

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr James McCann a prisoner at HMP Lincoln on 20 January 2017

**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 James McCann died on 20 January 2017 of cancer of the tongue while a prisoner at HMP Lincoln. He was 70 years old. I offer my condolences to Mr McCann's family and friends.

Mr McCann first complained of a sore throat on 17 July 2016. When he complained of difficulty swallowing one month later, he was promptly referred to the oncology department at hospital for tests. After his diagnosis it was hoped that a course of radical chemo-radiotherapy would leave him disease free. However, his health deteriorated and he was unable to complete the course of treatment.

I am satisfied that Mr McCann received a prompt diagnosis and a high standard of care following diagnosis of cancer, and during the palliative care stages. The care given to Mr McCann was equivalent to the care he would have expected to receive in the community.

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 2017

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Summary

Events

1. Mr McCann was serving an 18 year sentence for rape and indecent assault, and had been at HMP Leicester since 30 October 2015. Mr McCann was transferred to HMP Lincoln on 18 March 2016. During an initial health screen the same day, Mr McCann declared a family history of cancer. He smoked cigarettes and declined help from the prison's smoking cessation service.
2. On 17 July, Mr McCann complained of a painful lump in his throat. A prison GP found swollen lymph nodes, but believed this to be secondary to Mr McCann's sore throat. He prescribed chlorhexidine (antiseptic and pain relieving) throat spray.
3. A prison GP made an urgent referral to the hospital (under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks) on 22 August, when Mr McCann complained of difficulty swallowing.
4. Mr McCann saw an oncologist at the hospital on 30 August, who referred him for a biopsy of the tongue and a CT and an ultrasound scan of the neck. On 13 October, hospital doctors diagnosed Mr McCann with basoloid squamous cell carcinoma of the tongue base (tongue cancer). His oncologist ruled out surgical intervention due to the type of cancer and Mr McCann agreed to start radical intense chemo-radiotherapy, this being chemotherapy weekly and radiotherapy daily.
5. Mr McCann saw a prison GP on 25 October for a review. His pain was under control with his current prescription of tramadol. He spoke about his end of life wishes and said that, in the event of cardiac or respiratory arrest, he did not want to be resuscitated. There was a delay of 13 days in completing the necessary paperwork as they did not have a DNACPR order (A Do Not Attempt Cardiopulmonary Resuscitation) form available in the prison.
6. After a delay by the hospital and then a short time when Mr McCann initially declined treatment, Mr McCann began chemo-radiotherapy on 8 December. He was not restrained during treatment.
7. On 16 January 2017, Mr McCann asked to stop his treatment. He felt very unwell, had radiation burns to his neck, and was in pain. After seeking advice from a prison GP and his oncologist, all future chemo-radiotherapy treatments were cancelled.
8. Mr McCann's health deteriorated very quickly and, on 19 January, he moved to the prison's palliative care cell. A prison nurse started a syringe driver to administer pain relief and other medications to manage his symptoms. Mr McCann's health deteriorated and a nurse and prison staff monitored him regularly during the night. Mr McCann died at 12.30am the following morning, on 20 January. Mr McCann had a DNACPR order in place so resuscitation was not attempted.

Findings

9. The prison used the Gold Standards Framework for palliative care to develop an end of life care plan for Mr McCann. (The Gold Standards Framework was developed as collaboration between the NHS and Macmillan Cancer Care and is a fundamental part of the Department of Health's End of Life Care Programme providing an evidence based framework for the provision of care.) A prison GP reviewed Mr McCann's medication regularly to ensure he had adequate pain relief. This was good practice.
10. We are satisfied that Mr McCann received a high standard of care following diagnosis and during the palliative care stages. It is however disappointing that it took 13 days for healthcare staff to find a DNACPR form for Mr McCann. While it did not have a detrimental effect in this case it is a learning point for the future. The care given to Mr McCann was equivalent to the care he would have expected to receive in the community.

Recommendation

- The Head of Healthcare should ensure that the healthcare department have an adequate supply of DNACPR forms available at all times.

