

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Eldred Makabali a prisoner at HMP Bedford on 9 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 Makabali died on 9 January 2017, of ischaemic heart disease and narrowing of the arteries at HMP Bedford. He was 65 years old. I offer my condolences to Mr Makabali's family and friends.

Mr Makabali had been at Bedford for four months and suffered from chronic illnesses including diabetes, heart disease, and was recovering from a stroke. Mr Makabali required 24 hour nursing care and lived in the healthcare unit. Although his condition noticeably deteriorated in January 2017, I am satisfied that he was generally well cared for at Bedford.

However, I am disappointed that, once again, I have to raise concern over Bedford's inadequately justified use of restraints when taking a very unwell and immobile prisoner to hospital.

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

Nigel Newcomen CBE
Prisons and Probation Ombudsman

September 2017

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Summary

Events

1. On 6 September 2013, Mr Makabali was sentenced to life imprisonment for sexual offences. He had been diagnosed with diabetes and ischaemic heart disease before entering custody. In 2014 and 2016, he was transferred between prison and psychiatric secure units for treatment of his mental health issues. On 7 April 2016, Mr Makabali suffered a stroke in a secure unit and was taken to hospital. He was discharged from hospital to HMP Bedford in July.
2. Mr Makabali required complete nursing care and lived in the healthcare unit in Bedford. His door was left open at night to enable nurses to monitor him every 30 minutes. Staff used a hoist to move him. Mr Makabali had regular support from an external speech and language therapist. His pre-existing medical conditions were treated and managed.
3. Mr Makabali developed swollen legs and pressure sores. The sores were regularly dressed and he received physiotherapy support to reduce the swelling.
4. From September 2016 onwards, Mr Makabali was taken to hospital as an emergency five times. On one occasion, a doctor was concerned that Mr Makabali had suffered another stroke. He was restrained each time he was taken to hospital using an escort chain.
5. On 1 January 2017, Mr Makabali was taken to hospital but discharged himself and declined treatment. On 4 January, a doctor thought his health was deteriorating and requested a palliative care assessment which did not happen. On 9 January at 2.30am, a nurse checked on Mr Makabali who was not breathing. She called for help and a colleague responded and alerted operational staff. They started resuscitation and paramedics arrived at 2.46am. They confirmed at 3.10am that Mr Makabali had died.

Findings

6. We are satisfied that Mr Makabali was generally well cared for at Bedford and staff could not have prevented his death. However, he became very unwell in the last week of his life and we agree with the clinical reviewer that Mr Makabali should have had the opportunity to discuss end of life planning. Although Mr Makabali was unable to move independently he was restrained when taken to hospital.

Recommendations

- The Head of Healthcare should ensure that prisoners with chronic illness are given the opportunity to discuss end of life wishes, including their wishes regarding resuscitation in the event of sudden collapse.
- The Governor 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 Bedford 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 Makabali's prison and medical records.
9. The investigator interviewed one member of staff by telephone on 28 March 2017.
10. NHS England commissioned a clinical reviewer to review Mr Makabali's clinical care at the prison.
11. We informed HM Coroner for Bedfordshire of the investigation who gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.
12. The investigator wrote to Mr Makabali's daughter to explain the investigation and to ask if she had any matters she wanted the investigation to consider. She did not respond to our letter.
13. Mr Makabali's family received a copy of the initial report. They did not make any comments.
14. 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. The action plan has been annexed to this report.

Background Information

HMP Bedford

15. HMP Bedford is a local prison holding about 500 men. Northants Healthcare NHS Foundation Trust provide all healthcare services. There is an inpatient unit with nine cells and a four-bed dormitory.

HM Inspectorate of Prisons

16. The most recent inspection of HMP Bedford was in May 2016. Inspectors reported that the provision of healthcare was reasonably good. Health services were provided 24 hours a day and two nurses were available during the night. They found that clinical managers worked hard to drive effective service delivery and improvement. Ambulances were called promptly when needed.

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 June 2016, the IMB reported that generally healthcare was of a good standard. They were concerned about disruptions to the inpatient unit when prisoners were located there for segregation purposes.

Previous deaths at HMP Bedford

18. Mr Makabali was the fourth prisoner to die from natural causes at Bedford since 2012. We made recommendations about the risk assessment process for the use of restraints for hospital visits in the previous three investigation reports.

