Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr David Adkins a prisoner at HMP Whatton on 14 September 2016

A report by the Prisons and Probation Ombudsman
Nigel Newcomen CBE

PO Box 70769
London, SE1P 4XY
Email: mail@ppo.gsi.gov.uk
Web: www.ppo.gov.uk
T | 020 7633 4100
F | 020 7633 4141

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.

We carry out investigations to understand what happened and identify how the organisations whose actions we oversee can improve their work in the future.

Mr David Adkins died in HMP Whatton of colon cancer on 14 September 2016. He was 71 years old. I offer my condolences to his family and friends.

We agree with the clinical reviewer that the care Mr Adkins received overall at Whatton was at least equivalent to that he would have had in the community. He had minimised his symptoms for some time and his cancer was very advanced when diagnosed. Healthcare staff could not have prevented Mr Adkins' death. However, it is a concern that healthcare staff did not assess Mr Adkins' mental capacity after he refused medical investigations and treatment when doctors suspected he had cancer.

This version of my report, published on my website, has been amended to remove the names of staff and prisoners involved in my investigation.

Richard Pickering
Deputy Prisons and Probation Ombudsman **April 2017**

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Summary

Events

1. On 21 January 2005, Mr David Adkins was remanded into custody on suspicion of committing sexual offences. Eighteen months later, he was sentenced to 19 years in prison. After spending time at other prisons, Mr Adkins was transferred to HMP Whatton on 12 June 2009.

2. While in custody, Mr Adkins suffered from high blood pressure and Type 2 diabetes, which healthcare staff treated with appropriate medication and reviews.

3. In January 2013, blood test results showed that Mr Adkins was anaemic. A prison GP suspected his anaemia was caused by cancer but Mr Adkins refused further investigation. There is no record that healthcare staff assessed Mr Adkins' mental capacity to make this decision.

4. In February 2013, Mr Adkins' anaemia worsened and the GP referred him to the local hospital under the NHS two week wait system for suspected cancer patients. The hospital referred Mr Adkins for a colonoscopy and an endoscopy in April but Mr Adkins refused the procedures and signed a disclaimer to that effect.

5. Mr Adkins refused further investigations until 29 January 2015, when he became severely anaemic and was admitted to hospital as an emergency. While in hospital, doctors performed a colonoscopy, which showed that Mr Adkins had cancer of the large intestine that had spread to his lungs.

6. On 15 May, a consultant told Mr Adkins that his cancer was not operable. He underwent a course of palliative radiotherapy during July and had regular appointments with a specialist cancer care nurse.

7. In February 2016, Mr Adkins was no longer able to manage his personal hygiene so carers supported him. Healthcare staff confirmed that he only had a few months to live and Mr Adkins agreed that staff should not attempt to resuscitate him if his heart or breathing stopped.

8. At the end of June, Mr Adkins life expectancy was measured in days and, with the exception of medication for diabetes and pain relief, his medication was discontinued. Healthcare staff started an end of life pathway, though by mid-July, his prognosis had improved with a life expectancy measured in weeks.

9. In September, Mr Adkins' condition began to deteriorate and he moved to Whatton's palliative care unit on 12 September to receive 24-hour care. Mr Adkins died in the evening of 14 September.

Findings

10. Mr Adkins had not been well for some time but refused investigations when doctors suspected he had cancer. We agree with the clinical reviewer that Mr Adkins' care at Whatton was at least equivalent to that he could have expected to receive in the community. However, we are concerned that healthcare staff did not assess his mental capacity when he refused various medical investigations.

Recommendation

- The Head of Healthcare should ensure that when a prisoner refuses to have investigations or treatment for a life limiting condition, healthcare staff perform an assessment of their mental capacity and record the results in their medical record.

The Investigation Process

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

12. The investigator obtained copies of relevant extracts from Mr Adkins' prison and medical records.

13. NHS England commissioned a clinical reviewer to review Mr Adkins' clinical care at the prison.

14. We informed HM Coroner for Nottinghamshire of the investigation. Our investigation was suspended for over a month until we received the cause of death from the coroner. We have sent the coroner a copy of this report.

