Prisons & Probation
Ombudsman
Independent Investigations

# Independent investigation into the death of Mr Kenneth Owen a prisoner at HMP Oakwood on 5 October 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*

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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 Kenneth Owen died on 5 October 2016 at hospital from disseminated lung cancer. He was 71 years old.  I offer my condolences to Mr Owen's family and friends.

Mr Owen was diagnosed with cancer in August 2016.  Staff at HMP Oakwood actively planned how best to manage his condition despite not having a full diagnosis.  They met his medical and social care needs during the rapid decline in his health.  Overall, I am satisfied that the care Mr Owen received at Oakwood was equivalent to that he could have expected to receive in the community.  However, while it would not have changed the outcome, I am concerned that there was a delay in prison GPs reviewing Mr Owen's urgent x-ray results.

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** **April 2017**

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# Summary

## Events

1. On 11 February 2016, Mr Kenneth Owen was sentenced to four years and two months in prison for child cruelty. He was sent to HMP Hewell, before moving to HMP Oakwood on 28 April. Mr Owen was 71 at the time. His medical history included diet controlled diabetes and asthma.

2. On 14 June, Mr Owen told a prison GP that he had been coughing up blood for over four months, so the GP referred Mr Owen for an urgent chest x-ray. The x-ray took place on 28 June but a prison GP did not review the results until 14 July. The GP noted that the x-ray results indicated a suspected malignant mass in Mr Owen's right lung, so referred him to hospital under the two week rule for suspected cancer.

3. On 16 August, a hospital consultant told Mr Owen that cancer cells had spread to his chest, abdomen and pelvis. There was no indication of the primary cancer site, so the consultant referred Mr Owen for a biopsy and a Positron Emission Tomography scan (PET – a scan to show where there are active cancer cells). The hospital's PET machine was broken so this test did not take place until 15 September.

4. On 22 August, a GP prescribed Mr Owen paracetamol for pain relief. In September, Mr Owen's pain increased so GPs prescribed stronger pain relief in the form of codeine, buprenorphine patches and Oramorph. A GP also referred Mr Owen to palliative care services and asked about his resuscitation wishes. Mr Owen agreed that he did not want staff to attempt to resuscitate him if his heart or breathing stopped.

5. On 29 September, following a deterioration in his condition, Mr Owen was admitted to hospital. The following day he underwent surgery for a hernia. After the operation Mr Owen experienced more pain and shortness of breath.

6. On 2 October, the hospital decided that Mr Owen's prognosis was poor and that he needed hospice care. The hospital told Mr Owen's family about his poor prognosis. The following day the hospital placed Mr Owen on an end of life care pathway. Mr Owen continued to deteriorate and he died at 7.38am on 5 October.

## Findings

7. The clinical reviewer found that overall the care Mr Owen received at Oakwood was equivalent to that he could have expected to receive in the community. Despite various tests, hospital specialists could not identify the primary site of Mr Owen's cancer and without this knowledge the clinical reviewer confirmed that treatment could not start. Given the spread of cancer, the clinical reviewer was satisfied that healthcare staff started palliative care treatment while additional medical tests continued.

8. The clinical reviewer found that there was a delay in reviewing Mr Owen's urgent chest x-ray in June. Although this delayed the hospital referral, we agree with

the clinical reviewer that the delay would not have changed the outcome for Mr Owen.

9. We note that Mr Owen was granted compassionate release on 4 October but that he needed to report to the Probation Service before he could be formally released from custody.  This did not happen before Mr Owen's death.

## Recommendation

- The Head of Healthcare should ensure that prisoners have urgent X-rays as soon as possible after the request and that the results are investigated promptly.

## The Investigation Process

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

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

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

13. We informed HM Coroner for South Staffordshire District of the investigation who gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.

14. One of the Ombudsman's managers wrote to Mr Owen's son to explain the investigation and to ask if he had any matters he wanted the investigation to consider. Mr Owen's son raised several points for the investigation to consider:

- Mr Owen had not been taken for treatment because the prison was short staffed.
- Mr Owen had not received appropriate pain relief.
- Healthcare staff had not appropriately reviewed or monitored Mr Owen's health.
- The prison delayed an application for a compassionate release.

