

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Stuart Muir a prisoner at HMP Risley on 26 April 2016

**A report by the Prisons and Probation Ombudsman
Nigel Newcomen CBE**

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*



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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 Stuart Muir died on 26 April 2016 of lymphoma (a cancer), which had spread to his glands, while a prisoner at HMP Risley. He was 52 years old. I offer my condolences to Mr Muir's family and friends.

The investigation found that the clinical care Mr Muir received was equivalent to that he could expect to have received in the community, although some elements of his care were not fully discussed with him, which would have been best practice.

I am disappointed that officers restrained Mr Muir during chemotherapy treatment and until up to two weeks before he died, which indicates that staff at Risley are not aware of the legal position. This needs to be addressed as I have previously raised the issue of inappropriate use of restraints with the prison.

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

March 2017

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Summary

Events

1. Mr Stuart Muir breached the conditions of his licence and was recalled to prison on 28 February 2015. He was moved to HMP Risley on 3 July 2015. He suffered from asthma, migraines and smoked cigarettes. In October 2015, Mr Muir was treated for suspected chronic obstructive pulmonary disease (COPD – the name for a collection of lung diseases including chronic bronchitis and emphysema), after reporting coughing. This cough got no better and a doctor noted Mr Muir had lost weight. The doctor ordered urgent investigations for suspected cancer.
2. Before these investigations were completed, Mr Muir saw a doctor on 28 October because he was feeling unwell and had lost more weight. His temperature and pulse were high so the doctor sent Mr Muir to hospital. In hospital, doctors diagnosed him with lung cancer. However, after further investigations, they changed the diagnosis to an aggressive form of lymphoma (a cancer in the lymphatic system). Doctors gave him a prognosis of months to live and the prison began an application to release Mr Muir on compassionate grounds.
3. A nurse in the prison informed Mr Muir that a prison doctor regarded that resuscitation would be futile if Mr Muir's heart or breathing stopped and that they would not attempt resuscitation. A doctor implemented an order not to resuscitate Mr Muir if his heart or breathing stopped, to which Mr Muir agreed. The order was withdrawn in early January 2016, when a hospital consultant said Mr Muir was likely to live for five years or more. The prison withdrew the compassionate release request and Mr Muir was treated with chemotherapy.
4. Initially, Mr Muir's condition improved but, from early March 2016, he quickly began to deteriorate. On 29 March, after receiving chemotherapy treatment as an outpatient, the hospital admitted him as an inpatient because he was so unwell. Another application for release on compassionate grounds was begun in mid-April, when he was given a terminal prognosis. His health continued to deteriorate and he died on 26 April 2016.

Findings

5. The care that Mr Muir received was equivalent to that he could have expected to receive in the community. However, it is best practice to discuss care options with the patient and healthcare staff should have discussed resuscitation with Mr Muir before the decision was reached.
6. When he died, Mr Muir was not restrained. However, it is inappropriate that he was restrained before this, including during chemotherapy treatment. The risk assessments failed to fully consider Mr Muir's condition at that time.
7. Early release on compassionate grounds was discussed for a final time from mid-April, after Mr Muir received a terminal prognosis of days to weeks to live. It is not clear why the application form was not completed by the time Mr Muir died, nearly two weeks later.

Recommendations

- The Head of Healthcare should ensure that end of life care plans and DNACPR decisions are fully discussed and agreed with prisoners, before being implemented.
- The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position on the use of restraints 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. Though Mr Muir died on 26 April 2016, we were not notified of his death by HMP Risley until 10 August 2016. We regret the delay that this caused.
9. The investigator issued notices to staff and prisoners at Risley informing them of the investigation and asking anyone with relevant information to contact her. No one responded.
10. The investigator obtained copies of relevant extracts from Mr Muir's prison and medical records. She interviewed two members of staff over the telephone on 7 and 12 October.
11. NHS England commissioned a clinical reviewer to review Mr Muir's clinical care at the prison.
12. We informed HM Coroner for Cheshire of the investigation who gave us the cause of death. We have sent the coroner a copy of this report.
13. One of the Ombudsman's family liaison officers contacted Mr Muir's mother, to explain the investigation and to ask if she had any matters she wanted the investigation to consider. She asked if Mr Muir was diagnosed at the earliest possible time and if, when he was first taken ill, he should have gone to hospital sooner and stayed in longer. She also wanted to know if she was informed that he was in hospital at the earliest opportunity.
14. The investigation has assessed the main issues involved in Mr Muir'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.
15. Mr Muir'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.
16. The initial report was shared with the Prison Service. The Prison Service did not find any factual inaccuracies.