15. The investigator wrote to Mr Adkins' brother to explain the investigation and to ask if he had any matters he wanted the investigation to consider. He did not respond to our letter.

16. The investigation has assessed the main issues involved in Mr Adkins' 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.

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

Background Information

HMP Whatton

18. HMP Whatton in Nottinghamshire is a medium security category prison holding up to 841 men convicted of sex offences.

19. Nottinghamshire Healthcare Foundation Trust provides healthcare services at the prison. The healthcare centre is open seven days a week. GPs from a local practice provide specialist clinics for older prisoners and those with chronic conditions and there is an out-of-hours service. There are no inpatient beds, but there is a palliative care suite in the healthcare centre, called The Retreat, for end of life care.

HM Inspectorate of Prisons

20. The most recent inspection of HMP Whatton was in August 2016. Inspectors reported that the quality of health and social care was good, and waiting times for treatment were reasonable. Inspectors found that a mix of appropriately skilled staff, in well-integrated teams, provided health services, and that they provided polite and professional interactions with their patients. There was high demand for routine hospital appointments, though an increase in the number of available escort officers had significantly reduced the number of cancellations. They described the palliative care unit as excellent.

Independent Monitoring Board

21. 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 May 2016, the IMB reported that the elderly prison population was 37% and was a severe drain on prison resources. They said that the healthcare department struggled to care for the increasingly older population with their variety of complaints and conditions. They said that the healthcare facilities were not fit for purpose and compared badly with those in the community. Over the previous year, a business case to improve physical healthcare facilities was prepared, but was unsuccessful because funding from the NHS was no longer available.

Previous deaths at HMP Whatton

22. Mr Adkins was the tenth prisoner to die from natural causes at Whatton since January 2015. There were no similarities between the circumstances of Mr Adkins' death and previous deaths at the prison.

Findings

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

23. On 21 January 2005, Mr David Adkins was remanded into custody at HMP Bristol on suspicion of committing numerous sexual offences. On 7 June 2006, he was sentenced to 19 years in prison. After spending time at other prisons, Mr Adkins transferred to HMP Whatton on 12 June 2009.

24. While in custody, Mr Adkins suffered from high blood pressure and Type 2 diabetes. Healthcare staff treated these conditions with appropriate medication and regular reviews. Mr Adkins did not manage his diabetes well because he regularly ate high calorie food and ignored healthcare advice not to do this.

25. As part of his diabetes treatment, Mr Adkins received regular blood test and the results were normal until January 2013 when they showed he had anaemia. On 28 January, a prison GP explained that cancer could have caused his anaemia, though Mr Adkins refused further investigations. There is no record that she assessed Mr Adkins' mental capacity to make this decision.

26. On 11 February, Mr Adkins' anaemia had worsened and the GP ordered a chest x-ray and referred him to the gastroenterology unit at the hospital under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks. Mr Adkins attended the gastroenterology unit on 21 February, who wanted to perform a colonoscopy and an endoscopy (procedures to view the intestines internally). Mr Adkins refused these procedures and signed a disclaimer.

27. On 15 April, the GP explained that the cause of Mr Adkins' anaemia was likely to be colon cancer and urged him to have further investigations. She also prescribed iron supplements.

28. Due to the iron supplements, Mr Adkins' blood count went back to normal and healthcare staff took no further action, apart from performing regular blood tests.

29. In September 2014, Mr Adkins' anaemia returned so a prison GP saw Mr Adkins on 30 September and made a further two week referral for a colonoscopy.

30. Mr Adkins went to hospital on 27 October for the colonoscopy and an endoscopy, after the prison could not facilitate an appointment nine days earlier. The results from the endoscopy were normal, but because of poor bowel preparation the colonoscopy gave inadequate results so a CT colonoscopy (a CT scan which produces detailed pictures of the colon and rectum) was booked for 10 December.

31. On 10 December, Mr Adkins attended hospital for a CT colonoscopy, but the procedure did not take place because he said that he had continued to eat after the cut-off time for the procedure. The procedure was re-booked for January 2015 but, on 22 December, he refused it and signed a disclaimer confirming his decision.

