

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Arnoldas Balciunas a prisoner at HMP Bullingdon on 24 April 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.

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 Arnoldas Balciunas died of a haemorrhage as a result of oesophageal and stomach cancer on 24 April 2017, while a prisoner at HMP Bullingdon. He was 44 years old. I offer my condolences to his family and friends.

We are concerned that prison staff did not request Mr Balciunas' community medical records when he arrived. Prison clinicians did not prescribe him emergency pain relief medication in advance and failed to share information about him with the out of hours service. This resulted in Mr Balciunas unnecessarily experiencing severe pain before he went to hospital on 23 April.

We are also very concerned that, despite being very ill and in severe pain, and having been assessed as low risk, Mr Balciunas was handcuffed when he was taken to hospital. This is the third investigation in the last two years into a death at Bullingdon where we have expressed concerns about the inappropriate use of restraints when prisoners go to hospital, and it appears that the necessary lessons are not being learnt.

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

Elizabeth Moody
Acting Prisons and Probation Ombudsman

January 2018

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Summary

Events

1. Mr Arnoldas Balciunas was sentenced to two years and three months in prison on 4 August 2016 and sent to HMP Woodhill. When he arrived, he told a nurse carrying out his initial health screen that he had abdominal pain and had missed an appointment in the community in July 2016.
2. On 12 August, Mr Balciunas was transferred to HMP The Mount. He continued to complain of abdominal pain and tested positive for stomach bacteria in September. A prison doctor prescribed medication to eradicate the bacteria.
3. Over the next two months, Mr Balciunas remained in pain and complained of sporadic vomiting. Doctors prescribed acid-suppressing medication and in November, a GP referred him to a gastroenterology specialist at hospital. On 1 December, another doctor was concerned about Mr Balciunas' severe pain and weight loss and made an urgent referral. On 12 December, an endoscopy showed that Mr Balciunas had a malignant tumour in his lower oesophagus. Further scans showed the tumour was incurable and had spread towards his liver and lymph nodes. After his diagnosis, hospital and prison healthcare staff supported Mr Balciunas.
4. Over the next four months, Mr Balciunas' health steadily deteriorated and doctors managed his pain. He spent several days in hospital in March and on 23 March moved to the healthcare unit at HMP Bullingdon for 24-hour nursing care.
5. On the morning on 23 April, nurses attended to Mr Balciunas who was in considerable pain and had vomited blood. They could not give him stronger pain relief as nothing had been prescribed to him and they could not make contact with the out of the hours doctor. It is not clear why not. An emergency ambulance took Mr Balciunas to hospital, where he had a blood transfusion. Mr Balciunas died the next day in hospital, with his family present.

Findings

6. There is no evidence that staff at The Mount requested Mr Balciunas' community medical records, as they should have done, to ensure continuity of care.
7. We agree with the clinical reviewer that, overall, Mr Balciunas' care in prison was equivalent to that which he could have expected to receive in the community. However, on 23 April, when he was in considerable pain, nurses were unable to give him more pain relief as it had not been prescribed and they could not contact the out of hours doctor for a prescription.
8. Mr Balciunas, who was very ill, in severe pain and in his last hours of life, was restrained with two sets of handcuffs when he went to hospital on 23 April, and they remained in place until 9.20am the next day despite a hospital doctor asking for them to be removed in the early hours of the morning. There is a legal requirement that clear criteria are met to justify such decisions. We found no satisfactory explanation for those decisions.

Recommendations

- The Head of Healthcare at HMP The Mount should ensure that staff request community medical records for newly arrived prisoners without delay and in line with Prison Service instructions.
- The Head of Healthcare at HMP Bullingdon should ensure that there is a protocol in place for the advance prescription of emergency medication for patients in the last stages of a terminal illness.
- The Head of Healthcare at HMP Bullingdon should ensure that staff alert the out of hours service to patients with life-threatening and terminal conditions.
- The Governor at HMP Bullingdon should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position on using 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

9. The investigator issued notices to staff and prisoners at HMP Bullingdon informing them of the investigation and asking anyone with relevant information to contact her. No one responded.
10. The investigator obtained copies of relevant extracts from Mr Balciunas' prison and medical records.
11. NHS England commissioned a clinical reviewer to review Mr Balciunas' clinical care at the prison.
12. We informed HM Coroner for Oxfordshire of the investigation who gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.
13. The investigator wrote to Mr Balciunas' next of kin, his stepsister, 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.
14. The investigation has assessed Mr Balciunas' 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.
15. We wrote to Mr Balciunas' family to inform them of the investigation, but they did not respond. The Prison Service has accepted our recommendations and their action plan is attached as an annex to this report.

