Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Ms Alice Carpenter a prisoner at HMP Lewes on 14 October 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*

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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.

Ms Alice Carpenter died on 14 October 2016 in hospital of a chest infection due to her acquired immune deficiency syndrome (AIDS). She was 37 years old. I offer my condolences to Ms Carpenter's family and friends.

Ms Carpenter had suffered from human immunodeficiency virus (HIV) since 2007 but refused regular monitoring of her condition and antiretroviral treatment. The prison assessed her mental capacity to refuse treatment and decided that she was able to make this decision. Healthcare staff made regular attempts to make her fully aware of the consequences of this and made numerous attempts to encourage Ms Carpenter to take the treatment.

I am satisfied that Ms Carpenter received a good standard of healthcare at Lewes and that this care was equivalent to that she could have expected to receive in the community.

However, I am concerned that the use of restraints on Ms Carpenter's final visit to hospital was inappropriate. I am also disappointed that staff did not always respect Ms Carpenter's acquired gender, and treat and address her accordingly.

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 2017**

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Summary

Events

1. Ms Alice Carpenter was remanded to HMP Lewes on 28 September 2016 for arson. She had been at Lewes for a previous sentence and some staff were aware that she was transgender. She had a previous diagnosis of human immunodeficiency virus (HIV) and had been refusing treatment since June 2016.

2. At first, she refused an initial health screening but a nurse and a doctor saw her the following day. She told them that she was HIV positive and had been refusing treatment. She said that she regarded her condition as “terminal” and “palliative”.

3. Ms Carpenter was moved to a disabled cell in the inpatient unit shortly after her arrival at Lewes, where she remained until her death. On numerous occasions, Ms Carpenter refused to allow nurses to complete physical observations or dress open wounds caused by pressure from her wheelchair. She continued to refuse her antiretroviral medication and considered herself palliative.

4. Staff at Lewes were concerned that she was refusing treatment and contacted her HIV specialist in the community to request information about her mental capacity. The assessment conducted in the community concluded that she had the capacity to refuse medication. She was reassessed by the prison psychiatrist who found that she understood the consequences of refusing medication and had the capacity to make those decisions.

5. On 5 October, Ms Carpenter decided that she wanted to restart her treatment. However, her health had started to decline and she was admitted to hospital. She discharged herself. Lewes ordered her antiretroviral medication and she restarted her medication on 11 October. However, the next day, she refused her medication and fluids.

6. On 13 October, the ward manager noted that Ms Carpenter was weak, frail and struggling to clear her chest. An on call GP authorised her transfer to hospital for an urgent assessment.

7. Ms Carpenter’s condition continued to deteriorate and she died in hospital at 5.14am on 14 October.

Findings

8. The clinical reviewer concluded that the staff at Lewes provided care in a timely and appropriate manner and the care was delivered in line with National Institute for Health and Care Excellence (NICE) guidelines. She concluded that the care Ms Carpenter received was the equivalent to the care she would have expected to receive in the community.

9. We are also satisfied that when Ms Carpenter refused treatment, healthcare staff appropriately assessed her mental capacity. They found that she had the capacity to understand the consequences of not taking her medication and had the capacity to refuse treatment.

10. While staff said during interview that Ms Carpenter was not restrained when she went to hospital on 13 October, the risk assessment document suggests that officers restrained her with an escort chain for nearly three hours. We do not consider that the use of restraints was justified by fully considered risk assessments, which took into account her health at the time.

11. When Ms Carpenter arrived at Lewes, she told staff that she was transgender and asked staff to call her by her adopted name. We are concerned that staff continued to call her by her birth name and used male pronouns.

Recommendations

- 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 Governor should ensure that all prison staff are made aware of and understand PSI 17/2016 and their responsibilities for the care and treatment of transgender prisoners, which includes calling prisoners by their adopted names or based on their acquired gender.

The Investigation Process

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

13. The investigator visited HMP Lewes on 20 October 2016. She obtained copies of relevant extracts from Ms Carpenter's prison and medical records.

14. The investigator interviewed a member of staff on 15 December 2016.

15. NHS England commissioned a clinical reviewer to review Ms Carpenter's clinical care at the prison.

16. We informed HM Coroner for East Sussex of the investigation who gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.

17. The investigator wrote to Ms Carpenter's next of kin to explain the investigation and to ask if they had any matters they wanted the investigation to consider. They did not respond to our letter.

18. The prison received a copy of the report and did not identify any factual inaccuracies in the report.

Background Information

HMP Lewes

19. HMP Lewes is a local prison serving the courts of East and West Sussex and holds up to 692 men. Sussex Partnership NHS Foundation Trust provides primary care services.