32. By 29 January 2015, Mr Adkins had become severely anaemic so a prison GP sent him to hospital as an emergency. The hospital admitted him, gave him a blood transfusion and re-referred him for a colonoscopy on 10 March. Mr Adkins agreed to his colonoscopy and the results showed that Mr Adkins had cancer in his large intestine.

33. On 9 April, a nurse discussed the diagnosis with Mr Adkins, who seemed to have accepted it and was not distressed by it.

34. A month later, on 15 May, a consultant told Mr Adkins that his cancer had spread to his lungs and was not operable.

35. The clinical reviewer confirmed that Mr Adkins had symptoms of bowel cancer from January 2013, yet due to his refusal to have investigations Mr Adkins did not have the definitive diagnosis until March 2015. By this time the cancer had spread to his lungs and was inoperable. We agree with the clinical reviewer that it was likely that if he had been diagnosed a year earlier his outcome might have been different. However, we agree that it was Mr Adkins' choice to decline the colonoscopy, even when prison GPs explained their concerns to him.

36. While there was no evidence that Mr Adkins suffered from dementia or any other condition which might have affected his ability to reach an informed decision, we agree with the clinical reviewer that healthcare staff should have assessed his mental capacity when he declined the procedure. We make the following recommendation:

    The Head of Healthcare should ensure that when a prisoner refuses to have investigations or treatment for a life limiting condition, healthcare staff perform an assessment of their mental capacity and record the results in their medical record.

Mr Adkins' clinical care

37. After Mr Adkins was told that cancer had spread to his lungs a consultant offered him a course of palliative radiotherapy, which he completed in July.

38. Mr Adkins met a specialist cancer nurse every two to four weeks. On 6 August, she told Mr Adkins that the radiotherapy had been to control his symptoms but was not a cure. She considered that although a consultant explained the treatment, Mr Adkins failed to grasp the seriousness of his condition and continued to say that he had been cured.

39. On 22 October 2015, due to the progression of Mr Adkins cancer, the cancer specialist nurse created a palliative care plan. The plan outlined the medical care and emotional support both he and his family could expect from the prison and healthcare staff as the disease progressed. It also planned for the implementation of an end of life plan when his condition deteriorated to ensure his dignity was maintained, his symptoms were controlled and he was pain free.

40. Mr Adkins remained reasonably well, maintaining his weight and was fairly mobile but, on 22 February 2016, a prison GP found that Mr Adkins had become unable to manage his personal hygiene and instigated an incontinence care plan,

which included the use of agency and prisoner carers to manage his hygiene needs.

41. During a cancer care consultation, on 16 March, a nurse calculated Mr Adkins' Gold Standard Framework (GSF – a standard of care for people nearing the end of life) score at level B, which indicated he had a prognosis of a few months. Mr Adkins told her that he wanted to be released from prison to live with his brother.

42. On 15 June, Mr Adkins saw a prison GP and confirmed that he did not want be resuscitated if his heart or breathing stopped. The GP prescribed appropriate medication for Mr Adkins' pain and symptoms, and ordered a special hospital bed.

43. During the morning of 26 June, a nurse calculated Mr Adkins' GSF score at level D, which indicated he had a prognosis of a few days. She added Mr Adkins to the end of life care register and started an end of life pathway. The end of life pathway ensured that he could easily contact his family, confirmed Mr Adkins' wish not to be resuscitated and that his preferred place of death remained Whatton. The plan also included ensured that appropriate pain relief was available and that he received support for his personal care.

44. Over the next two days, a prison GP prescribed analgesia to treat Mr Adkins' pain, while another GP told other healthcare staff that Mr Adkins' medication should be stopped, with the exception of his pain relief and insulin.

45. By 18 July, Mr Adkins' GSF score had improved to level C, which indicated a prognosis of a few weeks.

46. On 3 August, Mr Adkins told a prison GP that he wanted to be released from prison to live with his brother, though the GP said this was not possible because his brother was ill. At that point, Mr Adkins said that he wanted to remain at Whatton for end of life care.