The Investigation Process

11. The investigator issued notices to staff and prisoners at HMP Lincoln informing them of the investigation and asking anyone with relevant information to contact her. No one responded
12. The investigator obtained copies of relevant extracts from Mr McCann's prison and medical records.
13. NHS England commissioned a clinical reviewer to review Mr McCann's clinical care at the prison.
14. We informed HM Coroner for Central Lincolnshire of the investigation who gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.
15. The investigation has assessed the main issues involved in Mr McCann'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.
16. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS pointed out some factual inaccuracies and this report has been amended accordingly.

Background Information

HMP Lincoln

17. HMP Lincoln houses up to 729 remand and convicted men. It serves the courts of Lincolnshire, Nottinghamshire and Humberside. It has four residential wings, which includes a vulnerable prisoners unit. Nottingham Healthcare NHS Trust provides health services and there is 24-hour nursing cover. There is no inpatient unit at Lincoln.

HM Inspectorate of Prisons

18. The most recent inspection of HMP Lincoln was in February 2017. Inspectors reported Health services had improved with the development of clinical governance arrangements and the refurbishment of the health centre. Access to services was satisfactory, with recent improvements in attendance at clinics. Nurses were qualified to deliver a wide range of in-house chronic disease clinics and one of the nurses managed the care needs of older prisoners. Palliative care and end-of-life policies and protocols were also available.

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. In its latest annual report, for the year to January 2016, the IMB reported that in October 2015, a complex case management register was developed which identified the frequency of visit or intervention required for each individual. Each case is also discussed at the daily handover.
20. The IMB also noted that HMP Lincoln were hoping to become smoke free by February 2017. As at January 2016, the smoking status of 89% of prisoners had been recorded and 94% of those prisoners had been offered support or advice to stop smoking. Mr McCann was offered stop smoking advice on reception but continued to smoke while in prison.

Previous deaths at HMP Lincoln

21. Mr McCann was the fourth person at Lincoln to die of natural causes since January 2015. There are no similarities with the circumstances of the other deaths.

Findings

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

22. Mr McCann was sentenced to 18 years imprisonment for rape and indecent assault on 30 October 2015, and was sent to HMP Leicester. He told healthcare staff on arrival about a 20 year history of blackouts and dizzy spells. Community GP records obtained by the prison confirmed that Mr McCann had a personality disorder and chronic depression. The records suggested that his blackouts were due to psychosomatic behaviour (a symptom of his personality disorder) and not medically induced. Mr McCann smoked cigarettes and walked with a crutch. He was prescribed amitriptyline (an antidepressant) and tramadol (a strong painkiller) for headaches.
23. Mr McCann was transferred to HMP Lincoln on 18 March 2016. During an initial health screen the same day, Mr McCann declared a family history of cancer. He declined help from the prison's smoking cessation service.
24. On 17 July, Mr McCann complained of a painful lump in his throat. A prison GP examined Mr McCann four days later, on 21 July. He found swollen lymph nodes but believed this to be secondary to Mr McCann's sore throat. Mr McCann did not have any other symptoms and the GP prescribed chlorhexidine (antiseptic and pain relieving) throat spray.
25. Mr McCann saw a prison GP on 22 August complaining of difficulty swallowing. Mr McCann had smoked for 60 years and explained that his father had died from throat cancer. Mr McCann's lymph nodes remained swollen but otherwise his throat was clear. He had no other symptoms (such as weight loss) but, in light of his family history, the GP appropriately made an urgent referral to the hospital under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks.
26. Mr McCann saw an oncologist at the hospital on 30 August. Mr McCann was told that he had suspected cancer of the tongue base. The oncologist referred him for a biopsy of the tongue and a CT and ultra sound scan of the neck to confirm the diagnosis. Mr McCann had his CT and ultrasound scan on 19 September, with his biopsy taking place two weeks later on 4 October.
27. Mr McCann returned to see the oncologist on 13 October. The oncologist confirmed a diagnosis of basoloid squamous cell carcinoma of the tongue base (tongue cancer). The oncologist ruled out surgical intervention due to the type of cancer. They recommended that Mr McCann should undergo radical intense chemo-radiotherapy, this being chemotherapy weekly and radiotherapy daily. It was hoped that on completion of this treatment Mr McCann would be disease free. Side effects of this treatment would include difficulty in swallowing due to the production of excess sticky saliva. A PEG feeding tube (a feeding tube direct into the stomach) was suggested to manage these side effects.
28. Mr McCann spoke to a nurse on 13 October after receiving his diagnosis. He said he wasn't surprised by his diagnosis considering his significant family history of cancer. We are satisfied that the diagnosis of cancer was made appropriately and without delay.