15. The investigation has assessed the main issues involved in Mr Owen'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 the Prison Service. The Prison Service pointed out a factual inaccuracy and this report has been amended accordingly.

17. Mr Owen's son received a copy of the initial report. He did not make any comments.

# Background Information

## HMP Oakwood

18. HMP Oakwood opened in 2012. It is near Wolverhampton and managed privately by G4S. Oakwood is one of the largest prisons in England and Wales, providing places for up to 1,605 Category C male prisoners.

19. Care UK provides the healthcare services, which include a daily GP clinic, some specialist services and out-of-hours GPs.

## HM Inspectorate of Prisons

20. The most recent inspection of HMP Oakwood was in December 2014. Inspectors reported that health services had improved considerably since the last inspection and, overall, were reasonably good. The range of services was appropriate and the management of prisoners with lifelong or complex health needs was very good, although staff shortages had led to a backlog of nurse reviews. Inspectors found that the healthcare rooms were well equipped and staff created appropriate care plans. However, there were often delays in arranging external hospital appointments because of the high demand and insufficient escort staff.

## Independent Monitoring Board

21. Each prison has an Independent Monitoring Board made up of unpaid volunteers from the local community who help to help ensure that prisoners are treated fairly and decently. In its latest annual report, for the year to March 2016, the IMB reported that, due to the uncertainty arising from the change of healthcare provider (Worcester Health and Care Trust provided healthcare services before April 2016), there were a high number of vacancies and the use of agency staff had lowered continuity of care. The healthcare department worked with MacMillan nurses to provide end of life care, but there was no nurse cover during the night.

## Previous deaths at HMP Oakwood

22. Mr Owen was the fourth prisoner to die from natural causes at Oakwood since January 2016. There has been one death since. There were no significant similarities with the circumstances of the previous death.

# Findings

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

23. On 9 February 2016, Mr Kenneth Owen was remanded to HMP Hewell. Two days later, he was sentenced to four years and two months imprisonment for child cruelty. On 28 April, Mr Owen moved to HMP Oakwood.

24. On arrival into custody, Mr Owen reported that he suffered from diet controlled diabetes and asthma, though he had not used an inhaler for some time. A nurse at Hewell noted that Mr Owen was in good health, took regular exercise and weighed 79.49kgs.

25. On 28 April, after arriving at Oakwood, a nurse saw Mr Owen for an older person's assessment. His medical observations were within normal range and Mr Owen's weight was recorded at 81.00kgs.

26. On 31 May, Mr Owen told a healthcare assistant that he had seen blood in his sputum. The healthcare assistant gave Mr Owen a sample pot for the sputum to be sent for analysis. Three days later, a prison GP reviewed the result of the sputum sample, noted there was no sign of infection and decided that no further action was required.

27. On 14 June, Mr Owen spoke to a locum GP and said that he had been coughing up blood for around four and half months. The GP examined Mr Owen and noted there were no signs of other respiratory symptoms, no weight loss, no chest sounds and no night sweats. Nevertheless, he referred Mr Owen for an urgent chest x-ray, which took place on 28 June.

28. Despite chasing the x-ray results on 8 July, it took a further six days for a prison GP to discuss the results of the chest x-ray with Mr Owen. He said that the x-ray showed a possible malignancy on the right lung, so he made an urgent referral to hospital under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks.

29. On 4 August, Mr Owen had a CT scan at hospital and was added to a list for a biopsy. Twelve days later, Mr Owen saw a respiratory consultant, who told Mr Owen that the scan showed multiple pulmonary metastases in his chest, abdomen and pelvis, though the primary source of his cancer was unclear. Mr Owen told the consultant he was concerned that it had taken time to get to this diagnosis. The consultant told Mr Owen that he needed an image guided biopsy, blood tests and a Positron Emission Tomography scan (PET – a scan to show where there are active cancer cells) to determine the primary source of the cancer. Additionally, the consultant referred Mr Owen to two specialist palliative care nurses to provide him with support and advice. The nurses liaised directly with healthcare staff at Oakwood and visited Mr Owen. They provided advice on pain relief and supported Mr Owen with information on the diagnosis of cancer, including medical interventions and treatments. Due to the difficulty of confirming the primary source of his cancer, there does not appear to have been a discussion about prognosis.

