Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Michael McCluskie a prisoner at HMP Whitemoor on 12 February 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*

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 Michael McCluskie died on 12 February 2016, after suffering from non-Hodgkin lymphoma, while a prisoner at HMP Whitemoor. He was 59 years old. I offer my condolences to Mr McCluskie's family and friends.

Although there were some slight delays in Mr McCluskie's initial diagnosis of cancer in 2012, and again with his later terminal diagnosis in January 2016, I am satisfied that these were not caused by prison healthcare staff who referred Mr McCluskie appropriately to hospital when necessary. He received generally good care at Whitemoor, equivalent to that he could have expected to receive in the community. However, it took too long to arrange a special mattress Mr McCluskie needed as his health deteriorated. I am also concerned that a too restrictive and blanket approach to security led to Mr McCluskie being restrained in hospital until shortly before his death and prevented him from using a telephone to keep in contact with his family and friends.

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 **September 2016**

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Summary

Events

1. On 23 January 1989, Mr Michael McCluskie was sentenced to life imprisonment for murder. He had been at HMP Whitemoor since 12 September 2001.

2. Mr McCluskie suffered from hepatitis A, B and C, and had cirrhosis of the liver. In June and early July 2012, prison doctors sent Mr McCluskie to hospital with chest pain and reduced feeling in his abdomen and lower limbs. No diagnosis was made. After a scan later in July, hospital doctors diagnosed him with non-Hodgkin lymphoma. They removed a tumour from his spine and monitored him. He had some difficult post-operative complications but appeared to recover from the cancer well. In June 2014, the hospital said he was clear of cancer.

3. In October 2014, Mr McCluskie reported lumps in his groin and a prison doctor referred him to hospital. In November, the hospital confirmed the lumps were a return of non-Hodgkin lymphoma. Mr McCluskie was treated with radiotherapy in February 2015 and hospital and prison healthcare staff monitored him.

4. Mr McCluskie became more unwell and reported dizziness. In November 2015, a consultant said Mr McCluskie's condition was not terminal and considered he could have a normal life expectancy. Mr McCluskie was taken to hospital twice in December after he collapsed. Each time he returned from the hospital after a few hours without any diagnosis. On 6 January 2016, he was taken to hospital after a respiratory arrest and doctors diagnosed a slow heart rate and postural hypotension (a drop in blood pressure after standing). The hospital discharged him the next day, but his health continued to deteriorate. He suffered from nose, mouth and rectal bleeding but hospital doctors did not diagnose the cause.

5. On 29 January, a prison doctor recorded low haemoglobin levels and sent Mr McCluskie to hospital for more investigations. In hospital, doctors found that Mr McCluskie had heart failure and that his cancer had spread. On 4 February, hospital doctors told him he was terminally ill. He remained in hospital for palliative care and died on 12 February.

Findings

6. The clinical reviewer considered there was a delay of some weeks in diagnosing non-Hodgkin lymphoma in July 2012, because the hospital had not investigated his symptoms sufficiently in June. Although this would not have affected the outcome, there was also a delay diagnosing that his condition was terminal in January 2016. Hospital care is outside the remit of this investigation, but the clinical reviewer has drawn this to the attention of NHS England. We are satisfied that prison healthcare staff appropriately referred Mr McCluskie to hospital for investigation. His clinical care at the prison was equivalent to that he could have expected to receive in the community, and in line with the information and advice that prison healthcare staff had from the hospital teams.

7. While Mr McCluskie's care at the prison was mostly good, it took too long to arrange a special mattress for him after operations on his back and knee caused extensive scarring and pain. When he went to hospital in restraints on 29

January 2016, the risk assessment was not properly justified and did not fully take into account how his health affected his risk of escape. The prison did not consider compassionate release because, without a clear prognosis, the application would not have been successful.

Recommendations

- The Head of Healthcare should ensure that prisoners with serious health conditions receive appropriate equipment to meet their assessed needs, without undue delay.
- The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position 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 Governor should ensure that there are appropriate arrangements to allow terminally ill prisoners in hospital keep in contact with family and friends by telephone.

The Investigation Process

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

9. The investigator obtained copies of relevant extracts from Mr McCluskie's prison and medical records. She interviewed three members of prison staff by telephone.

10. NHS England commissioned a clinical reviewer to review Mr McCluskie's clinical care at the prison. He interviewed three members of healthcare staff.

11. We informed HM Coroner for Cambridgeshire and Peterborough District of the investigation who gave us the cause of death. We have sent the coroner a copy of this report.

