

**Prisons &
Probation**

Ombudsman
Independent Investigations

Investigation into the death of Mr David Tait a prisoner at HMP Elmley on 3 June 2015

**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 David Tait died from bronchopneumonia and widespread cancer at HMP Elmley, on 3 June 2015. He was 88 years old. I offer my condolences to Mr Tait's family and friends.

Mr Tait had been diagnosed with cancer in 2010 but had declined surgery because of the risks linked to his age and other chronic health problems. His death was expected and I am satisfied that he received a good standard of care at Elmley, at least equivalent to that he could have expected in the community. However, I am concerned that he missed some hospital appointments due to insufficient escort staff and that he was restrained for some of his visits to hospital, without appropriate justification.

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

May 2016

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Summary

Events

1. Mr David Tait was remanded to HMP Elmley on 28 November 2011, charged with grievous bodily harm. (He was later convicted and received a five year prison sentence.) Mr Tait had many longstanding and chronic health problems, including high blood pressure, heart disease and diabetes. In February 2010, he had been diagnosed with pancreatic cancer. After thorough initial assessments, healthcare staff produced comprehensive care plans to monitor and manage Mr Tait's health. They reviewed his cancer symptoms weekly, in consultation with the local palliative care service. Mr Tait had limited mobility and was only able to walk with help or using a walking frame.
2. From January 2015, Mr Tait became increasingly unwell, experiencing dizzy spells and headaches. After a fall on 13 May, he was admitted to hospital, where doctors found that the cancer had spread to his brain and lungs. No active treatment was possible. The hospital discharged Mr Tait on 28 May and he was cared for in the prison's inpatient unit until his death on 3 June.

Findings

3. Mr Tait had good access to healthcare services at Elmley and staff worked collaboratively with palliative care specialists to manage the symptoms of his cancer. They referred him promptly to secondary care when necessary, although he missed several hospital appointments, usually with no recorded explanation. We are satisfied that, overall, Mr Tait's clinical care was at least equivalent to that he could have expected to receive in the community.
4. Risk assessments for Mr Tait's hospital appointments concluded that he was a low risk of escape. Two escort staff accompanied him, using either single, double handcuffs or an escort chain. Most assessments did not include relevant medical information about his condition and how it had affected his risk of escape, but healthcare staff twice noted that he should not be double handcuffed due to his poor mobility. Mr Tait could be difficult to manage but we are not satisfied that the decisions to restrain him were always based on a full consideration of his health and mobility and how this affected his risk of escape. We have raised this issue with Elmley before.

Recommendations

- The Governor and Head of Healthcare should ensure that prisoners do not miss hospital appointments unless there are properly justified, exceptional and fully recorded reasons.
- 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 the prisoner and are based on the actual risk the prisoner presents at the time.

The Investigation Process

3. The investigator issued notices to staff and prisoners at HMP Elmley informing them of the investigation and asking anyone with relevant information to contact her. No one responded.
4. The investigator obtained and reviewed copies of relevant extracts from Mr Tait's prison and medical records.
5. NHS England commissioned a clinical reviewer to review Mr Tait's clinical care at the prison.
6. We informed HM Coroner for mid-Kent of the investigation. The investigation was suspended for some time, as the coroner requested detailed histology tests before giving a cause of death. We regret the consequent delay in issuing this report, a copy of which we have sent to the coroner.
7. One of the Ombudsman's family liaison officers wrote to Mr Tait's wife to explain the investigation. Mr Tait's wife had no specific matters for the investigation to consider.
8. The investigation has assessed the main issues involved in Mr Tait'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.
9. The initial report was shared with the Prison Service. The Prison Service did not find any factual inaccuracies.
10. Mr Tait's family received a copy of the initial report. They did not make any comments.

Background Information

HMP Elmley

11. HMP Elmley is a local prison on the Isle of Sheppey, which serves the courts in Kent and holds more than 1,200 men in five wings, with a mixture of single, double and triple cells. Integrated Care 24 Ltd (IC24) provides primary healthcare services at Elmley. The prison's healthcare centre includes a 29-bed inpatient unit.

HM Inspectorate of Prisons

12. The most recent inspection of Elmley was in November 2015. The report has yet to be published, but inspectors told us that the emergency response procedures had improved. The previous inspection in June 2014, reported that the overall quality of health services was reasonably good, but there was a high rate of non-attendance at primary care clinics, often caused by wing staff not getting prisoners to their appointments. A high number of prisoner complaints were about cancelled or rescheduled hospital appointments. Almost half of the missed appointments were due to the unavailability of prison escorts. Initial and secondary screenings were effective and staff used care plans appropriately for long-term conditions. Provision in the inpatient unit was good, with a decent environment.