30. On 31 August, Mr Owen saw his consultant and told him he was disappointed in the time it was taking to gain a full diagnosis. The doctors at Oakwood noted during their reviews of Mr Owen that further tests were being undertaken at the hospital and they were waiting for a treatment plan.

31. During September, Mr Owen's PET scan was delayed because the hospital's machine was in need of repair. The hospital completed the scan on 15 September. Due to the delay in completing the scan, the hospital also postponed outpatient appointments for Mr Owen to see his respiratory consultant and for a second biopsy. These were not completed before Mr Owen's death, so he did not receive confirmation of the primary source of his cancer.

32. Mr Owen did not experience any lung cancer symptoms until late May when he complained of having blood in his sputum. The clinical reviewer noted that an urgent x-ray for patients suspected of having lung cancer should be completed within two weeks, which happened for Mr Owen. It took a further two weeks for a doctor to review the x-ray result. This delayed the cancer referral to hospital until 14 July. We agree with the clinical reviewer that due to the widespread nature of Mr Owen's cancer, this delay did not affect his outcome. However, a similar delay could be vital in the future. We make the following recommendation:

    **The Head of Healthcare should ensure that prisoners have urgent X-rays as soon as possible after the request and that the results are investigated promptly.**

33. After Mr Owen had been referred to hospital, the hospital identified that cancer had spread to his chest, abdomen and pelvis, though the initial tests could not identify the primary site. The clinical reviewer confirmed that the primary site of Mr Owen's cancer was important as it would determine the type of cancer cells that he had and the appropriate treatment for it. Without the primary site, the clinical reviewer was satisfied that the hospital could not advise on any interim treatment plans.

34. We agree with the clinical reviewer that there was no evidence to indicate Mr Owen did not receive life saving treatment or that his treatment was compromised by staff shortages, a concern which was raised with us by Mr Owen's son.

### Mr Owen's clinical care

35. On 18 August, Mr Owen's son spoke to prison healthcare staff about his father being in pain. This was the first reference in his medical notes to Mr Owen being in pain.

36. Four days later, Mr Owen told a prison GP he had pain and sickness. The GP prescribed paracetamol for the pain and cyclizine to relieve sickness.

37. An officer was on duty during the evening of 24 August when two healthcare staff arrived to give Mr Owen pain relief medication. The officer asked Mr Owen why he had not spoken to wing staff about his pain. Mr Owen told the officer there was no point as officers could not do anything for him. The officer noted that Mr Owen had not spoken to him about being in pain.

38. Mr Owen saw a prison GP on 6 September and said that paracetamol had not relieved his back pain. The GP prescribed codeine for additional pain relief

39. Ten days later, a MacMillan nurse told the prison that Mr Owen's pain had increased so he should be given a buprenorphine patch (stronger pain relief). On 19 September, a prison GP prescribed Mr Owen ibuprofen and buprenorphine patches, though Mr Owen did not receive these until the following day.

40. On 23 September, the Head of Healthcare spoke to a hospice about Mr Owen's ongoing pain control. They prescribed morphine.

41. On 26 September, a prison GP noted that Mr Owen knew he was seriously ill and wanted to be around his family at the time of his death. Mr Owen agreed that he did not want staff to resuscitate him if his heart or breathing stopped and the GP, together with the Head of Healthcare, completed the necessary paperwork. The GP also made a referral to a palliative care specialist to produce a palliative care plan and to consider the possibility of hospice care. Mr Owen was admitted to hospital before a palliative care specialist could review him.

42. The following day, a Macmillan nurse saw Mr Owen, who said that he was managing his pain and knew how to ask for more pain relief when he needed it.

43. On 28 September, Mr Owen told healthcare staff that he had vomited and felt unwell, though he was not pain. A nurse examined Mr Owen and found a large inguinal hernia (a hernia in the abdomen). She spoke to the Macmillan nurse, who said that Mr Owen should be admitted to hospital.