12. One of the Ombudsman's family liaison officers contacted Mr McCluskie's sister, to explain the investigation and to ask if she had any matters she wanted the investigation to consider. Mr McCluskie's sister asked the following:

    - Why were Mr McCluskie's symptoms not treated before he ended up needing a wheelchair?
    - Why he was placed on the second landing when he was in a wheelchair and why did he not get a special mattress?
    - What were the circumstances of his collapse on 6 January 2016 and why were his family not informed?
    - Was there a delay in diagnosing his cancer?
    - What care did Mr McCluskie receive after the operation to remove the cancer?

13. The investigation has assessed the main issues involved in Mr McCluskie'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.

14. Mr McCluskie's family received a copy of the initial report. They did not make any comments.

15. The initial report was shared with the Prison Service. The Prison Service pointed out some factual inaccuracies and this report has been amended accordingly.

Background Information

HMP Whitemoor

16. HMP Whitemoor is a high security prison, which holds over 450 men serving long sentences. NHS East Anglia commissions healthcare services.

17. Since April 2015, Northamptonshire Healthcare NHS Foundation Trust has been the healthcare provider. The prison healthcare centre includes a nine-bed inpatient unit. Primary care, drug misuse services and mental health services are now integrated.

HM Inspectorate of Prisons

18. The most recent inspection of HMP Whitemoor was in January 2014. Inspectors reported that the inpatient unit provided a therapeutic and supportive environment and there were a good range of services. Prisoners had daily access to nurses on the wing. There was good integrated working between the healthcare services and the wider prison.

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 May 2015, the IMB reported that the overall provision of healthcare services was reasonable but there was a reliance on agency staff.

Previous deaths at HMP Whitemoor

20. Mr McCluskie was the fifth prisoner to die from natural causes since January 2014. There were no significant similarities with the circumstances of the other deaths.

Findings

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

21. On 23 January 1989, Mr Michael McCluskie was sentenced to life imprisonment for murder. He had been at Whitemoor since 12 September 2001. Mr McCluskie had previously misused drugs and alcohol. In prison, doctors diagnosed him with osteoarthritis of the knee and hepatitis A, B and C. On 18 June 2010, Mr McCluskie was diagnosed with cirrhosis of the liver. Treatment for hepatitis was ineffective and hospital doctors and prison healthcare staff monitored him frequently.

22. In 2011, Mr McCluskie fell and suffered continuing back pain afterwards. In June 2012, Mr McCluskie had chest pain and went to hospital. Doctors excluded the possibility of a heart attack or lung problem, but gave no diagnosis. Mr McCluskie was admitted to hospital again between 5-7 July with reduced sensation in his abdomen and lower limbs. X-rays showed osteoarthritis in his knee and mild degenerative changes to his back. He was discharged to see a neurologist.

23. When he returned to the prison, he could only mobilise in a wheelchair. A prison GP chased the neurology appointment and discussed his case with a neurologist, who arranged an urgent CT scan. On 26 July, he had the CT scan at hospital, which showed a tumour was compressing his spinal cord. He was transferred urgently to another hospital for an emergency operation. A biopsy of the tumour and bone biopsy led to a diagnosis of non-Hodgkin lymphoma.

24. The lymphoma clinic at the hospital monitored Mr McCluskie over the next two years. In June 2014, doctors said the treatment had been successful, and the cancer had gone. In October 2014, Mr McCluskie told a prison GP that he had a lump in the left side of his groin. The GP referred him for a scan, which showed a recurrence of cancer in his pelvis and groin.

25. In 2015, Mr McCluskie's health declined. On 3 November 2015, he told a prison psychiatrist that he thought he was terminally ill. The psychiatrist checked with the hospital and a consultant wrote that Mr McCluskie's life expectancy was likely to be over ten years. The consultant did not consider he was dying.

26. On 10 December, Mr McCluskie told a doctor at the lymphoma clinic that he had dizziness and a swollen leg. The doctor did not consider the symptoms were cancer related. On 22 December, a prison GP referred Mr McCluskie urgently to a hospital gastrointestinal specialist for rectal bleeding. Later that day, Mr McCluskie collapsed. His blood oxygen level was low and the GP sent him to hospital, but the hospital discharged him in the early hours of the next day. On 30 December, he was taken to hospital again, after a further collapse. The hospital discharged him the next day. The hospital did not give a diagnosis either time.