47. Mr Adkins continued to decline and became less mobile. He became largely bed-bound so healthcare staff ordered him a specialist mattress and placed him on the register to be moved to The Retreat. Mr Adkins moved there on 12 September and agency carers provided him with 24-hour care.

48. Mr Adkins' condition continued to decline and he died at around 11.10pm on 14 September.

49. We agree with the clinical reviewer that healthcare staff at the prison supported Mr Adkins well, ensured that his symptoms were well controlled and created care plans in line with gold standard terminal care guidelines. We agree that the care Mr Adkins received in at Whatton was at least equivalent to that he could have expected to receive in the community.

Mr Adkins' location

50. From his reception into Whatton, Mr Adkins stayed in standard accommodation where he elected to remain throughout. As his physical condition worsened, the prison ensured that nursing staff and prisoner carers supported him.

51. Mr Adkins remained in his own room until the last few days of his life when he was moved to The Retreat, Whatton's specialist end of life suite.

52. We are satisfied that Mr Adkins' accommodation was in line with his wishes and appropriate for his needs.

Restraints, security and escorts

53. When prisoners have to travel outside of the prison, a risk assessment is conducted to determine the nature and level of any security arrangements, including any restraints.

54. The Prison Service has a duty to protect the public but this has to be balanced with a responsibility to treat prisoners with humanity and maintain their dignity. The level of restraints used should be necessary in the circumstances and based on a risk assessment which considers the risk of escape, the risk to the public and which also takes account of factors such as their health and mobility.

55. During Mr Adkins' last hospital appointment in September 2015, a senior prison manager decided that he should not be restrained at all during visits to hospital.

56. We are satisfied with the manager's decision and that the prison appropriately considered Mr Adkins' health and the impact it had on the risk he presented.

Liaison with Mr Adkins' family

57. Mr Adkins nominated his brother as his next of kin. On 20 July 2015, the prison appointed Mr Adkins' personal officer as the family liaison officer. Another officer took over the role on 21 June 2016 until after Mr Adkins' death.

58. The first family liaison officer wrote to Mr Adkins' brother on 31 July 2015 to help re-establish contact between them. Following this, both family liaison officers kept Mr Adkins' brother informed of his physical condition and facilitated visits at the prison.

59. After Mr Adkins moved to The Retreat on 12 September, the first family liaison officer contacted Mr Adkins' brother to make him aware of his significant deterioration. Mr Adkins' brother visited him on the afternoon of 14 September, a few hours prior to Mr Adkins' death. As he left the prison, Mr Adkins' brother asked the prison to leave a message on his mobile telephone if Mr Adkins died during the night. When Mr Adkins died, a senior prison manager left a message on his brother's phone. The second family liaison officer continued to support Mr Adkins' family until after his funeral.

60. Mr Adkins' funeral took place on 11 October and the prison contributed to the funeral costs, in line with national policy.

Compassionate release

61. Release on compassionate grounds is a means by which prisoners who are seriously ill, usually with a life expectancy of less than three months can be permanently released from custody before their sentence has expired. A clear medical opinion of life expectancy is required. The criteria for early release for determinate sentenced prisoners are set out in Prison Service Order (PSO) 6000.

Among the criteria is that the risk of re-offending is expected to be minimal, further imprisonment would reduce life expectancy, there are adequate arrangements for the prisoner's care and treatment outside prison, and release would benefit the prisoner and his family. An application for early release on compassionate grounds must be submitted to the Public Protection Casework Section (PPCS) of the National Offender Management Service (NOMS).

62. At regular points during his time at Whatton Mr Adkins said that he wanted to be released to live with his brother, though his brother was not prepared to support this.

63. In mid-March 2016, Mr Adkins was given a prognosis of a few months and by 29 July the prognosis was more definitive at 12 weeks. The prison started an application for compassionate release on 2 August. However, as Mr Adkins' brother could not care for him and he had not complied with his sentence plan, his offender supervisor did not support the application. The prison did not proceed with the application.

64. We are satisfied that the prison appropriately considered compassionate release for Mr Adkins.

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