20. HMP Lewes has an inpatient unit in healthcare, for prisoners who present with acute physical and/or mental health issues. It has two landings and can house 12 prisoners at any given time. There are 10 beds on the upper landing and two, including the disabled cell, on the lower landing. Healthcare staff are on duty at the prison at all times, including two qualified nurses at night and two during the day.

HM Inspectorate of Prisons

21. The most recent inspection of HMP Lewes was in December 2015 and January 2016. Inspectors found that health services were reasonably good but too many hospital appointments were cancelled because of a shortage of staff to escort prisoners. The inpatient unit provided compassionate care for patients with complex health needs but there were insufficient custody staff to deliver a therapeutic regime. They found that primary care services, the management of long-term conditions and medicine management were reasonably good and well managed.

Independent Monitoring Board

22. Each prison in England and Wales has an Independent Monitoring Board (IMB) of unpaid volunteers from the local community, who help ensure prisoners are treated fairly and decently. In its latest report, for the year to 31 January 2016, the IMB noted that there had been a sharp increase in older prisoners with complex needs. The IMB found that the unpredictable prison regime had an impact on the services provided by healthcare and external hospital appointments were often cancelled due to other prisoners having a more urgent need.

Previous deaths at HMP Lewes

23. Ms Carpenter was the seventh prisoner to die of natural causes at HMP Lewes since January 2015. There have been two subsequent deaths. We have made a recommendation about the inappropriate use of restraints before.

Assessment, Care in Custody and Teamwork

24. Assessment, Care in Custody and Teamwork (ACCT) is the care planning system the Prison Service uses to support prisoners at risk of suicide or self-harm. The purpose of ACCT is to try to determine the level of risk posed, the steps that might be taken to reduce this and the extent to which staff need to monitor and supervise the prisoner. Checks should be irregular to prevent the prisoner anticipating when they will occur. Part of the ACCT process involves drawing up a care map to identify the prisoner’s most urgent issues and how they will be met. Regular multidisciplinary reviews should be held. The ACCT plan

should not be closed until all of the actions on the care map have been completed. Guidance on ACCT procedures is set out in Prison Service Instruction (PSI) 64/2011.

Transgender prisoners

25. Prison Service Instruction (PSI) 07/2011 on the care and management of transgender prisoners, covers medical treatment, living in an acquired gender role and the legal position for doing so. Gender reassignment is a protected characteristic under the Equality Act 2010, and prisoners must not be discriminated against or harassed because of it.

26. The national instruction says that governors must allow prisoners who consider themselves transgender and who wish to begin gender reassignment to live permanently in their acquired gender. This includes allowing them to dress in clothes appropriate to their acquired gender, use gender appropriate names and access the items they use to maintain their gender appearance at all times.

27. PSI 17/2016 on the care and management of transgender offenders was released in November 2016. The policy focuses on transgender prisoners who have expressed a consistent desire to live permanently in their acquired gender but also includes intersex, non-binary and gender fluid prisoners.

28. The national instruction says that all transgender prisoners must be allowed to express their gender identity, including dressing in clothes suited to their acquired gender. Transgender prisoners must be allowed to adopt a gender-appropriate or gender-neutral name and others must consistently address them using their preferred name.

29. In January 2017, we published a Learning Lessons Bulletin on transgender prisoners, which summarised the lessons that need to be learned from our investigations into the deaths of and complaints from transgender prisoners. These lessons include the need for meaningful contact between personal officers and transgender prisoners, for proactive evaluation of the location for a transgender prisoner and for reasonable adjustments that do not compromise security to help transgender prisoners to live in their gender.

Key Events

30. On 28 September 2016, Ms Alice Carpenter was remanded into custody on charges of arson and was sent to HMP Lewes.

31. Later that day, Ms Carpenter attended an initial health screening with the ward manager. She refused to answer any questions but did mention that she was feeling suicidal. He started ACCT procedures and arranged for Ms Carpenter to be seen by another member of staff the following day.

32. On 29 September, an occupational therapist saw Ms Carpenter in her cell after Ms Carpenter refused to attend the her ACCT interview. She told her that she wanted to be referred to as 'Alice' and that she identified as female. The occupational therapist completed a level one risk assessment and planned to refer Ms Carpenter to the crisis team. There is no record that this happened.

33. Later that day, at her initial health screening, Ms Carpenter told a nurse that she was transgender. She also said she had suffered from human immunodeficiency virus (HIV) but had not taken her HIV medication since June 2016. She said that she regarded her condition as "terminal". The nurse made an appointment for Ms Carpenter to see the prison HIV specialist the next day.

34. Also on 29 September, a prison GP saw Ms Carpenter and noted she was gaunt. Ms Carpenter told the doctor that she was "palliative" and did not want to take her antiretroviral HIV medication. He also noted that Ms Carpenter identified as a transgender female, that she was depressed and in poor health. He referred her to the mental health team. Later that day, a nurse saw Ms Carpenter and noted that she was under weight and possibly malnourished. He noted that the GP prescribed her extra milk and food supplements.