44. On 29 September, Mr Owen underwent emergency surgery to repair the hernia and he initially made a good recovery. However, he began to experience pain and shortness of breath so the hospital's critical team reviewed him.

45. On 2 October, hospital staff met with Mr Owen's family and told them of his poor prognosis. The hospital cancelled a lung biopsy and started arrangements to transfer Mr Owen to a local hospice. The following day, the hospital placed Mr Owen on the end of life care pathway. His condition continued to deteriorate and he died at 7.38am on 5 October.

46. While prison healthcare staff were awaiting a formal treatment plan from the hospital, the clinical reviewer was satisfied that they treated Mr Owen appropriately for any symptoms arising. The clinical reviewer noted that there was a clear progression in the strength of Mr Owen's pain relieving medication from low level analgesia to stronger buprenorphine patches and morphine.

47. The clinical reviewer noted that the prison healthcare team took appropriate steps to engage Macmillan nurses to support Mr Owen's palliative care treatment. Overall, we agree with the clinical reviewer that the care Mr Owen received was equivalent to that he could have expected to receive in the community.

### Mr Owen's location

48. Mr Owen was located on a normal prison wing. He was self-caring and did not need any special aids or adaptations. When Mr Owen's condition deteriorated,

healthcare staff arranged for his admission to hospital. We are satisfied that Mr Owen was appropriately located at Oakwood.

### Restraints, security and escorts

49. 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.

50. When Mr Owen went to hospital in July and August respectively for a chest x-ray and CT scan, prison managers authorised officers to restrain him with 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). Healthcare staff noted that he was self-caring and had full mobility so they did not object to the use of restraints. As Mr Owen's mobility was not affected at this time, we are satisfied that the use of restraints was justified.

51. When Mr Owen was admitted to hospital on 28 September, a prison manager authorised officers not to restrain Mr Owen because he was serious ill and not an escape risk. She also arranged for the escorting officers to wear civilian clothing. We note and agree with the decision not to restrain Mr Owen during his final hospital admission.

### Liaison with Mr Owen's family

52. Mr Owen kept his family updated on his serious health issues and one of his sons had been in direct contact with prison and hospital staff.

53. On 28 September, the prison appointed a prison manager as a family liaison officer and she telephoned Mr Owen's next of kin, his wife, and told her that her husband had been admitted to hospital. She advised Mr Owen's wife that she and the family could visit him at any time.

54. The prison manager and a deputy liaison officer visited Mr Owen in hospital and met his family to offer support until his death on 5 October. Shortly after Mr Owen's death, the prison manager contacted his wife to break the news of his death and to offer her condolences and support. The family liaison officers continued to support Mr Owen's family through telephone calls.

55. Mr Owen's funeral was held on 11 November and the prison contributed to the funeral costs in line with national guidance.

56. As Mr Owen had not been formally diagnosed with terminal cancer and that prison healthcare staff had only referred him to a palliative care specialist on 26 September, we are satisfied that the prison appointed a family liaison officer sufficiently quickly. We are also satisfied that prison healthcare staff spoke to Mr Owen's son about his father's pain.

## Compassionate release

57. 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).

58. The prison started an application for compassionate release on 2 October. On 3 October, hospital staff told a prison manager that Mr Owen had a life expectancy of five to six weeks. She submitted an application for a compassionate release to PPCS on the same day.

59. PPCS granted his compassionate release on 4 October and faxed the completed paperwork to Oakwood at 5.00pm. However, PPCS decided that Mr Owen had to report to the Probation Service before being formally released from custody. As Mr Owen died the following day at 7.38am, there was no opportunity for the Probation Service to see him and he remained in the custody of Oakwood.

60. Up to 3 October, there was no prognosis or clear medial opinion of Mr Owen's life expectancy and without that information PPCS would not have considered an application for compassionate release. We are satisfied that the prison made every effort to promptly submit an application for compassionate release and that Mr Owen's sudden deterioration prevented him being released from custody.

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