Key Events

19. On 1 September 2012, Mr Eldred Makabali was remanded to HMP Wormwood Scrubs for sexual offences. He had been in prison once before, in America in 1992. On 26 March 2013, Mr Makabali was transferred to HMP High Down. On 6 September, he was sentenced to life imprisonment. Mr Makabali was suffering with type 2 diabetes and ischaemic heart disease when he entered prison.
20. In January 2014, Mr Makabali was transferred to HMP Parkhurst. A psychiatrist assessed him and recommended a transfer to Three Bridges Medium Secure Unit, which happened on 24 June. He was transferred to HMP Wormwood Scrubs on 15 October.
21. Mr Makabali's mental health deteriorated and, on 10 February 2016, he was admitted to Kneesworth House Medium Secure Unit for assessment. They diagnosed him with mixed personality disorder (traits of a number of different personality disorders). On 7 April, Mr Makabali suffered a stroke and was transferred to Addenbrookes Hospital.
22. The hospital discharged Mr Makabali on 25 July, and he was sent to HMP Bedford. Mr Makabali was located in healthcare because he needed full time nursing. Staff used a hoist to move him from his bed to a chair. He was doubly incontinent, diabetic and hypertensive. Nurses observed him half hourly and left his cell door open at night to attend to him easily.
23. A speech and language therapist, made contact with the prison healthcare unit on Mr Makabali's arrival to give advice on how to care for him after his stroke. He was to have a normal diet, thickened fluids and to sit upright when eating. The speech and language therapist regularly reviewed Mr Makabali's needs.
24. On 28 July, a community psychiatric nurse, contacted Kneesworth House to request discharge information. Mr Makabali was referred to a neurological physiotherapist, and seen on 2 August. They planned to access his records from hospital to gain information on past assessments.
25. On 2 August, the community psychiatric nurse assessed Mr Makabali's mental health after he made an inappropriate comment to a nurse. The nurse reviewed Mr Makabali with a psychiatrist on 4 August. The psychiatrist planned to contact Kneewsworth House Secure Unit to discuss low dose Olanzapine (antipsychotic) medication and said that his stroke rehabilitation should continue as planned.
26. On 18 August, the community physiotherapy department contacted the modern matron, in the prison. They explained that they would not visit Mr Makabali to provide physiotherapy because he had been non-compliant and awkward when at hospital.
27. A doctor assessed Mr Makabali on 12 September, because he had a high temperature and felt breathless. She thought he might have sepsis and sent him to hospital. The prison were unable to locate the escort risk assessment for this appointment. The hospital treated him with antibiotics for pneumonia. A speech and language therapist at hospital reviewed Mr Makabali and advised that he

should continue to have thickened fluids. He was returned to prison on 16 September.

28. On 6 October, Nurse A saw Mr Makabali in a diabetic clinic. They agreed a diabetes care plan and she referred Mr Makabali to a podiatrist, dentist, an optician, and for retinal screening.
29. During October and November Mr Makabali developed swollen legs and pressure sores. He received physiotherapy support to reduce the swelling in his legs. Mr Makabali's pressure sores were regularly dressed and on 14 November, he saw a tissue viability nurse who advised nursing staff to continue with the same treatment.
30. On 21 November, the doctor considered that Mr Makabali might have had a stroke as he showed right-sided facial weakness and he was unable to close his right eye. The doctor sent Mr Makabali to hospital as an emergency. Mr Makabali was escorted by two officers and restrained with an escort chain (a long chain with a handcuff at each end, one of which is attached to the prisoner and the other to an officer). The medical assessment stated that Mr Makabali was not seriously ill and that restraints were appropriate and necessary. Mr Makabali returned to Bedford the following day without any changes to his care. An MRI scan was urgently requested.
31. On 12 and 16 December, Mr Makabali was taken to hospital with a high temperature, a cough and, on 12 December, a concern that he had developed a weakness on the right side of his body. On both occasions, officers restrained him with an escort chain. The medical section of the risk assessment on 16 December, recorded that he was seriously ill. Mr Makabali stayed in hospital for four days on each occasion. He was discharged with antibiotics and treated for aspiration pneumonia (a lung infection).
32. On 1 January 2017, Mr Makabali was taken to hospital due to a persistent cough and unstable vital signs. He was restrained with a single cuff, to be changed to an escort chain during treatment. He refused a blood test, discharged himself and was returned to Bedford the same day.
33. A multidisciplinary team discussed Mr Makabali at a complex needs meeting on 4 January. The doctor felt that Mr Makabali's condition was deteriorating and diagnosed him with possible aspiration pneumonia. She recommended that he be considered for palliative care and asked for him to be assessed by palliative care nurses at HMP Littlehey.
34. On 5 January, a second community psychiatric nurse, met Mr Makabali to complete a mental health capacity assessment. Mr Makabali said that he declined treatment at hospital because he was unfamiliar with the procedures that needed to take place. She concluded that a doctor should assess his mental capacity to make decisions about his treatment, and that they would be able to fully explain the procedures to him.
35. On 9 January, Nurse B checked Mr Makabali at around 2.30am. He was not breathing and she called Nurse C, who was nearby, to help. Neither nurse could find a pulse. While Nurse B started cardiopulmonary resuscitation (CPR), Nurse