Independent Monitoring Board

13. 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 October 2015, the IMB reported that the healthcare department was efficient. Staff were well trained and managed long-term chronic diseases well. However, the Board was concerned about the high rate of non-attendance at healthcare appointments due to wing staff not sending prisoners for their appointments.

Previous deaths at HMP Elmley

14. Mr Tait was the sixth of seven prisoners to die from natural causes at Elmley since January 2014. We have made previous recommendations about the use of restraints for seriously ill prisoners without comprehensive risk assessments to justify their use.

Findings

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

15. In February 2010, Mr David Tait was diagnosed with cancer of the ampulla of Vater (a rare form of pancreatic cancer where the bile and pancreatic ducts meet) at hospital. The hospital referred him to a specialist team at King's College Hospital, London. After discussing treatment options with a consultant gastroenterologist on 7 April 2010, Mr Tait refused surgery because of the increased risks of his age and other existing health problems. They agreed that a local hospital should manage his symptoms.
16. On 28 November 2011, Mr Tait was remanded to HMP Elmley, charged with grievous bodily harm after stabbing his wife. (Mr Tait was convicted on 4 May 2012 and sentenced to five years' imprisonment.) At an initial health assessment, a nurse noted that he had several chronic health problems, including pancreatic cancer, high blood pressure, heart disease, angina and type 2 diabetes. He had been discharged from hospital two days before, after treatment for an infection linked to his cancer, and he was frail and unsteady on his feet. Mr Tait was waiting for an appointment with a consultant gastroenterologist at hospital. An administrator requested his community GP records.
17. On 29 November, a prison GP reviewed Mr Tait and re-prescribed his medication. Healthcare staff carried out further assessments and completed care plans for his health conditions. On 28 December 2011, a GP referred Mr Tait to a gastroenterologist at hospital for continuing care of his cancer.
18. The prison received Mr Tait's medical records on 9 January 2012 and a prison GP reviewed them that day. The GP noted that Mr Tait's cancer had not been reviewed recently, so he requested an urgent appointment. On 10 January, an administrator re-faxed a GP's letter to the hospital, requesting an urgent referral. The hospital replied the same day, advising that Mr Tait already had an appointment listed for February. Another administrator telephoned the consultant's secretary, who spoke to the consultant and rescheduled the appointment for 25 January.
19. Mr Tait had a slow growing cancer which had been diagnosed before he went into prison. When he arrived at Elmley, a nurse quickly identified his condition and referred him to the GP, who prescribed appropriate medication. Although several weeks elapsed before healthcare staff referred to secondary care, we are satisfied that there were no medical grounds for an urgent referral as this was for routine monitoring of his cancer.

Mr Tait's medical treatment

20. On 1 March, the nurse manager completed a care plan to manage Mr Tait's cancer. The plan instructed healthcare staff to review him weekly to check for several specific symptoms, including jaundice, sickness, fever, itching and shivering and to ask about pain. It advised when to refer to the GP. On 7 March, a nurse referred Mr Tait to the palliative care service for advice on managing his

care.

21. Mr Tait often complained of pain in his chest and other areas of his body, dizziness, and headaches. He had other symptoms arising from his medical conditions. When necessary, healthcare staff sent him to the local hospital and referred him to specialists to investigate his symptoms. The clinical reviewer said that these symptoms were generally not due to Mr Tait's cancer.
22. A palliative care specialist visited the prison on 4 July for a palliative care review with Mr Tait and a nurse. He accepted their offer of counselling, but did not identify any other needs.
23. On 11 March 2013, a consultant gastroenterologist at hospital noted that Mr Tait's cancer was slow growing and he had no symptoms at that time. He discharged Mr Tate and stated no further treatment would be necessary, unless he became jaundiced.
24. On 1 April 2014, Mr Tait reported chest and abdominal pain. A prison GP referred him to a chest specialist and requested an ultrasound scan of his abdomen to check his organs, in case the pain was due to his cancer.
25. On 28 May, Mr Tait was released from prison on conditional licence, to live at Probation Service approved premises. Because of his poor behaviour at the hostel, his licence was revoked and he was sent back to Elmley on 6 June. Healthcare staff created new care plans and noted that he had an outstanding gastroenterology appointment.
26. Mr Tait sometimes missed care plan meetings and other prison and hospital medical appointments. The reasons were seldom recorded. Sometimes it seems the hospital rescheduled the appointments but he also missed appointments because of a shortage of prison staff to escort him.
27. On 10 January 2015, Mr Tait fell in his cell and hit his head. He told a nurse that he had been feeling unwell for a long time, with constant headaches. She noted a recent history of dizzy spells and feeling faint, but found no injuries. His vital signs were normal. She referred him to the GP.
28. Mr Tait was due to attend an appointment at the gastroenterology clinic at 11.00am on 13 January 2015. However, he and staff set off late, at 11.45am, as no escort officers had been allocated. At midday, the gastroenterologist's secretary telephoned to say that the clinic would be finished before they arrived so she would rearrange the appointment. The gastroenterologist reviewed Mr Tait's medical notes in his absence and wrote to the prison. He explained that a CT scan had shown the lesion diagnosed in 2010 and a small opaque area that they had not seen previously. Mr Tait's abdomen was otherwise normal and there was nothing to explain the widespread abdominal pain he had reported. He said he would repeat the scan in three months and review him at the clinic.
29. On 22 April, the gastroenterologist wrote to the prison GP, as Mr Tait had missed a recent follow-up scan. He acknowledged the prison's operational difficulties,