Background Information

HM Bullingdon

16. HMP Bullingdon is a training and local prison, serving the courts of Oxfordshire and Berkshire. It holds up to 1,114 men. Healthcare is provided by Care UK. Cotswold Medicare Ltd provides general practitioner services. South Staffordshire and Shropshire NHS Foundation Trust provides care for those with severe and enduring mental illness and secondary mental health services.

HM Inspectorate of Prisons

17. The most recent inspection of HMP Bullingdon was in June 2015. Inspectors reported that primary health services were reasonable and lifelong condition management was good but support for older prisoners and those with complex needs required improvement. Inspectors reported that the healthcare environment was reasonable but cleaning did not meet NHS standards and some fixtures and fittings did not meet infection control standards. Inspectors found that there was inconsistent use of professional interpreting services.

Independent Monitoring Board

18. 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 July 2016, the IMB reported that cleanliness in Bullingdon's healthcare department remained below required NHS standards and the recruitment and retention of healthcare staff was challenging,

Previous deaths at HMP Bullingdon

19. Mr Balciunas is the sixth prisoner to die from natural causes at Bullingdon since 2014. Two previous investigations in the last two years also identified concerns with Bullingdon's use of restraints without proper justification.

HMP The Mount

20. HMP The Mount is a medium security prison holding around 1,000 men. West Hertfordshire NHS Trust provides primary healthcare services and GP services. There are GP sessions from Monday to Friday, with out of hours provision at other times. No healthcare staff are on duty between 6.30pm and 8.00am.

HM Inspectorate of Prisons

21. The most recent inspection of HMP The Mount was in April 2015. Inspectors found health services to be reasonably good. The range of primary care services was appropriate, with acceptable waiting times. Prisoners' access to external hospital appointments was good.

Independent Monitoring Board

22. In their latest annual report to February 2017, the IMB did not raise any significant concerns about health services at The Mount, and noted that the healthcare team had received an award for excellence in partnership working.

Findings

Diagnosis of Mr Balciunas' terminal illness and informing him of his condition

23. Mr Arnoldas Balciunas, a Lithuanian national, was convicted of drug offences on 4 August 2016. He was sentenced to two years and three months in prison and sent to HMP Woodhill.
24. At his initial health screen, a nurse noted he could speak and understand English well. The next day, a nurse carried out a second health screen and recorded that Mr Balciunas had a history of abdominal discomfort. He said he had missed an appointment in the community to investigate this in July 2016. The clinical reviewer noted that Mr Balciunas' community medical records did not refer to such an appointment in July 2016, and his records indicated that he had not had an appointment or telephone consultation with a doctor since 2012.
25. On 11 August, the nurse made an appointment for a doctor to review Mr Balciunas. He did not attend the appointment but the reasons for this are not known. On 12 August, Mr Balciunas was transferred to HMP The Mount. A nurse carried out an initial health screen and noted that Mr Balciunas had gastric pain. The nurse arranged for Mr Balciunas to see a GP.
26. On 23 August, a locum GP saw Mr Balciunas and noted his history of gastric pain. He concluded that he had gastritis (inflammation of the stomach lining). The GP prescribed acid-suppressing medication and noted that if his symptoms did not settle, Mr Balciunas would need blood tests for helicobacter pylori, a bacterium that can cause gastritis.
27. On 8 September, a locum GP saw Mr Balciunas as his symptoms had not improved. The GP prescribed different acid-suppressing medication and when Mr Balciunas tested positive for helicobacter pylori, the GP prescribed medication to clear the bacterial infection. The clinical reviewer noted that Mr Balciunas' blood tests were normal (apart from very mildly raised inflammatory markers) and he had no signs of anaemia.
28. On 24 October, a locum GP noted that Mr Balciunas still had pain radiating to his back, particularly at night. The GP noted that Mr Balciunas had not lost weight and had no "alarm symptoms" (which would have included upper abdominal pain, being over 55 years old, unintentional weight loss, nausea, and low haemoglobin or raised platelet count). He advised Mr Balciunas to continue with his medication and noted that he should be referred for an endoscopy (a camera investigation of the stomach) if he was not better in two months.
29. On 14 November, a locum GP saw Mr Balciunas again and noted his ongoing symptoms. He referred him to the hospital gastroenterology department. On 1 December, a locum GP was concerned that Mr Balciunas' pain was "severe and debilitating". She noted that he had lost 10kgs in weight over four months and that he complained of sporadic vomiting. She referred him urgently to gastroenterology under the NHS pathway that requires patients with suspected cancer to be seen by a specialist within two weeks.