35. On 30 September, a member of the prison's Sexual Health Clinic saw Ms Carpenter. He noted she wanted to be cared for palliatively and did not want to start her antiretroviral medication. He was concerned she did not understand the effects of refusing medication but informed her that she could start the treatment again at any time. He made an appointment for Ms Carpenter to see the prison doctor in order to assess her mental capacity and planned to order her medication should she decide to engage with treatment. There is no record to confirm if the medication was ordered. He then contacted the Lawson Unit, a specialist HIV outpatient unit which cared for Ms Carpenter in the community, to request confirmation on her mental capacity to refuse medication. The multi-disciplinary team meeting notes showed that at the time of assessment she had capacity.

36. A prison GP saw Ms Carpenter on 1 October. She noted that Ms Carpenter stated she was palliative and was refusing to take her medication. There is no record that she assessed her capacity to refuse her anti-retirovials. The same afternoon, Ms Carpenter was moved to a disabled cell in the inpatient unit.

37. Two days later, a nurse saw Ms Carpenter and noted that she needed to have her mental capacity assessed by a doctor regarding her refusal of treatment. He noted she was on an open ACCT and that it appeared at times that Ms Carpenter was concerned about her condition, as she ensured her diet and medication

were correct. He organised for healthcare to provide Ms Carpenter with a pressure-relieving mattress.

38. On 5 October, Ms Carpenter refused to allow nurses to carry out any physical observations. A nurse tried at different points throughout the day, explaining that she strongly recommended she had them done.

39. On the same day, a psychiatrist saw Ms Carpenter in order to review her capacity. Ms Carpenter told her that she wanted to restart taking her medication. The psychiatrist determined that she had the capacity to make decisions about her medication. She planned to conduct a joint assessment with a GP the next day to review her psychiatric records and current medication to check their interactions with the antiretroviral medication.

40. On 6 October, a nurse noted that Ms Carpenter had agreed to accept her antiretroviral medication. A prison GP saw Ms Carpenter in the afternoon and asked her if she would be happy to accept her HIV medication. She agreed to take them as long as she could continue to take quetuapine (an antipsychotic).

41. Later that afternoon, a prison GP made an entry in Ms Carpenter's medical record that he had sent Ms Carpenter to hospital for an emergency assessment due to deterioration in her physical health. Ms Carpenter self-discharged from hospital after refusing medical treatment.

42. A nurse saw Ms Carpenter on 7 October. He noted that Ms Carpenter said she wanted to take her antiretroviral medication and that she wanted to get better. Another nurse noted that as the antiretroviral medication was a specialist medication, it had to be ordered from a local specialist provider and would not arrive at the prison until 11 October. Due to her decision to restart her antiretroviral treatment, prison staff closed her ACCT that day.

43. Ms Carpenter's antiretroviral medication arrived on 11 October and she took it that day. The following day, she refused her antiretroviral medication and any fluids.

44. On 12 October, a prison GP noted that Ms Carpenter was difficult to manage and that a gradual decline in her health would occur due to refusal to engage in treatment. He noted that she required palliative care.

Events on 13 October 2016

45. In the afternoon, a prison GP saw Ms Carpenter. He noted her condition was very poor and she had lost more weight. She had taken her antiretroviral medication but had refused other medication. He recorded that she wanted to be resuscitated but informed her that it was not in her best interests as her general condition was poor.

46. A nurse noted later that evening that staff had checked Ms Carpenter four to five times an hour. He noted that she was struggling to clear her chest and looked frail and weak. He contacted the on call GP, who recommended Ms Carpenter be sent to hospital, so requested an ambulance. The ambulance arrived at 10.47pm and took Ms Carpenter to hospital at 11.28pm. Two officers

accompanied Ms Carpenter and restrained her with a single cuff which was removed three hours later.

47. Ms Carpenter's condition did not improve and, after further deterioration, she died at 5.14am on 14 October.

Contact with Ms Carpenter's family

48. On 14 October, Lewes appointed an operational support grade as the family liaison officer. Ms Carpenter had not provided the prison with details of her next of kin, so he traced her family. At approximately 4.00pm, he organised for representatives from HMP Preston to visit Ms Carpenter's next of kin to inform them of Ms Carpenter's death. A chaplain and a senior prison manager from Preston arrived at the family home at 4.30pm and informed Ms Carpenter's mother and stepfather of her death. The family liaison officer supported Ms Carpenter's family until after the funeral.

49. Ms Carpenter's stepfather contacted the family liaison officer on 17 October and said that her family wanted the prison to organise the funeral. Ms Carpenter's funeral was held on 9 November, which the prison arranged and paid for in line with national instructions.