C went into the office next to Mr Makabali's cell and telephoned the control room informing them of a code blue situation (which indicates a prisoner is unconscious, not breathing or is having breathing difficulties) and to call an ambulance. An ambulance was called at 2.35am. Nurse C returned to the cell and helped with CPR.

36. The Custodial Manager (CM) and officer A arrived at Mr Makabali's cell at 2.37am. They helped the nurses to lift Mr Makabali onto the floor for CPR to take place more effectively. Paramedics arrived at Mr Makabali's cell at 2.46am and took over CPR. At 3.10am, paramedics confirmed that Mr Makabali had died.

Contact with Mr Makabali's family

37. A family liaison officer was appointed following Mr Makabali's death. The family liaison officer made contact with Mr Makabali's daughter who was informed of his death.
38. The funeral took place on 7 February and the prison contributed towards the funeral costs in line with national policy.

Support for prisoners and staff

39. After Mr Makabali's death, the acting governor, debriefed the staff involved in the emergency response to ensure they had the opportunity to discuss any issues arising, and to offer support. The staff care team also offered support.
40. The prison posted notices informing other prisoners of Mr Makabali's death, and offering support. Staff reviewed all prisoners assessed as being at risk of suicide or self-harm in case they had been adversely affected by Mr Makabali's death.

Post-mortem report

41. The results of the post mortem investigation were ischaemic heart disease (condition that affects blood flow to the heart) and severe arteries atherosclerosis and stenosis (build up in arteries that causes blood loss to the brain).

Findings

Clinical care

42. When Mr Makabali arrived at HMP Bedford he required complete nursing care and rehabilitation after suffering a stroke. Mr Makabali had trouble with speech and difficulty swallowing. A speech and language specialist regularly reviewed Mr Makabali in prison and also assessed him as an inpatient at hospital. The clinical reviewer considered that the relationship between prison health care staff and the speech and language team was very good and clearly put his needs at the centre of his care.
43. Mr Makabali was diagnosed with ischaemic heart disease before entering custody. The clinical reviewer found that healthcare staff at Bedford regularly monitored his blood pressure, pulse and cholesterol levels and the management of this condition was equivalent to what he would have received in the community.
44. The clinical reviewer found Mr Makabali received good care for management of pressure sores and had regular contact with healthcare staff. She considered that his access to physiotherapy was not as would be expected in the community and has made a recommendation which the Head of Healthcare will need to address.
45. The clinical reviewer was concerned that there was no evidence of communication with Mr Makabali about advanced care planning and his wishes for end of life care. We agree, and make the following recommendation:

The Head of Healthcare should ensure that prisoners with chronic illness are given the opportunity to discuss end of life wishes, including their wishes regarding resuscitation in the event of sudden collapse.

Use of restraints

46. 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.
47. A judgment in the High Court in 2007, made it clear that prison staff need to distinguish between the 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 judgement indicated that prison staff must take into account medical opinion about the prisoner's ability to escape and keep this under review as circumstances change.
48. Mr Makabali was taken to hospital as an emergency five times between September 2016 and January 2017. On each occasion, he was restrained with an escort chain and on one occasion a single cuff was used. The medical assessments as part of his escort risk assessments acknowledged that his medical condition was serious only on one occasion, and did not object to the

use of restraints. They did not record that Mr Makabali was wheelchair bound and required assistance to move.

49. Public protection is fundamental, but security measures must be proportionate to a prisoner's individual circumstances, which must be fully considered, taken into account and balanced against the security risks. We do not consider that staff appropriately assessed Mr Makabali's risk, or fully took into account his condition when making a decision on the use of restraints. We consider that there is a need for those involved in making decisions at all levels of the Prison Service, to ensure that a prisoner's health and mobility are fully taken into account in risk assessments for hospital escorts, and that staff follow the 2007 High Court judgment. We make the following recommendation:

The Governor 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.

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