Prisons & Probation Ombudsman
Independent Investigations

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

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*

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 Cezary Stolarski died on 20 January 2017 of cancer, while a prisoner at HMP Lincoln. He was 49 years old. I offer my condolences to Mr Stolarski's family and friends.

Mr Stolarski first complained of a cough and chest pain on 4 June 2015. He was promptly referred for tests, and a diagnosis of lung cancer was made. Mr Stolarski was treated with chemotherapy and radiotherapy. However, the cancer spread to his brain and his health deteriorated.

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

However, I consider that the use of restraints when Mr Stolarski was taken to hospital for treatment did not take sufficient account of his deteriorating condition.

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 **August 2017**

Contents

Summary

Events

1. On 15 July 2014, Mr Stolarski was sentenced to 12 years imprisonment for rape and false imprisonment. This was his first time in prison. His first language was Polish. He had no physical illness diagnosed at this time.

2. On 4 June 2015, Mr Stolarski complained of a cough and chest pain that had lasted for four months. A doctor referred him for a chest X-ray and the report from the scan recommended a CT scan. This took place on 3 July and, on 7 July, a prison doctor told Mr Stolarski that it was likely he had cancer. Following a bronchoscopy, a diagnosis of lung cancer was confirmed on 4 August.

3. Mr Stolarski received four cycles of chemotherapy and 32 sessions of radiotherapy between 29 October and 12 January 2016. In February 2016, he complained of blurred vision and headaches and, on 22 February, an oncologist confirmed that cancer had spread to his brain and his condition could only be treated palliatively.

4. Mr Stolarski was nursed in his cell. He had the support of Polish-speaking 'buddy' prisoners to help with interpretation. A mental health nurse saw him regularly to provide emotional support and the Big Word telephone interpretation service was used on each occasion.

5. Mr Stolarski experienced swollen ankles and abdomen as a result of his cancer treatment and was admitted to hospital when this became problematic. When his pain became worse, a syringe driver was put in place. He was transferred to a hospice on 18 January, where he died on 20 January.

Findings

6. We are satisfied that Mr Stolarski received a good standard of care following diagnosis and during the stages of his treatment and throughout his palliative care. However, we consider the use of restraints was inappropriate when Mr Stolarski was receiving cancer treatment and his risk assessments did not take into account his deteriorating condition.

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.

The Investigation Process

7. 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.

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

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

10. We informed HM Coroner for Central Lincolnshire of the investigation. He gave us the results of the post-mortem examination and we have sent the coroner a copy of this report.

11. One of the Ombudsman's family liaison officers contacted Mr Stolarski's daughter to explain the investigation and to ask whether she had any matters the family wanted the investigation to consider. She was interested to know more about the medical care he received.

12. The investigation has assessed the main issues involved in Mr Stolarski'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.

13. Mr Stolarski'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.

14. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS did not find any factual inaccuracies.

Background Information

HM Prison Lincoln

15. HMP Lincoln houses up to 738 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

16. The most recent inspection of HMP Lincoln was conducted in November 2013. Inspectors reported that 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

17. 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.

Previous deaths at HMP Lincoln

18. Mr Stolarski was one of four prisoners at Lincoln to die of natural causes since January 2015. There are no similarities with the circumstances of the other deaths.

Findings

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

19. Mr Stolarski was remanded to HMP Lincoln on 9 September 2013. He was sentenced to 12 years imprisonment for rape and false imprisonment on 15 July 2014. This was his first time in prison. On 19 August 2014, he was transferred back to Lincoln after spending a short period at HMP Birmingham. His first language was Polish. Mr Stolarski had no diagnosed physical illness at this time.

20. On 4 June 2015, a prison GP saw Mr Stolarski, who reported with a cough he had had for the last four months, and with chest pain. The GP referred Mr Stolarski for a chest X-ray which took place on 15 June. On 22 June, another GP made an urgent referral for a CT scan, as advised by the X-ray department, under the NHS pathway. This requires patients with suspected cancer to be seen by a specialist within two weeks.

21. A prison GP saw Mr Stolarski on 30 June and explained that the chest X-ray was inconclusive and further tests had been requested. He prescribed Mr Stolarski with antidepressant medication. On 3 July, Mr Stolarski attended hospital for a CT scan.

22. On 7 July, a prison GP reviewed the result of the CT scan and referred Mr Stolarski to the chest clinic at hospital. He met with Mr Stolarski later that day and explained his likely diagnosis of cancer.

23. On 4 August, Mr Stolarski attended hospital for a bronchoscopy (a test that allows examination of the airways) and a diagnosis of lung cancer was made. We are satisfied that this diagnosis was made appropriately and without delay.