but asked if they could arrange for him to have the scan. There was no reference to this planned scan in prison records or that staff rearranged the appointment.

30. In May, Mr Tait became increasingly frail. He had problems with his memory and lost weight. On 11 and 12 May, officers asked nurses to examine him as he had fallen in his cell. The nurses recorded that he looked pale and unwell and referred him to the GP. A prison GP reviewed Mr Tait in the afternoon of 12 May. He noted that Mr Tait had difficulty swallowing solids and liquids, was unable to turn and found sitting and standing very painful. The GP referred him urgently to a gastroenterologist and requested urgent X-rays to rule out fractures.
31. At 6.09am on 13 May, Mr Tait fell in his cell again and a nurse arranged for him to see the GP later that day. However, at 9.50am, Mr Tait had another crisis and a nurse took him to the healthcare centre. A prison GP assessed Mr Tait and sent him to the accident and emergency department at hospital, where he was admitted as an inpatient.
32. On 18 May, one of the escort officers telephoned the healthcare department to report that Mr Tait's cancer had spread to his brain and lungs. Healthcare staff confirmed this information.
33. A multidisciplinary team at the hospital agreed that Mr Tait should have palliative care only. He decided that he did not want to be resuscitated if his heart or breathing stopped. The hospital discharged Mr Tait on 28 May. His discharge summary noted that he had widespread cancer, was medically stable, but frail and advised on his management and medication. When he arrived back at the prison, a nurse assessed him and completed new care plans. She referred him to the GP and a palliative care specialist to assess his needs and provide support.
34. At 4.25pm on 3 June, a healthcare assistant informed the nurse manager that Mr Tait was unresponsive. At 4.30pm, a GP certified Mr Tait's death at 4.30pm.
35. The post-mortem report indicated that the cause of Mr Tait's death was bronchopneumonia and disseminated carcinoma. The pathologist noted a large tumour in his lung, with small deposits of cancer in his kidney. There was no obvious tumour in his pancreas.
36. The clinical reviewer noted that there might have been an opportunity to detect the spread of Mr Tait's cancer slightly earlier if one GP had been responsible for his management, but this would not have affected his overall care. Throughout his time at Elmley, healthcare staff reviewed Mr Tait frequently and updated his care plans. They wrote to his consultant for updates and prognoses on his condition. We are satisfied that Mr Tait's clinical care was equivalent to that he could have expected in the community. However, we are concerned that he missed hospital appointments and that the reasons were often not recorded. We note that in June 2014, HM Inspectorate of Prisons also found that prisoners missed hospital appointments. We make the following recommendation:

The Governor and Head of Healthcare should ensure that prisoners do not miss hospital appointments unless there are properly justified, exceptional and fully recorded reasons.

Mr Tait's location

37. Mr Tait initially lived in a standard cell but was subsequently given a cell for disabled prisoners. When he returned to Elmley from hospital on 28 May, he was admitted to the prison's inpatient unit. At first, nurses had to call the night manager to open the cell each time they visited to check him. On 31 May, prison managers agreed that his cell should be left open throughout the night so nurses could check and reposition him, hourly.
38. We are satisfied that Mr Tait had suitable accommodation to meet his needs and that he was appropriately admitted to the healthcare inpatient unit when his condition deteriorated significantly.