30. On 12 December, Mr Balciunas had an endoscopy which found a malignant tumour in the lower third of his oesophagus. Clinical staff told Mr Balciunas.
31. On 14 December, a nurse manager spoke to Mr Balciunas. She noted that he understood his diagnosis and why he needed further investigations. She recorded that his mental health was stable.
32. The clinical reviewer considered that healthcare staff managed Mr Balciunas' abdominal symptoms broadly in line with national guidance. Prison doctors referred him to a specialist as his symptoms continued.
33. Prison Service Order 3050 on Continuity of Healthcare says that when a prisoner arrives in reception, staff should try to retrieve information, including medical records, from a community GP or other relevant source. The clinical reviewer noted that no one asked for Mr Balciunas' community medical records, even though he told staff of his history of abdominal symptoms and claimed he had missed an appointment in the community. (The community records subsequently showed that Mr Balciunas had not in fact been in contact with his doctor.) While obtaining the records would not have changed the outcome for Mr Balciunas, it is important that staff ask for a patient's community medical records to ensure continuity of care, especially when they say they have a pre-existing condition. We make the following recommendation:

The Head of Healthcare at HMP The Mount should ensure that staff request community medical records for newly arrived prisoners without delay and in line with Prison Service instructions.

Mr Balciunas' clinical care

34. In the two weeks after Mr Balciunas was diagnosed with a tumour, a series of CT and PET scans indicated that he had an aggressive, incurable cancer which had spread from the oesophagus towards his liver and lymph nodes.
35. On 4 January 2017, Mr Balciunas saw a specialist to discuss his condition. A nurse accompanied him. The clinical reviewer noted that a full and frank discussion took place, with a Lithuanian interpreter present. Mr Balciunas was told that the tumour was incurable and inoperable; and the hospital said he would be offered palliative chemotherapy. They gave him information leaflets about his condition in Lithuanian. Mr Balciunas took the news fairly well and said that his girlfriend would support him.
36. Doctors managed Mr Balciunas' pain initially with codeine-based pain relief, and then with fentanyl (an opiate drug administered through a skin patch) and oral morphine. On 12 January, Mr Balciunas started intravenous and oral chemotherapy and had three cycles before he became more unwell.
37. In early March, Mr Balciunas' swallowing and appetite began to deteriorate and doctors admitted him to hospital for a repeat endoscopy on 20 March. He had a stent inserted (a plastic tube passed through the obstructing tumour to enable fluids and food to pass through to the stomach). On 23 March, he was transferred to HMP Bullingdon (for 24-hour nursing care).

38. On admission to HMP Bullingdon's healthcare wing, a nurse assessed him fully and started an end-of-life care plan. Mr Balciunas was referred to the palliative care team from the local hospice. The palliative care team visited on 30 March. They recommended an increase in his analgesia and offered ongoing support.
39. Mr Balciunas' health continued to decline. His pain was variable but the clinical reviewer was satisfied that it was generally adequately controlled with oral morphine and fentanyl patches.
40. At 5.45am on 23 April, nurses attended to Mr Balciunas who was in severe pain. They found he had vomited a black substance which appeared to be blood, his blood pressure was very low and nurses requested an ambulance which the control room called immediately. Records show that nurses were unable to give more morphine pain relief without a doctor, and they were unable to contact the out of hours doctor. It is not clear from the records why not. The clinical reviewer noted that no injectable analgesia had been prescribed in advance to control Mr Balciunas' severe pain.
41. Mr Balciunas was admitted to hospital, where he received a blood transfusion. He died at 6.05pm on 24 April. The post-mortem examination confirmed that Mr Balciunas died from a massive gastro-intestinal haemorrhage, secondary to a gastro-oesophageal tumour.
42. The clinical reviewer considered that, overall, Mr Balciunas' treatment in prison was equivalent to that which he could have expected to receive in the community.
43. Although there were good care plans in place, palliative care was mostly good and clinicians managed his pain well most of the time, we share the clinical reviewer's concern that when Mr Balciunas was in severe pain on 23 April, nurses were unable to give him injectable pain relief without a prescription. The clinical reviewer noted that it is common in the community for patients in the last stages of a terminal illness to have emergency medications prescribed in advance of a potential sudden deterioration. We make the following recommendation:

The Head of Healthcare at HMP Bullingdon should ensure that there is a protocol in place for the advance prescription of emergency medication for patients in the last stages of a terminal illness.