Mr Stolarski's clinical care

24. On 23 September, Mr Stolarski attended an oncology appointment at the hospital, where it was confirmed he had lung cancer. He was told he would be treated with chemotherapy and radiotherapy. A mental health nurse met with Mr Stolarski on 28 September to discuss his feelings about his diagnosis. He asked for his antidepressant medication to be increased because he felt worried and had difficulty sleeping. Mr Stolarski received a short course of sleeping tablets and had his antidepressant medication increased on 2 October.

25. On 8 October, the mental health nurse spoke with the clinical lead about Mr Stolarski's care. The clinical lead explained that Mr Stolarski would have his care explained to him in Polish. He would be given a single cell and a thermometer to monitor his temperature during chemotherapy.

26. On 29 October, Mr Stolarski received his first cycle of chemotherapy at hospital. He was seen for temperature recording on 3 November. The clinical reviewer commented that there were very few occasions when Mr Stolarski's temperature had been recorded during chemotherapy. Mr Stolarski completed his chemotherapy on 12 January 2016. He also had 32 sessions of radiotherapy over the time he was having chemotherapy.

27. On 22 February, Mr Stolarski attended an oncology appointment. He complained of headaches and blurred vision. A CT scan took place on 29 February to check whether the cancer had spread to his brain.

28. On 4 March, Mr Stolarski was told at a hospital appointment that the cancer had spread and that any treatment would be merely palliative, intended to prolong his life. Mr Stolarski discussed his diagnosis with the mental health nurse on 11 March and said that he would receive radiotherapy to treat his brain tumours but he might only have months to live. She agreed to see Mr Stolarski weekly to support him. On 16 March, a nurse spoke with a Macmillan nurse, who gave advice on Mr Stolarski's condition and the support that could be offered to him.

29. On 1 April, nurses met Mr Stolarski to discuss his end of life wishes. He was clear that he wanted to be resuscitated in the event of a cardiac arrest. Mr Stolarski received radiotherapy for his brain tumours on 5 April. On 25 April, a nurse met him to confirm that he would receive no further treatment for his brain tumours.

30. On 24 May, Mr Stolarski met Macmillan nurses using the Big Word telephone interpretation service. They reiterated his terminal condition and discussed his wishes about active resuscitation, which he wanted to remain in place.

31. On 7 June, Mr Stolarski was taken to hospital as an emergency case, with stomach pain and a distended abdomen. He returned to Lincoln on 8 June with medicine to treat constipation. On 14 June, a prison GP was concerned with Mr Stolarski's continuing symptoms of a distended abdomen, and sent him to hospital for further examination. An oncologist advised that the constipation was a progression of his cancer and Mr Stolarski returned to prison on 17 June. While at hospital, Mr Stolarski decided that he did not want anyone to resuscitate him if his heart or breathing stopped. He signed an order to that effect on 15 June.

32. During July and early August, Mr Stolarski was treated for fluid retention in his ankles and swelling in his abdomen. On 17 August, a hospital oncologist reviewed him and diagnosed him with ascites (a build up of fluid in the abdomen) and considered that he might need a hospital admission to drain this if it got worse.

33. Mr Stolarski remained stable during August and September. On 14 October, a prison GP reviewed him when he presented with increased abdominal pain, ankle swelling and reduced air into his lungs. He wrote to his oncologist to request an assessment. On the same day, staff from a hospice had a meeting with healthcare staff to discuss transferring Mr Stolarski. They agreed to the transfer and offered to increase their support visits to the prison.

34. On 29 October, Mr Stolarski was admitted to hospital for excess fluid to be drained. A CT scan of his chest and abdomen took place. On 8 December, Mr Stolarski attended an oncology appointment where it was confirmed that his brain tumours had progressed. He was offered ten sessions of palliative brain radiation and his pain relief changed to morphine. There is no evidence that this radiotherapy took place.

35. On 14 December, Mr Stolarski's care was discussed at in a complex case meeting. They decided to move him into a larger cell, additional furniture was requested and a buzzer to call for assistance was installed.

36. On 16 December, Mr Stolarski's legs gave way when he got up, and his arm began shaking. An ambulance was called but paramedics advised that Mr Stolarski would be best managed in the prison. A prison GP prescribed regular doses of morphine and ordered syringe driver medications, so that they were available when required.

37. On 3 January 2017, Mr Stolarski complained of severe back pain. On 9 January, he was unable to attend a hospital appointment due to the intense pain in his back. Prison doctors reviewed his pain relief regularly and advice was sought from his oncologist and Macmillan nurse on how to keep him comfortable.