27. On 6 January 2016, Mr McCluskie was taken urgently to hospital with breathing difficulties. The hospital discharged him the next day with a 24-hour electrocardiogram, which showed an abnormally slow heart rate. The hospital

diagnosed postural hypotension (when blood pressure suddenly drops on standing) and prescribed medication.

28. On 26 January, Mr McCluskie went to hospital and a scan showed a possibility of increased cancer. Mr McCluskie continued to have rectal bleeding and nose bleeds but the hospital did not diagnose a cause. Blood results on 29 January, showed a low haemoglobin level and a prison GP sent Mr McCluskie to hospital again for further investigation. In hospital, a CT scan showed that the cancer had spread through Mr McCluskie's abdomen and pelvis. Mr McCluskie also had severely impaired left ventricular function on his heart. On 4 February, hospital doctors told him that his condition was terminal.

29. Mr McCluskie sometimes associated the fall in prison in 2011 with the onset of his cancer, but the clinical reviewer considered that this was unrelated. However, the clinical reviewer found that there were possible delays in the diagnosis of Mr McCluskie's cancer in 2012, and in diagnosing his terminal condition in 2016. In June 2012, the hospital did not fully investigate his symptoms, which meant the diagnosis was not made until 26 July. The clinical reviewer was satisfied the prison healthcare staff appropriately referred Mr McCluskie for investigation.

30. There was then a second delay in diagnosing Mr McCluskie's terminal condition. The lymphoma clinic gave him an optimistic prognosis in November 2015, but there were delays in fully investigating his deterioration in spite of prison healthcare staff sending him to hospital on three separate occasions. Mr McCluskie did not receive a terminal diagnosis until 4 February 2016. The clinical reviewer did not consider these further delays would have made a difference to the outcome. Hospital care is outside the PPO's remit, but the clinical reviewer has brought this to the attention of NHS England. We are satisfied that prison healthcare staff promptly referred Mr McCluskie for investigations when necessary.

Mr McCluskie's clinical care

31. After his initial diagnosis in 2012, Mr McCluskie had radiotherapy, which appeared to be successful. The clinical reviewer noted that Mr McCluskie was severely disabled after his operation in July 2012. He was nursed in the healthcare centre at Whitemoor and made a good recovery.

32. In February 2015, Mr McCluskie had radiotherapy again, which reduced the cancer, which had been found at the end of 2014. Over the next few months, both hospital and prison healthcare staff saw Mr McCluskie frequently to monitor his cancer and risk of deep vein thrombosis. Hospital doctors said the cancer was slow growing.

33. In June 2015, Mr McCluskie's health began to deteriorate and he complained of increased lower back pain. A prison GP planned to monitor this, and referred him for kidney function blood tests on 6 July. The results were borderline abnormal and the GP ordered a repeat blood test which was carried out on 14 July. No results were recorded.

34. On 10 September, Mr McCluskie told the prison GP that he felt dizzy when he stood up. His blood pressure was within normal range. Several blood tests were

completed in September, showing high cholesterol and borderline abnormal kidney function. The GP prescribed medication for his cholesterol. Healthcare staff monitored Mr McCluskie and treated him for constipation and continued dizziness.

35. Although a hospital consultant had said in November that Mr McCluskie was likely to live over ten years, healthcare staff at the prison were concerned about his condition and implemented a care plan, which included monitoring his condition and treatment. Throughout December, Mr McCluskie felt unwell and suffered from dizziness. Healthcare staff continued to see him daily, until he was admitted to hospital on 29 January and diagnosed with terminal cancer. Mr McCluskie died in hospital on 12 February.

36. The coroner gave the cause of death as pulmonary oedema caused by pneumonia and non-Hodgkin lymphoma. Mr McCluskie also had hepatitis C and cirrhosis of the liver.

37. The clinical reviewer concluded that Mr McCluskie's care at Whitemoor was equivalent to that he could have expected to receive in the community. In his last four weeks at the prison, nurses saw him daily. Prison healthcare staff acted appropriately by referring Mr McCluskie to hospital when necessary. The clinical reviewer considered that prison healthcare staff gave Mr McCluskie the correct treatment and medication, based on the information they had about his condition at all times. We are satisfied that Mr McCluskie received an appropriate standard of care at the prison.

Mr McCluskie's location

38. When Mr McCluskie returned to the prison from hospital in June 2012, he was admitted to the prison's inpatient unit. From July 2012, he used a wheelchair. In January 2014, he went back to his original wing. The prison told us his cell was on a ground floor landing but this was not recorded anywhere. We could find no evidence that Mr McCluskie was accommodated on a second floor landing, as his family suggested.