Support for prisoners and staff

50. The prison posted notices informing other prisoners of Ms Carpenter'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 Ms Carpenter's death.

51. Management at the prison did not hold a hot debrief but did refer all staff involved to the Care Team who offered ongoing support.

Post-mortem report

52. A post-mortem examination found that Ms Carpenter died of bronchopneumonia caused by Acquired Immunodeficiency Syndrome (AIDS).

Findings

Clinical care

53. Ms Carpenter was in Lewes for 17 days. The clinical reviewer concluded that Ms Carpenter's refusal to engage with treatment made it difficult to provide effective medical care. She concluded that the care Ms Carpenter received was delivered in line with NICE guidelines and equivalent to the care she would have expected to receive in the community.

54. Ms Carpenter arrived at Lewes on 28 September and told staff that she had not been engaging with treatment for her HIV since June, as she wanted to die. Ms Carpenter continued to refuse her antiretroviral medication while at Lewes but staff still encouraged her to engage with treatment on numerous occasions. In light of her refusals, healthcare staff requested her community multi-disciplinary team notes to check her mental capacity. A prison psychiatrist also assessed her mental capacity and found that she had the capacity to refuse treatment. We are satisfied that healthcare staff took appropriate steps to assess Ms Carpenter's mental capacity and that they convinced her, briefly, to restart taking her antiretroviral medication.

Restraints, security and escorts

55. 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.

56. When Ms Carpenter went to hospital on 13 October, a nurse provided medical information, which included that she was terminally ill and that she needed urgent assessment. He also indicated that there was a medical objection to the use of restraints and justified his decision by stating that Ms Carpenter was both frail and weak. Using this information, a prison manager recommended that two officers should escort Ms Carpenter and restrain her with a single cuff. He contacted a senior prison manager, who authorised the restraint arrangements at 10.50pm.

57. Almost three hours later, at 1.48am on 14 October, the senior prison manager amended the escort arrangements, due to Ms Carpenter's imminent end of life. He authorised restraints to be removed and for the number of escorting officers to be reduced.

58. At interview, the prison manager said that he would normally make a decision about restraints depending on a prisoner's categorisation. He acknowledged that he saw the front page of Ms Carpenter's escort risk assessment, which detailed

medical objection to the use of restraints. His recollection was that escort staff did not restrain Ms Carpenter because when he saw her, he noticed she was frail and weak. His statement is not supported by Ms Carpenter's escort records, which state that restraints were removed at 1.48am.

59. 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. While the prison quickly reviewed the use of restraints, we are disappointed that Ms Carpenter was initially restrained, despite the nurse's medical objection to their use. By ignoring this information, we do not consider that the prison manager and senior prison manager appropriately considered how her health affected her risk of escape as required in 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.

Transgender prisoners

60. Prison Service Instruction (PSI) 7/2011 'The Care and Management of Transsexual Prisoners', which was in force when Ms Carpenter was at Lewes, contains a mandatory instruction that "permitting prisoners to live permanently in their acquired gender will include allowing prisoners to dress in clothes appropriate to their acquired gender and adopting gender-appropriate names and modes of address".

61. PSI 17/2016 'The Care and Management of Transgender Offenders' replaced PSI 7/2011 and it contains a mandatory instruction that "transgender prisoners must be allowed to adopt a gender-appropriate or gender-neutral name and be addressed by others consistent with the gender (or neutral gender) they identify with".

62. Ms Carpenter first lived under her female identity in 1998 and was later diagnosed with a gender identity disorder in 2009. She had previously served a custodial sentence in Lewes and had told staff during this stay that she identified as female.

63. When she arrived at Lewes in September 2016, Ms Carpenter told staff that she identified as female within her first 48 hours at Lewes. Even though they each separately recorded this in her prison records, staff consistently referred to Ms Carpenter by male pronouns or called her by her birth name. Although there is no record that Ms Carpenter complained about this, we are concerned that Lewes failed to follow the guidance of PSI 7/2011 by ignoring her requests. We would have expected the prison to accept Ms Carpenter's wishes and referred to her consistently throughout her medical and prison records by female pronouns and her chosen name.

64. At the time Ms Carpenter was in the custody of Lewes, PSI 17/2016 had not come into force. It came into effect in January 2017, along with a broader review

of the care and management of transgender offenders conducted by the Ministry of Justice. As this PSI was published very recently, we recommend that Lewes review the policy and our Learning Lessons Bulletin on transgender prisoners. We make the following recommendation:

The Governor should ensure that all prison staff are made aware of and understand PSI 17/2016 and their responsibilities for the care and treatment of transgender prisoners, which includes calling prisoners by their adopted names or based on their acquired gender.

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