Prisons & Probation Ombudsman
Independent Investigations

# Independent investigation into the death of Mr Stephen Newman a prisoner at HMP Stocken on 20 February 2016

## A report by the Prisons and Probation Ombudsman Nigel Newcomen CBE

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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 Stephen Newman died on 20 February 2016 of cancer of the colon, while a prisoner at HMP Stocken. He was 73 years old. I offer my condolences to Mr Newman's family and friends.

I am satisfied that Mr Newman received a good standard of clinical care at Stocken. The prison GP provided thorough and regular assessments of Mr Newman and referred him to a specialist appropriately.

While I am not satisfied that managers making the decision to use restraints when Mr Newman was taken to hospital always justified their risk assessment with fully considered healthcare input, I am pleased he spent his last few weeks unrestrained. I am also concerned that the prison did not appoint a family liaison officer early enough after Mr Newman's cancer diagnosis.

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

**Nigel Newcomen CBE**
**Prisons and Probation Ombudsman** **August 2016**

## Contents

Summary ..... 1
The Investigation Process ..... 3
Background Information ..... 4
Findings ..... 5

# Summary

## Events

1. On 1 January 2015, Mr Stephen Newman was sentenced to six years in prison for violent offences. He had been at HMP Stocken on 9 July 2015. At an initial health screen at Stocken, a nurse noted he was registered blind but had partial sight in his right eye. He needed visual aids for reading and watching television. He had no other health concerns at that time.

2. In September, Mr Newman reported abdominal pain. A GP diagnosed a hernia and arranged an ECG, which indicated tachycardia (a fast heart beat). On 1 October, the GP reviewed Mr Newman, who said he had an occasional dry cough and thought he had lost weight. The GP noted that Mr Newman was anaemic and his temperature was raised. Until he had given up the year before, Mr Newman had been a heavy smoker and the GP referred him for a chest X-ray and CT scan. The scan found a calcified hematoma (hardened bruise), and a small lump on Mr Newman's lungs, neither of which required urgent treatment.

3. On 20 November, the GP examined Mr Newman, who was still losing weight, had abdominal pain, a raised temperature, and anaemia. The GP referred Mr Newman to a specialist for suspected cancer. On 16 December, a gastroenterologist reviewed Mr Newman and arranged a gastroscopy and colonoscopy for 23 December.

4. On 31 December, before the results of the investigation were received, Mr Newman was admitted to hospital with urosepsis (a complication of a urinary tract infection). In hospital, doctors told Mr Newman that the colonoscopy had shown he had colon cancer. The hospital discharged Mr Newman on 1 January. Surgery was planned for 14 February.

5. On 5 February, Mr Newman suffered with severe diarrhoea and vomiting and was admitted to hospital. Doctors found his symptoms were caused by a blockage in his colon. Mr Newman was too unwell to have the planned operation. His condition declined and he received palliative care. On 18 February, the prison appointed an officer to liaise with Mr Newman's family. On 20 February, Mr Newman died in hospital.

## Findings

6. Mr Newman received good continuity of care from a GP who assessed his symptoms thoroughly and appropriately referred him for specialist investigation when indicated. We are satisfied that there was no delay in his diagnosis and treatment and that Mr Newman's care at Stocken was equivalent to that he could have expected to receive in the community.

7. Mr Newman was restrained for all hospital visits until 5 February. We do not consider that the use of restraints when Mr Newman went to hospital was justified by fully considered risk assessments which took into account his health and condition at the time. We also consider the prison waited too long before appointing a family liaison officer.

## Recommendations

- 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 a family liaison officer or appropriate member of staff is appointed as soon as a prisoner is diagnosed with a serious illness, in line with Prison Service Instructions. Such a person should keep the family informed of important changes, such as when the prisoner is admitted to hospital.

# The Investigation Process

8. The investigator issued notices to staff and prisoners at HMP Stocken 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 Newman's prison and medical records.

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

11. We informed HM Coroner for Cambridgeshire and Peterborough of the investigation who gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.

12. One of the Ombudsman's family liaison officers contacted Mr Newman's sister, to explain the investigation and to ask if she had any matters she wanted the investigation to consider. She asked why it had taken so long for Mr Newman to be admitted to hospital, whether there were any delays in him receiving necessary treatment, and why he did not have his planned surgery.

13. The investigation has assessed the main issues involved in Mr Newman'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. The initial report was shared with the Prison Service. There were no factual inaccuracies. Mr Newman's sister received a copy of the initial report and indicated that she was satisfied with the findings.

# Background Information

### HMP Stocken

15. HMP Stocken is a medium security prison, in Rutland, which holds up to 842 men. Nottinghamshire Healthcare NHS Foundation Trust provides primary physical health services and Northamptonshire Healthcare NHS Foundation Trust provides mental health services. Nurses are on site from 7.30am until 6.30pm from Monday to Friday and 8.30am until 6.30pm at weekends. One lead GP, supported by locum GP's, provide 12 clinics a week. An older prisoner lead nurse runs over-50s screening clinics with annual reviews.