Mr McCann's clinical care

29. During a complex case meeting on 19 October, a named nurse was allocated to Mr McCann's for the purpose of offering support and providing liaison with the Macmillan nurse and oncologist. An F35 prison form was sent to the kitchen asking that Mr McCann be given a soft food diet.
30. The named nurse visited Mr McCann on 23 October, to discuss his feelings around his diagnosis and future care plans. She recorded that Mr McCann avoided talking about his feelings but agreed to go ahead with his treatment. She created a care plan instructing staff that a MUST screen (a screening tool to identify adults who are malnourished, at risk of malnutrition, or obese) should be completed with Mr McCann monthly. Mr McCann weighed 14 stones 1lb at this time.
31. Mr McCann saw a prison GP on 25 October for review. He said he was happy to continue with normal prison food and did not want a soft food diet. His pain was under control with his current prescription of tramadol. The GP asked Mr McCann about his end of life wishes. He said that in the event of cardiac or respiratory arrest he did not want to be resuscitated. A DNACPR (A Do Not Attempt Cardiopulmonary Resuscitation) order was not completed that day as a form was not available in the healthcare department.
32. On 31 October, Mr McCann had a PEG feeding tube inserted in hospital in preparation for his radiotherapy starting on 16 November. The named nurse created a care plan the following day to offer education and advice on the management of his PEG feeding tube.
33. 13 days after being agreed, on 7 November, a prison GP signed Mr McCann's DNACPR form. It is unclear why it took so long for healthcare staff to find a form. If Mr McCann had collapsed before a formal notice had been given to staff, resuscitation could have been given against Mr McCann's wishes. While it did not have a detrimental effect in this case it is a learning point for the future. We make the following recommendation:

The Head of Healthcare should ensure that the healthcare department have an adequate supply of DNACPR forms available at all times.

34. On 10 November, a prison GP changed Mr McCann's tramadol to Oramorph; there is no record why. The hospital deferred Mr McCann's radiotherapy start date from 16 November to 28 November.
35. On 28 November Mr McCann refused to attend hospital to start his chemo-radiotherapy. He complained that his tramadol had been changed to oramorph which was ineffective and making him feel sick. He was also unhappy with the prison food provided and now wanted a soft diet. Mr McCann refused to start his treatment until his issues were addressed. A new F35 form (to change his food) was sent to the prison kitchen.
36. A prison GP prescribed Fortisip drinks (high calorie nutritional drinks) and buccastem to reduce his nausea on 30 November. Despite these changes Mr McCann continued to refuse treatment explaining that his Hindu faith had given

him great comfort and he was aware that he would die if he did not have treatment for his cancer.