38. On 17 January, Mr Stolarski was found on his cell floor. He was confused and had been incontinent. A prison GP decided to administer a syringe driver for his pain relief medication. The hospice confirmed that they had a bed for Mr Stolarski on 18 January, and he was transferred there later that day. Mr Stolarski died in the hospice on 20 January.

39. The clinical reviewer concluded that health care staff at Lincoln worked well with the Macmillan team on an end of life care plan. She found that the care given to Mr Stolarski was equivalent to the care he could expect to receive in the community. She commended the mental health nurse for the time and support she gave Mr Stolarski. The clinical reviewer makes three recommendations, which the Head of Healthcare will need to address.

Mr Stolarski's location

40. Mr Stolarski remained on E wing throughout his illness. On 10 October 2015, a prison GP requested that Mr Stolarski be given a single cell. Mr Stolarski remained in a single cell during his time in prison and was moved into a palliative care cell on 14 December 2016. This was big enough for a hospital bed and other care equipment as his nursing needs increased.

41. Polish speaking prisoners were used as 'buddies' for Mr Stolarski. They provided him with additional support on his wing and acted as interpreters.

42. On 17 January 2017, Mr Stolarski was found lying on his cell floor in a state of confusion. Arrangements were put in place for his cell door to be left open at night and for him to be checked every 30 minutes. A hospice bed was secured and Mr Stolarski transferred there the following day.

Restraints, security and escorts

43. The Prison Service has a duty to protect the public when escorting prisoners outside prison, such as when attending hospital. It also has a responsibility to balance this by treating prisoners with humanity. The extent of restraints used should be necessary in all the circumstances and based on an assessment of risk which considers the likelihood of escape, the degree of risk to the public and takes into account the prisoner's health and mobility. The judgment of the High Court in the case of Graham (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.

44. Mr Stolarski had numerous trips to hospital following his diagnosis in August 2015. On all of his escort risk assessments, prison security staff considered that he presented a "normal" risk, except to females and members of the public for whom he was categorised as "medium to high risk".

45. He received four cycles of chemotherapy between 29 October 2015 and 12 January 2016, and radiotherapy treatment up to 3 January 2017. For each chemotherapy appointment, Mr Stolarski was restrained with double cuffs. (Double-cuffing means handcuffing a prisoner's hands in front of him with one wrist attached to a prisoner officer using an additional set of handcuffs.) For his first appointment, an escort chain was used during treatment. (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.) For the other appointments, a note was made in the risk assessment that restraints could be removed during treatment.

46. From 23 November 2016, Mr Stolarski was restrained with single cuffs and an escort chain during his escorts to hospital. Prior to this date, double cuffs were applied. There were no medical objections to the use of restraints but there was no medical information provided to document Mr Stolarski's increasing lack of mobility or his terminal illness. We consider the use of restraints inappropriate during medical treatment and the risk assessments did not fully take into account the health of Mr Stolarski. 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 Stolarski's family

47. On 1 June 2016, a family liaison officer was appointed. He attended a multidisciplinary meeting to discuss Mr Stolarski's care on 22 June. He asked Mr Stolarski to discuss with his family his wishes in relation to the repatriation of his body following his death.

48. On 7 and 8 January 2017, Mr Stolarski's daughter and two sisters travelled from Poland and visited him in prison. An operational manager contacted Mr Stolarski's daughter informing her that he had been transferred to a hospice on 18 January. That evening prison staff arranged for Mr Stolarski to speak to his daughter over the telephone. The family liaison officer broke the news of Mr Stolarski's death to his daughter over the telephone as she lived in Poland.

49. Mr Stolarski's body was repatriated to Poland in line with his wishes. The prison contributed to the costs in line with national policy.

Compassionate release

50. 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.

51. In March 2016, Mr Stolarski discussed his wish to be repatriated to Poland to serve the remainder of his sentence, with his offender supervisor. Mr Stolarski received approval for his repatriation request on 11 November but was concerned about whether he would continue to receive cancer treatment on his return. On 8 December, Mr Stolarski told his offender supervisor that he wanted to stay in the UK until his treatment had finished. We are satisfied that Mr Stolarski's request for repatriation to Poland was fully explored. Although there is no evidence to suggest that compassionate release in the UK was considered, we recognise that it was unlikely that this would have been granted.

52. On 14 October, the Governor approved release on temporary licence to a hospice once this was required. On 18 January 2017, Mr Stolarski transferred to a hospice accompanied by one officer in plain clothes.

Prisons & Probation Ombudsman
Independent Investigations

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