### HM Inspectorate of Prisons

16. The most recent inspection of Stocken was in July 2015. Inspectors reported that health services were good, particularly in identifying and supporting prisoners with complex health needs. Waiting times for GP, nurse and dental service appointments were acceptable but prisoners waited too long for most other health services.

### 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 April 2015, the IMB noted that one GP now worked four days a week, which provided consistency of care and prescribing. There were many healthcare staff vacancies, partly caused by a national shortage of registered general nurses, which led to a reliance on agency staff.

### Previous deaths at HMP Stocken

18. Mr Newman was the second prisoner to die from natural causes at Stocken since January 2015. In that investigation into the other death, in December 2015, we also found that restraints were used in hospital without a fully considered risk assessment.

# Findings

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

19. On 1 January 2015, Mr Newman was sentenced to six years in prison for a violent offence. He had been at Stocken since 9 July 2015. At an initial health screen, a nurse noted that Mr Newman was registered blind. He had no sight in his left eye and peripheral vision in his right eye, but only needed visual aids for reading and watching television. Mr Newman did not have any other health concerns at the time.

20. On 2 August, Mr Newman reported vomiting and diarrhoea and a nurse advised him to drink plenty of fluids and rest. On 19 September, Mr Newman said he had a lump in his stomach. A nurse thought he might have an umbilical hernia and referred him to a prison GP.

21. On 24 September, a prison GP examined Mr Newman, diagnosed an abdominal hernia and referred him to a specialist. He also arranged an ECG. On 29 September, the results indicated an abnormally rapid heartbeat. On 1 October, the GP examined Mr Newman and noted that he had no other cardiac symptoms. Until a year earlier, Mr Newman had smoked 20 cigarettes a day. He said he occasionally had a dried cough and believed he had lost some weight.

22. Mr Newman said that he felt well, but the prison GP noted that he had a temperature and blood tests showed he was anaemic (a lack of red blood cells resulting in tiredness) and had borderline neutrophilia (a lack of white blood cells to fight bacteria). Based on Mr Newman's possible weight loss, cough, and history of smoking, the GP referred him for a chest X-ray, which took place on 13 October at hospital.

23. On 16 October, the hospital advised the prison GP that the chest X-ray showed Mr Newman had an enlarged heart, possibly due to a haematoma (a solid swelling of clotted blood within the tissues). On the hospital's advice, the GP referred Mr Newman for a CT scan, under the NHS pathway that requires patients with suspected cancer to be seen by a specialist within two weeks. He told Mr Newman the results of the X-ray. On 23 October, the GP examined Mr Newman again and amended the CT scan request to include the abdomen and pelvis. Mr Newman had the scan at hospital on 11 November.

24. On 19 November, a specialist wrote to the GP saying the CT scan had shown Mr Newman had a calcified haematoma (hardened bruise), that did not show any sign of cancer and did not require any further action. There was also a pulmonary nodule (lump), which did not require urgent attention. Mr Newman's liver, kidneys, pancreas, and spleen all appeared normal.

25. On 20 November, the prison GP discussed the results with Mr Newman who continued to lose weight, had abdominal pain, a raised temperature and anaemia. The GP wanted to rule out cancer and referred him urgently to a gastroenterologist.

26. On 30 November, a consultant confirmed that Mr Newman had a small epigastric (abdominal) hernia, and booked Mr Newman in for surgery on 18 January 2016.

27. On 16 December, a gastroenterologist at hospital examined Mr Newman and he had a gastroscopy and colonoscopy on 23 December.

28. On 31 December, Mr Newman collapsed and was taken to hospital where doctors diagnosed urosepsis (an infection brought on by a urinary tract infection) and prescribed antibiotics. On 1 January 2016, hospital, doctors told Mr Newman that the colonoscopy indicated a malignant mass and a biopsy confirmed cancer of the colon.

29. We are satisfied that healthcare staff at Stocken reviewed Mr Newman frequently, and considered his symptoms appropriately. A doctor saw him frequently and referred him to a specialist promptly when he identified concerns that might indicate cancer. We are satisfied there was no delay in his diagnosis.

### Mr Newman's clinical care

30. On 1 January, Mr Newman returned to Stocken from hospital and healthcare staff assessed him daily. On 7 January, Mr Newman had a CT scan of his abdomen. Hospital specialists decided that Mr Newman needed surgery for the colon cancer and cancelled the less urgent hernia operation. When Mr Newman arrived at the hospital on 1 February, for the planned surgery, the hospital did not have a specialist bed available and re-scheduled the operation for 14 February. Mr Newman was taken back to the prison.

31. On 5 February, Mr Newman was admitted to the hospital's critical care unit, after becoming very ill with diarrhoea and vomiting. On 6 February, hospital staff said that Mr Newman had a blockage caused by the colon cancer.