Restraints, security and escorts

39. 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.
40. Mr Tait had limited mobility and was only able to walk with assistance, or a walking frame. However, he was often verbally and physically aggressive to staff and other prisoners. On 20 August 2013, he returned to the prison before being seen for a hospital neurology appointment as he became violent and non-compliant in a taxi and had to be restrained.
41. The security risk assessments from July 2014 concluded that Mr Tait was a low risk of escape and risk to the public (except on 8 August 2014 and 24 March 2015, when he was assessed as medium risk to the public). Prison staff who completed the forms noted his threatening and violent behaviour. Generally, the healthcare section of the risk assessments did not include any relevant information about his condition and how it would have affected his risk of escape as the High Court judgment requires. The prison said that healthcare staff would only contribute to the risk assessment if there had been a change of circumstances, such as a deterioration in a prisoner's condition or a different medical condition, but it is not clear how this would be established without a healthcare contribution. On two assessments, healthcare staff noted that he should not be double handcuffed due to his poor mobility.
42. Each risk assessment specified the use of either single or double handcuffs, or an escort chain. (Double handcuffing 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 and is usually used for high risk prisoners in good health. 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.)

43. The prison was unable to provide a risk assessment for Mr Tait's last hospital visit on 13 May. They said that as it was an emergency, it was likely that staff had used the previous one, completed on 2 April, over a month earlier. Two officers accompanied him and they applied an escort chain.
44. At 6.25pm on 13 May, one of the escort officers noted in the escort log that he would remain uncuffed unless his behaviour changed or he became uncooperative. However, at 10.10am on 15 May, a Supervising Officer noted that a custodial manager had instructed that Mr Tait could remain uncuffed only if he was "wired up/on a machine", otherwise the officers should use an escort chain. As Mr Tait was on a drip at that time, he was not restrained. At 3.30pm, after the drip was removed, the officers re-applied the escort chain. Mr Tait became increasingly confused and, at times, was abusive and aggressive towards staff.
45. An entry in the escort log at 2.00pm on 18 May noted that Mr Tait's cancer had spread to his brain and lungs and there were problems with his liver. A prison manager authorised staff to remove the escort chain at 6.00pm that day. On 19 May, the prison temporarily reduced the escort to one member of staff, until 20 May.
46. Public protection is fundamental, but security measures must be proportionate to a prisoner's individual circumstances. It is difficult to see how managers reached the conclusion that Mr Tait was a risk of escape or a risk of re-offending, when his mobility was so poor, he had an advanced terminal illness that had left him in a very weak condition and, most of the time, was escorted by two officers. It seems that the focus of the risk assessments was on the use of restraints as a means to deter Mr Tait from becoming abusive to staff, with little consideration of how his medical condition and limited mobility affected his risk of escape, as the 2007 High Court judgment requires. Mr Tait's condition had deteriorated significantly towards the end of his life but decisions were based on a risk assessment from six weeks earlier. We are not satisfied that staff appropriately assessed Mr Tait's 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 the prisoner and are based on the actual risk the prisoner presents at the time.

Liaison with Mr Tait's family

47. Prison Service policy is that when a prisoner is seriously ill the prison should notify his family. On 31 May, a nurse spoke to a prison chaplain, who was also the prison's family liaison officer, about notifying his family of his serious condition. The chaplain told her that there was a restraining order preventing Mr Tait contacting his wife, (the victim of his offence) although he had listed her as his next of kin and emergency contact. The same day, he went to see Mr Tait to ask him about his wishes for his funeral arrangements, but he was unable to respond in any way.
48. After Mr Tait's death on 3 June, the chaplain and a prison manager went to see Mr Tait's wife to inform her of his death and offer support. The chaplain arranged and led Mr Tait's funeral, which was held on 9 July. His wife and daughter attended. In line with national guidance, the prison paid for the funeral.
49. We note that Mr Tait's offence was against his wife and the restraining order prohibited him from either direct or indirect contact with her. While he was alive, the prison understandably considered that contact on his behalf might breach the order so we make no formal recommendation. However, in similar circumstances in the future, it might be helpful to ask prisoners to nominate another person as next of kin or give an alternative emergency contact.

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. On 18 May 2015, prison staff began an application for early release on compassionate grounds. A prison GP noted on the form that Mr Tait had widespread incurable cancer with a poor prognosis and that they were waiting for a consultant's report. She said it was highly unlikely that he would be able to commit any criminal act given his medical condition.
52. Mr Tait's offender supervisor at the prison indicated that owing to his violent and aggressive behaviour at the approved premises and in prison, it was unlikely that they would find suitable accommodation for him, if released and the approved premises would not accept him back. The application was submitted to the Governor on 27 May, but Mr Tait died before it was fully considered.
53. We are satisfied that the prison appropriately considered the possibility of compassionate release.

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