37. The named nurse spoke to Mr McCann on 4 December, about his refusal to start treatment and his general health. He had lost weight (he now weighed 13st 5lbs) but otherwise appeared well. After she arranged for Mr McCann to speak to a Hindu priest over the phone for advice, he agreed to start his chemo-radiotherapy. Mr McCann started his treatment on 8 December.
38. During a palliative care review on 26 December, Mr McCann told a nurse that he was eating and drinking well and still able to take his medication orally. He was not in pain and managing well on the wing. On 14 January, Mr McCann was given a portable alarm so he could alert staff if he was ever unable to reach his cell alarm bell.
39. On 16 January 2017, Mr McCann asked to stop his treatment. He felt very unwell, had radiation burns to his neck, was in increased pain and had lost a lot of weight. (Mr McCann's last recorded weight on 8 January was 12stones 2lbs.) A prison GP spoke to the oncologist. It was agreed that, with his current deterioration, further treatment was unlikely to be beneficial. Mr McCann was prescribed zormorph for his pain and prochlorperazine to reduce his nausea. All future chemo-radiotherapy treatments were cancelled.
40. A prison GP and the named nurse visited Mr McCann in his cell on 18 January, to discuss end of life care. After this meeting, the nurse telephoned a nurse at a hospice, who agreed to assess Mr McCann on 20 January for future transfer.
41. Mr McCann moved to a palliative care cell on 19 January. The cell had a hospital bed and more room for healthcare staff to move around in. Mr McCann found it difficult to swallow due to a build up of mucus secretions. A syringe driver (a portable infusion pump used to give liquid medication continuously over a long period time via a needle in the hand) was started to administer pain relief, and he was given other medications to manage his symptoms.
42. At 8pm that evening, Mr McCann vomited up black fluid. He was semi conscious and appeared agitated. A nurse telephoned the out of hours doctor, asking that he prescribe medication to ease Mr McCann's pain and agitation. Staff checked Mr McCann hourly. An officer checked Mr McCann at midnight and he appeared to be asleep. Another nurse visited Mr McCann in his cell 30 minutes later at 12.30am (on 20 January) and found him unresponsive with no pulse or signs of breathing. Mr McCann had a DNACPR order in place and so he did not attempt resuscitation.
43. The clinical reviewer noted that the prison used the Gold Standards Framework for palliative care to develop an end of life care plan for Mr McCann. (The Gold Standards Framework was developed as collaboration between the NHS and Macmillan Cancer Care and is a fundamental part of the Department of Health's End of Life Care Programme providing an evidence based framework for the provision of care.) A prison GP reviewed Mr McCann's medication regularly to ensure he had adequate pain relief. This was good practice. We are satisfied that Mr McCann received a high standard of care following diagnosis and during

the palliative care stages. The care given to Mr McCann was equivalent to the care he would have expected to receive in the community.

Mr McCann's location

44. Mr McCann remained on E wing throughout his illness. E wing has a palliative care cell, big enough for a hospital bed and other palliative care equipment. Mr McCann moved to the palliative care cell on 19 January. Another terminally ill prisoner had been in the cell before this. The named nurse made a referral to a hospice. However, Mr McCann died before a transfer could take place.

Restraints, security and escorts

45. When prisoners have to travel outside of the prison, a risk assessment determines the nature and level of security arrangements, including restraints. The Prison Service has a duty to protect the public but this has to be balanced with a responsibility to treat prisoners with humanity. Any restraints used should be necessary and decisions should be based on the security risk taking into account factors such as the prisoner's health and mobility.
46. Mr McCann had chemo-radiotherapy treatment between 8 December 2016 and 15 January 2017. During his escort to the hospital, Mr McCann was restrained with a single handcuff. Mr McCann was unrestrained during his chemo-radiotherapy treatment. We consider this appropriate.

Liaison with Mr McCann's family

47. On 9 December, the family liaison officer spoke to Mr McCann to introduce himself, offer support and discuss his end of life wishes. Mr McCann asked that his nephew, who was living abroad, be his next of kin. However, Mr McCann did not know where his nephew lived or how to contact him and asked that, in his absence, his ex-wife be contacted. She lived a long distance away, and the local police contacted her. She declined to have any contact with Mr McCann or the prison before or after his death.
48. Mr McCann's funeral was organised by the prison for 20 April at Lincoln Crematorium. The prison contributed to the funeral costs in line with national policy.

Compassionate release

49. 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. Mr McCann did not make an application for early release on compassionate grounds. He did not have anyone to care for him if released and said that his solicitors had a copy of a will detailing his wishes after he died. He did not give the prison permission to contact his solicitors at that time. We are satisfied an application was not made.

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