39. After this, Mr McCluskie moved between his cell on the wing and the prison's inpatient unit, as and when his condition required it. In July 2014, Mr McCluskie asked for an orthopaedic mattress, to relieve back and knee pain caused by serious scarring from his operations. A doctor assessed Mr McCluskie and agreed this. However, prison beds were too narrow for standard specialist mattresses and it took over a year to organise a bespoke mattress. While we accept it had been difficult to arrange a bespoke mattress, a year was too long, after doctors had agreed this would be beneficial.

40. In December 2015, Mr McCluskie moved to the prison's inpatient unit and remained there until he went to hospital for the last time on 29 January 2016. We are satisfied that the prison accommodated Mr McCluskie appropriately throughout his illness, but we are concerned at the wait for a specialist mattress. We make the following recommendation:

The Head of Healthcare should ensure that prisoners with serious health conditions receive appropriate equipment to meet their assessed needs, without undue delay.

Restraints, security and escorts

41. 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.

42. Mr McCluskie was restrained for all hospital appointments and admissions. When Mr McCluskie went to hospital for the last time, on 29 January 2016, a prison manager decided that officers should use double handcuffs to restrain Mr McCluskie at all times. (Double cuffing entails the prisoner having his wrists handcuffed in front of him and then having one wrist attached to a prison officer by an additional set of handcuffs. This is usually required for moving category A or category B prisoners in good health.) Although Mr McCluskie was a category B prisoner, his health and mobility was very poor at the time. A nurse noted on the risk assessment that Mr McCluskie had impaired mobility, but gave no objections to the use of restraints. At the time, Mr McCluskie was dependent on a wheelchair, but this was not recorded. The risk assessment noted that Mr McCluskie was considered vulnerable and was a risk of violence, but not at risk of escape or hostage taking.

43. On 30 January, a prison manager decided that restraints should be reduced to 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.) Prison managers reviewed the risk assessment each day, and made no changes. Mr McCluskie remained restrained by an escort chain, even when he was receiving blood transfusions, until 10 February. At this point, a doctor at the hospital said that the restraints should be removed because Mr McCluskie was clinically weak and posed minimal risk. A prison manager agreed that officers should remove the restraints.

44. We are concerned that a manager approved the use of double handcuffs when Mr McCluskie went to hospital on 29 January, when he was very ill and not mobile. It appears that prison managers based their assessment on his historical risk of offending without considering whether his health and mobility reduced his risks, as the High Court judgment requires. In hospital he remained restrained by an escort chain for too long and during treatment, without satisfactory risk assessments to justify restraints. He continued to be restrained until 10 February, just two days before his death. It appeared restraints were only removed at that

stage because a hospital doctor had commented that Mr McCluskie posed a minimal risk. 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 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 McCluskie's family

45. Mr McCluskie was in daily telephone contact with his family while in the prison, and kept them informed of his condition when he was initially diagnosed.

46. On 5 February 2016, after Mr McCluskie's terminal diagnosis, the prison appointed a family liaison officer. She contacted his partner to explain her role and remained in contact with her. She also spoke to Mr McCluskie's sister. His family was able to visit Mr McCluskie in hospital and members of his family were with him when he died.

47. Mr McCluskie's family was concerned that he was not able to use a telephone in hospital. The prison said there were security concerns about him using an unsecure telephone line that could not be monitored. They did not specify any particular concerns, other than general security issues about unmonitored telephone calls in the high security prison estate. A doctor offered to bring a telephone to use on loudspeaker so that officers could monitor the conversation. However, prison managers refused this on the grounds that the hospital would be paying for Mr McCluskie's telephone calls. We consider that this decision was insensitive for a dying man in his last days.

48. Mr McCluskie's funeral was on 26 February 2016. The prison contributed towards the costs of the funeral, in line with national instructions. There was a memorial service at the prison on 8 April, which Mr McCluskie's sister, other family members and his partner attended. We are satisfied that family liaison arrangements were generally appropriate but consider the prison should have allowed Mr McCluskie to use a telephone in hospital. We make the following recommendation:

The Governor should ensure that there are appropriate arrangements to allow terminally ill prisoners in hospital keep in contact with family and friends by telephone.

Compassionate release

49. 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 released before their sentence has expired. A clear medical opinion of life expectancy is required.

50. Mr McCluskie had no definite prognosis after he was diagnosed with terminal cancer on 4 February 2016, although he died shortly afterwards. While there was no evidence that the prison considered the possibility of compassionate

release, we accept that without a clear prognosis an application would not have been successful.

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