory).

25. On 23 October, the locum GP examined Mr Burton after he reported ongoing chest pain. The GP noted that he had not responded to the previous course of antibiotics and prescribed another antibiotic for a chest infection. He also requested a chest X-Ray.

26. On 29 October, Mr Burton complained of pain in the right side of his abdomen. A locum GP examined him and noted that he had good air entry into both lungs and his blood pressure was normal. He prescribed naproxen and advised nurses to consult a doctor if his symptoms continued.

27. On 4 November, Mr Burton had a chest X-ray. On 11 November, the results of the X-ray were noted as normal. The next day, a prison GP examined Mr Burton after he reported worsening chest pains. He suspected pleurisy or pneumonia and arranged admission to hospital. On 16 November, after investigations in hospital, the hospital informed the GP that Mr Burton had a terminal diagnosis of lung cancer with multiple bone metastases. There is no record of when Mr Burton was told about the diagnosis.

28. The clinical reviewer considered that Mr Burton was referred for a chest X-Ray in line with National Institute for Health and Care Excellence (NICE) guidance, after he presented with re-occurring chest and shoulder pain in October. However, no one recorded that this was for suspected cancer, despite Mr Burton's symptoms. The clinical reviewer noted that there was a lack of continuity of care because of the number of GPs involved and some locum doctors were unable to review Mr Burton's clinical history as they had not been trained to use SystmOne (the computerised prison medical record system). It is possible that better continuity of care would have led to a slightly earlier referral although this is unlikely to have changed the outcome as Mr Burton's cancer was well advanced when diagnosed. We make the following recommendation:

The Head of Healthcare should ensure that all healthcare staff are trained in the use of SystmOne to allow appropriate continuity of care and prompt specialist referrals when necessary.

Mr Burton's medical treatment

29. On 16 November, a hospital palliative care nurse told a prison GP that after Mr Burton's diagnosis, a consultant had offered to take biopsies and provide palliative chemotherapy, but Mr Burton had declined treatment. On 17 November, two nurses from Altcourse attended a palliative care meeting at the hospital. The palliative care nurse told them that Mr Burton's condition was terminal and he had not long to live. She suggested moving him to a hospice. The nurses went to see Mr Burton and he said he did not want to be admitted to the prison healthcare unit for end of life care.

30. On 25 November, Mr Burton moved to a hospice for end of life care. Prison healthcare staff kept in frequent touch with the hospice for updates on his condition. Mr Burton died at the hospice on 12 December.

31. All of Mr Burton's care after his diagnosis was at the hospital and hospice. We are therefore satisfied that his care was in line with standards in the community.

Mr Burton's location

32. Mr Burton indicated that he did not want to be admitted to the prison's inpatient unit for end of life care. A nurse liaised with prison managers and hospital staff to arrange a move to the hospice.

33. We are satisfied that the prison appropriately took account of Mr Burton's preferences about his location for end of life care and that the hospice was appropriate for his needs.

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. 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.

35. When Mr Burton, went to hospital on 12 November, there was little input into the medical information section of the risk assessment, apart from a circled indication that there was no medical objection to the use of restraints. There was nothing about his current symptoms or his limited mobility. There was no indication of his level of risk to the public, staff or of escape in the risk assessment. A prison manager decided that staff should use double handcuffs to restrain him. The risk assessment noted that Mr Burton had been compliant during previous hospital escorts.

36. At 8.30pm on 12 November, the prison manager decided that the escort officers should remove Mr Burton's double handcuffs and use an escort chain. (An escort chain is a long chain with a handcuff at each end, one of which is attached to a prison officer.) There is no evidence of a further risk assessment after his terminal diagnosis, which the prison were informed of on 16 November. On 23 November, a prison manager reviewed Mr Burton's risk and agreed that he should no longer be restrained. He reduced the escort from two officers to one. The decision was based on Mr Burton's terminal diagnosis, his limited mobility and impending move to the hospice.

37. We are satisfied that the prison appropriately removed restraints on 23 November but we are concerned that there is no evidence of any earlier review of Mr Burton's risk, after his hospital admission and terminal diagnosis with advanced cancer. We are also concerned about the decision to use double handcuffs. Double cuffing entails the prisoner having his hands handcuffed in front of him and then having one wrist attached to a prison officer by an additional set of handcuffs. This is usually required for moving category A or category B prisoners in good health. When, exceptionally, double handcuffs are used for a category C prisoner like Mr Burton, the Prison Service requires that reasons should be recorded in writing. This was not done and we can see no reason why it would be justified. The risk assessment used was based entirely on the prison's view of his offence with little evidence of any consideration of how his health and mobility affected this risk, as the 2007 High Court judgment requires. We make the following recommendation:

The Director 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 the prisoner and are based on the actual risk the prisoner presents at the time.

Liaison with Mr Burton's family

38. On 24 November, the prison appointed an officer as their family liaison officer (FLO) and he visited Mr Burton to explain his role. Mr Burton said he did not want the prison to contact his family. On 1 December, the FLO visited Mr Burton again at the hospice and he said he did not object to the FLO contacting his son. The FLO tried to call Mr Burton's son several times and eventually spoke to him on 4 December and informed him of his father's condition.

39. On 11 December, a member of staff from the hospice contacted the prison and asked them to inform Mr Burtons' family that he did not have much longer to live. A prison manager telephoned Mr Burton's ex-wife, who he had named as his next of kin. She arranged for his son to call the prison. Mr Burton's son said that he and his brother would travel to the hospice to be with their father. His sons were with him when he died on 12 December.

40. Mr Burton's family did not want anyone from the prison to visit them. On 14 December, the FLO telephoned Mr Burton's son and offered condolences and support. He spoke to him again on the 15 December, to discuss Mr Burton's funeral arrangements. Mr Burton's funeral was on 29 December. The prison contributed to the costs in line with national policy.

41. We are satisfied that there was appropriate liaison with Mr Burton's family.

Compassionate release

42. 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.

43. On 25 November, when Mr Burton moved to the hospice, the prison started an application for compassionate release. They submitted this to the National Offender Management Service on 7 December, but it was returned two days later as no prognosis had been included. Sadly, Mr Burton died before the prison could resubmit the application. We are satisfied that the prison appropriately began compassionate release procedures.

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