Background Information

HMP Risley

17. HMP Risley is a medium security training prison, which holds over 1,000 convicted men. Bridgewater Community Healthcare NHS Trust provides healthcare services in the prison. There is 24-hour healthcare cover. There is a doctor in the prison during the day and at night there are nurses on duty. Prisoners who need inpatient treatment are referred to other prisons (usually HMP Preston) or to hospital. Lifeline provides substance misuse services.

HM Inspectorate of Prisons

18. The most recent inspection of HMP Risley was in July 2013. Inspectors reported that there were a wide range of clinics, and a proactive approach to healthcare. The relationships with local services were good.

Independent Monitoring Board

19. 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. The most recent report to March 2016, states that there is a multi-disciplinary approach to wellbeing across the prison and plans to expand the healthcare services provided.

Previous deaths at HMP Risley

20. Mr Muir was the fourth prisoner to die of natural causes at Risley since January 2014. There has been one death since. We have commented on the need for fully considered risk assessments for the use of restraints before.

Findings

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

21. Mr Stuart Muir was released on licence on 21 November 2014, after serving time in prison for arson. However, he breached the conditions of his licence, and was recalled into prison on 28 February 2015. He was admitted to HMP Risley on 3 July. A nurse noted that he used inhalers for asthma, suffered from migraines and smoked cigarettes. He declined help to stop smoking.
22. On 7 October, Mr Muir saw a prison GP, as he had a cough and had been producing phlegm. The GP found Mr Muir had a high pulse (100 beats per minute) and a slightly low oxygen saturation (97%). The GP thought Mr Muir may have chronic obstructive pulmonary disease (COPD – the name for a collection of lung diseases including chronic bronchitis and emphysema) and prescribed antibiotics, steroids and an inhaler.
23. A week later, on 14 October, the GP again saw Mr Muir, who said he was no better. He was still coughing and had lost 9kg since July. The GP ordered urgent blood tests and a chest x-ray. This was to be done within two weeks in line with NHS guidelines for suspected cancer. The hospital scheduled the chest x-ray for 2 November (outside the usual two week timeframe and outside prison control). Before the x-ray was completed, Mr Muir saw the GP about the blood tests on 28 October. The GP noted that the results showed abnormalities and that the antibiotics had not worked. Mr Muir felt unwell and had lost a further 2kg. His temperature and pulse were high (37.6 degrees and 120 beats per minute, respectively), but his blood pressure was normal (120/60). The GP sent Mr Muir to hospital.
24. Mr Muir returned to prison on 30 October. While in hospital, investigations showed that he had lung cancer. Hospital doctors told him he had lung cancer, which had spread to his liver and adrenal glands. He received support from the chaplaincy team and officers on the wing.
25. On 25 November, prison healthcare staff sent Mr Muir back to hospital because he found it hard to breathe. He also had low oxygen levels (88-90%) and a high pulse (120 beats per minute).
26. Hospital doctors treated Mr Muir for pneumonia and organised further investigations to confirm how far his cancer had spread. He returned to prison on 30 November, and moved to a ground floor cell on 1 December, because he could no longer walk far without difficulty.
27. A nurse became Mr Muir's key nurse contact, and she attended hospital appointments with him. On 4 December, hospital doctors confirmed he had stage four lung cancer, with a prognosis of less than six months. Mr Muir had a biopsy on 10 December. On 16 December, at a hospital appointment, consultants told Mr Muir he actually had an aggressive form of lymphoma (a cancer in the lymphatic system), and they referred him to the haematology department.

28. The clinical reviewer concluded that Mr Muir's diagnosis was timely and appropriate. His assessment and referral to hospital was prompt and effective, and he was kept informed of his diagnosis.

Mr Muir's clinical care

29. Mr Muir went to hospital on 21 December, after suffering pains and difficulty breathing. The hospital gave him antibiotics to treat pneumonia. He returned to prison the next day after a CT scan.
30. A nurse spoke with Mr Muir on 23 December about possible treatment options and the fact that after diagnosis, life expectancy was not usually long. Chemotherapy would be used to prolong life, rather than to cure the cancer. She informed Mr Muir that a prison GP had decided resuscitation would be futile and that a Do Not Attempt Cardiopulmonary Resuscitation Order (DNACPR) would be implemented. An Order means that in the event of cardiac or respiratory arrest no attempt at resuscitation will be made. All other appropriate treatment and care would continue to be provided. Mr Muir agreed to this once told, and an Order was signed to that effect.
31. On 23 December, Mr Muir began chemotherapy and stayed in hospital as an inpatient. He returned to prison on 30 December.
32. On 4 January 2016, a hospital consultant spoke with a prison GP and said that Mr Muir in fact had up to five years to live, and that after chemotherapy they would give a clearer prognosis. The GP discussed this with Mr Muir on 6 January, and Mr Muir seemed happy with the news. The DNACPR Order was cancelled, which his key work nurse contact told him on 12 January. Again, the decision to remove it was not discussed with him.
33. National Institute for Health and Clinical Excellence (NICE) guidelines outline that in end of life care, patients, including prisoners, should be involved in the planning and decisions about their care. Although it appears Mr Muir was informed in a compassionate way, and agreed with the decision, implementing and then withdrawing a DNACPR was not discussed with him in advance. This is not in line with guidelines by the Resuscitation Council for holistic end of life care. We make the following recommendation:

The Head of Healthcare should ensure that end of life care plans and DNACPR decisions are fully discussed and agreed with prisoners, before being implemented.
34. Mr Muir responded well to chemotherapy and, over the next two months, his health began to improve. However, he became unwell again in March. On 29 March, he was sent to hospital for chemotherapy. However, hospital doctors suspected he had a severe chest infection and moved him to hospital as an inpatient.
35. Hospital consultants said, on 13 April, that Mr Muir only had days to weeks to live. They began palliative care. Mr Muir's health deteriorated quickly and he died on 26 April.

36. The clinical reviewer concluded that, with the exception of the lack of discussion around the DNACPR, the care Mr Muir received was equivalent to that he could have expected to receive while in the community.

Mr Muir's location

37. Mr Muir moved to a ground floor cell on 1 December 2015, once he was not able to mobilise well. This was near to the wing office and servery. He was sent to hospital as appropriate and the earliest opportunity. His location was appropriate.

Restraints, security and escorts

38. 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.
39. On 31 December 2015, a nurse commented on the risk assessment that Mr Muir was breathless and needed a wheelchair. Subsequent risk assessments included this, but nurses did not note when Mr Muir received chemotherapy, and did not raise an objection to the use of restraints. Security staff decided two officers would escort Mr Muir, and use an escort chain (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). This was the same throughout most of his hospital appointments. From escort records, it appears that, on 3 March 2016, escort officers used restraints on Mr Muir during chemotherapy. The risk assessments in March were authorised by a prison manager.
40. During Mr Muir's time as an inpatient from 29 March, escort officers restrained Mr Muir with an escort chain. Escort officers recorded, on 11 April, that Mr Muir was very breathless after walking to and from the toilet and that he found it difficult to get around. On 13 April, the restraints were removed after a hospital doctor confirmed that Mr Muir was physically unable to walk further than a short distance, and said restraints were unnecessary. He remained unrestrained until he died.
41. In interview, it became clear that healthcare staff and prison staff appeared to be unaware of the High Court Judgment relating to the use of restraints on seriously ill prisoners. They did not know that it was a legal requirement to consider removing restraints from prisoners during life saving treatment, specifically chemotherapy. Without an understanding of Mr Muir's health and his ability to escape at that time, we are not satisfied that there was an appropriately considered risk assessment. 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 on the use of restraints 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 Muir's family

42. The prison appointed a senior prison manager as the family liaison officer on 5 November 2015. She contacted Mr Muir's mother on 9 November and introduced herself to Mr Muir, the following day, to explain her role.
43. It is not clear when Mr Muir's mother was told Mr Muir was in hospital for the final time. He initially went for a scheduled appointment on 29 March that turned into an inpatient stay. Mr Muir's mother visited him in hospital from 1 April 2016. The prison manager offered support and met Mr Muir's family before and after Mr Muir's death. Mr Muir had an insurance policy which paid for the funeral, held on 17 May 2016.

Compassionate release

44. Prisoners can be released from custody 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.
45. A prison probation officer started the application for compassionate release at the beginning of December 2015. However, when the hospital consultant said that Mr Muir had up to five years to live, the application was stopped. On 13 April, when Mr Muir was given a poor prognosis the application was again started. A prison GP signed the paperwork on 22 April, detailing a poor prognosis. The prison probation officer then completed her section three days later. However the application was not completed and sent for consideration before Mr Muir died.
46. Mr Muir's prognosis changed suddenly and the prison did start the application again when this was clear. Without a clear prognosis it is unlikely the application would have been successful, so it could not have been started sooner. It is not clear why it took nearly two weeks for the prison to complete most, but not all, of the compassionate release application. We are pleased that the process was started, although the reasons behind any decisions or possible delays were not recorded. We do not make a recommendation here, but the Governor should ensure that applications for compassionate release are treated with sufficient priority and the reasons behind decisions recorded.

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