32. The surgical team at hospital decided that Mr Newman was too unwell to have surgery and told the prison GP that Mr Newman would receive palliative care. On 15 February, hospital staff said Mr Newman was not expected to live more than one or two weeks. Mr Newman died in his sleep at the hospital on 20 February.

33. The coroner gave the cause of death as bronchopneumonia resulting from adenocarcinoma of the traverse colon (colon cancer).

34. The clinical reviewer considered that Mr Newman care ay the prison was equivalent to that he could have expected to receive in the community and we are satisfied that he received a good standard of healthcare at Stocken.

### Mr Newman's location

35. Mr Newman has a standard single cell at Stocken on a standard wing. After he was diagnosed with cancer, nurses checked him on the wing every day.

36. For the last two weeks of his life, Mr Newman remained in hospital. A few days before he died, prison and hospital staff discussed moving him to a hospice or nursing home, but Mr Newman died before this was progressed.

37. We are satisfied that Mr Newman was appropriately located during his time at Stocken.

## Restraints, security, and escorts

38. 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.

39. Mr Newman was diagnosed with colon cancer on 1 January 2016. When he went to hospital after that, security staff continued to assess him as a medium risk to the public and medium risk of escape. Managers decided that officers should restrain him with handcuffs or 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.) The only healthcare input into each risk assessment was an indication (by circling a yes/no answer) that there were no objections to restraints, no other medical considerations, and no risk to escorting staff. There was no information about Mr Newman's condition at the time, his mobility or whether his poor sight affected his risk.

40. One risk assessment completed on 22 January for a hospital appointment noted that he was "wheelchair bound" yet there was no healthcare comment about how this affected his risk of escape. An entry in his medical record of 26 January assessed his mobility as "very limited", yet there is no mention of this on the risk assessment when he was taken to hospital on 1 February. On 5 February, before Mr Newman was admitted to hospital, his medical record noted that he was "unable to stand unsupported". However, the healthcare section of the risk assessment was completed as before and an operational manager decided that staff should use an escort chain to restrain him. At 8.10pm that evening, another manager decided that restraints should be removed, as Mr Newman's condition was critical. Restraints were not used again.

41. 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. An appropriate decision was made to remove restraints on the evening of 5 February, but there is no evidence that earlier risk assessments, after Mr Newman was diagnosed with a serious medical condition, used the tests required by the High Court judgment. There is insufficient information in the risk assessments for us to be satisfied that staff fully considered whether Mr Newman's health and mobility at the time, affected his risk. Although it is the Governor's responsibility to ensure that the risk assessment process is properly managed, the Head of Healthcare also need to make sure that healthcare staff fully understand the requirements of the High Court judgment. 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 Newman's family

42. At 8.05pm on 5 February, a hospital consultant asked the prison to inform Mr Newman's next of kin that he was very ill. At 9.30pm, Mr Newman's sister telephoned the hospital and spoke to a nurse directly. A prison manager agreed that Mr Newman's family could visit him at any time.

43. It was not until 18 February, two days before Mr Newman died, that the prison appointed an officer as the family liaison officer. He telephoned Mr Newman's sister to explain his role and offered his assistance. When Mr Newman died on 20 February, the hospital contacted Mr Newman's sister directly. The officer telephoned later that day and offered his condolences and support.

44. Mr Newman's funeral was on 17 March 2016. The prison offered to contribute to the costs in line with national instructions.

45. Prison Service Instruction (PSI) 64/2011 states that prisons must ensure that arrangements are in place for an appropriate member of staff to engage with the next of kin or a nominated person of prisoners who are either terminally or seriously ill. On 1 January, Mr Newman was informed he had cancer and on 5 February, he was admitted to hospital critically ill. We would have expected the prison to have appointed someone to support Mr Newman and his family from at least the time of his hospital admission. Although a prison manager arranged for Mr Newman's family to visit him, it was nearly two weeks after Mr Newman was admitted to hospital that the prison eventually appointed a family liaison officer, when he was very critically ill. There is no record that anyone formally supported him or his family before this. We make the following recommendation:

**The Governor should ensure that an appropriate member of staff is appointed promptly to engage with and support the family of terminally or seriously ill prisoners. Such a person should keep the family informed of important changes, such as when the prisoner is admitted to hospital.**

### Compassionate release

46. Prisoners can be released 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.

47. When Mr Newman was first diagnosed with cancer on 1 January, treatment options were being considered and no prognosis had been given. It was not until 15 February that hospital staff said Mr Newman had only up to two weeks to live that a prison GP immediately started an application for compassionate release. The application was sent to the Public Protection Casework Section (PPCS) of the National Offender Management Service, on 19 February. Sadly, Mr Newman died before the application was considered.

48. We are satisfied that the prison appropriately prioritised Mr Newman's compassionate release application once they knew of his short prognosis.

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