44. There were difficulties in contacting an out of hours doctor for assistance. The clinical reviewer was satisfied that Mr Balciunas was appropriately managed as there was no delay in taking him to hospital by emergency ambulance. However, the clinical reviewer noted that staff should keep the out of hours service updated with information about seriously ill prisoners and ensure that effective communication plans are in place in the event of an emergency. We make the following recommendation:

The Head of Healthcare at HMP Bullingdon should ensure that staff alert the out of hours service to patients with life-threatening and terminal conditions.

Mr Balciunas' location

45. We are satisfied that Mr Balciunas was appropriately located throughout his illness. When Mr Balciunas became more unwell in March, both healthcare and prison staff worked together to arrange for him to go directly to Bullingdon's healthcare department, which could provide 24-hour nursing care.
46. Records show that UK Visas and Immigration were planning to deport Mr Balciunas at the end of his sentence. However, while in prison, he was arrested under a European Arrest Warrant for attempted theft and proceedings were underway for him to be extradited to Lithuania. He attended Westminster Magistrates' Court on 19 April, although very ill at the time, as he wished to return to Lithuania and complete his treatment there. Instead, he was remanded into custody and a new hearing date was set for 2 May. Mr Balciunas died before this date.
47. After the hearing on 19 April, Mr Balciunas was sent from the court to HMP Wandsworth. The Governors of Wandsworth and Bullingdon appropriately arranged for Mr Balciunas to return to Bullingdon that day (as Bullingdon had 24-hour nursing care). After he returned to Bullingdon, Mr Balciunas said he wanted to complete his treatment in the UK.

Restraints, security and escorts

48. The Prison Service must balance their duty to protect the public when escorting prisoners out of prison such as to hospital with their duty to treat 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 High Court judgment in 2007 made it clear that prison staff should 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 they have 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.
49. We are concerned that although Mr Balciunas was extremely ill and in severe pain, he was double cuffed when taken to hospital on 23 April. Double cuffing is when the prisoner's hands are handcuffed in front of him and one wrist is attached to a prison officer by an additional set of handcuffs. A hospital doctor was concerned about Mr Balciunas still being in handcuffs in the early hours on 24 April, and said that they should be removed for decency as he was at the end of his life. Despite this, Mr Balciunas remained in restraints until 9.20am that morning when the duty governor approved their removal after Mr Balciunas had an apparent seizure. Restraints were not reapplied.
50. We reviewed Mr Balciunas' risk assessment for 23 April, which recorded that his risk to the public, hospital staff and prison staff was low, and that his risk of hostage taking, escape and assistance was also low. The healthcare section of the risk assessment, completed by a nurse, indicated that there was no medical objection to the use of restraints and no information about Mr Balciunas' condition.

51. Mr Balciunas was a Category C prisoner. Double cuffing is usually required for moving Category A or Category B prisoners in good health. When, exceptionally, double cuffs are used for a Category C prisoner like Mr Balciunas, national instructions require prisons to record their reasons in writing. There is no evidence to support the decision to use double cuffs in this instance and we can see no reason why it would be justified. We are concerned that the risk assessment did not sufficiently consider Mr Balciunas' ill health and poor mobility, as case law requires. We make the following recommendation:

The Governor at HMP Bullingdon should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position on using 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.

52. We note that this is the third time we have made this recommendation to Bullingdon since the start of 2015.

Liaison with Mr Balciunas' family

53. Mr Balciunas' stepsister was his next of kin and he was in contact with both his stepsister and girlfriend who were aware he was in hospital. The hospital contacted his girlfriend and stepsister as his condition deteriorated on 24 April. Prison staff withdrew from Mr Balciunas' bedside for a short while to allow them some private time with him, and they were with him when he died.
54. After Mr Balciunas' death, The Mount appointed a prison manager as the family liaison officer. He telephoned Mr Balciunas' stepsister later that evening and offered his condolences and support. He and another member of prison staff visited Mr Balciunas' stepsister the next day to provide information and support. The prison paid the costs of the funeral in line with national policy.
55. We are satisfied that Mr Balciunas' family was appropriately supported before and after his death.

Compassionate release

56. If prisoners have a terminal illness and are expected to die soon, they can be considered for release on compassionate grounds for medical reasons before their sentence has expired. It was not possible for staff to complete an application for compassionate release because Mr Balciunas was arrested under a European Arrest Warrant while in prison and proceedings were ongoing.

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