

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Frederick Bailey a prisoner at HMP Exeter on 22 May 2017

A report by the Prisons and Probation Ombudsman

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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.

Mr Frederick Bailey died on 22 May 2017, while a prisoner at HMP Exeter. He died as a result of food entering his airway, which was caused by heart failure and frailty. He was 81 years old. We offer our condolences to Mr Bailey's family and friends.

Mr Bailey received a good standard of care at both HMP Exeter and HMP Dartmoor. We are satisfied that the care he received was equivalent to that which he could have expected in the community.

However, requests for GP appointments at Exeter and Dartmoor need to be acted upon promptly. We have raised concerns about missed GP appointments at Exeter before and are disappointed to have to do so again.

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

Elizabeth Moody
Acting Prisons and Probation Ombudsman

December 2017

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Summary

Events

1. In January 2016, Mr Frederick Bailey was sentenced to 21 years imprisonment for sexual offences and was sent to HMP Exeter. He was an elderly, frail man, who suffered from a number of chronic conditions including kidney disease and heart failure. Healthcare staff monitored him frequently but there is no record that a follow up GP appointment, requested on 19 May, took place. On 7 October, Mr Bailey was moved to HMP Dartmoor.
2. On 26 October, a GP noted a growth on Mr Bailey's right thumb and, suspecting cancer, made an urgent dermatology referral. Mr Bailey had a biopsy on 14 December and the prison received a hospital letter on 27 January 2017 confirming he had skin cancer. A handwritten note on the letter requested a GP discuss Mr Bailey's cancer diagnosis with him but there is no indication this took place.
3. On 7 February, Mr Bailey failed to collect his medication and a nurse found him in his cell suffering from abdominal pain. She took his clinical observations and sent him to hospital, where further investigations found that his skin cancer had spread to his right armpit. On 22 March, Mr Bailey was transferred directly from hospital to HMP Exeter, which had better facilities to meet his needs. Over the next two months, healthcare staff provided Mr Bailey with palliative care and monitored him frequently.
4. On 22 May, a GP saw Mr Bailey for a review and noted that he appeared frailer and more confused than normal. She prescribed antibiotics to treat a chest infection and requested blood tests and a chest X-ray. At 4.30pm, a carer gave Mr Bailey some food, and shortly afterwards, noticed he had difficulty breathing. At 4.38pm, the carer notified a nurse who could not locate Mr Bailey's pulse and went to get a prison officer, who called an emergency code. Upon returning to Mr Bailey's cell, they noticed him take some shallow breaths and stop breathing. At 4.45pm, a GP confirmed that Mr Bailey had died.

Findings

5. We are satisfied that prison healthcare staff managed Mr Bailey's health conditions well. They made appropriate referrals, reviewed him frequently and treated his conditions accordingly. Palliative care was good and Mr Bailey was involved in decisions about his care. The clinical reviewer considered that Mr Bailey's care was equivalent to that which he could have expected to receive in the community. However, we are concerned that healthcare staff at Dartmoor and Exeter did not consistently arrange follow up GP appointments when requested.
6. We are pleased that officers did not restrain Mr Bailey when he was taken to hospital.

Recommendations

- The Heads of Healthcare at HMP Dartmoor and HMP Exeter should ensure that all requests for follow up GP appointments are acted upon promptly.

The Investigation Process

7. The investigator issued notices to staff and prisoners at HMP Exeter informing them of the investigation and asking anyone with relevant information to contact him. No one responded.
8. The investigator obtained copies of relevant extracts from Mr Bailey's prison and medical records.
9. NHS England commissioned a clinical reviewer to review Mr Bailey's clinical care at the prison.
10. We informed HM Coroner for Exeter and Greater Devon of the investigation who gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.
11. One of the Ombudsman's family liaison officers contacted Mr Bailey's daughter, to explain the investigation and to ask if she had any matters she wanted the investigation to consider. Mr Bailey's daughter raised the following issues:
 - she was concerned about the way escort staff from Dartmoor spoke to Mr Bailey during a hospital admission in February 2017;
 - she was concerned about the care Mr Bailey received at Exeter and wanted to know why he spent so much time in his cell;
 - she asked about Mr Bailey's ability to swallow and wanted to know if staff considered a swallowing assessment; and
 - she wanted to know what Mr Bailey choked on.
12. The investigation has assessed the main issues involved in Mr Bailey'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.
13. Mr Bailey's family received a copy of the initial report. They did not raise any further issues, or comment on the factual accuracy of the report.
14. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS did not find any factual inaccuracies.

Background Information

HM Prison Dartmoor

15. HMP Dartmoor holds up to 640 adult male prisoners. The prison has six residential wings. Dorset Healthcare Unit Foundation Trust provides the prison's healthcare. Healthcare staff are on duty between 8.00am and 6.00pm on weekdays and between 8.30am and 5.15pm at weekends.

HM Prison Exeter

16. HMP Exeter is a local prison holding a maximum of 560 men either on remand, convicted or sentenced. The prison serves the courts of the South West. Care UK took over all healthcare provision at Exeter on 1 April 2017 (Dorset NHS University Trust previously provided health services). There are 10 cells on F Wing for prisoners who need social care and one cell for end of life palliative care. The wing has facilities for visiting relatives.

HM Inspectorate of Prisons

17. The most recent inspection of HMP Dartmoor was in December 2013. Inspectors found the delivery of health services had improved with a small but well qualified team of healthcare staff delivering a wide range of clinics. Seven GP clinics were delivered each week.
18. The most recent inspection of HMP Exeter was in August 2016. Inspectors reported that when a prisoner needed a cell with special adjustments, they had to wait for a cell on the social care unit. They also reported that the palliative care service was inconsistent, as prisoners did not always receive care and medication in a timely way owing to the lack of staff. They also noted that there were not enough social care staff to meet prisoners' needs.

Independent Monitoring Board

19. 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 Dartmoor, for the year to September 2016, the IMB reported that the ageing prison population resulted in an increased attendance at a range of outpatient appointments. The IMB welcomed the developments made by healthcare staff, but remained concerned about provision of end of life care.
20. In the IMB's latest report for Exeter, for the year to December 2016, the IMB reported that staffing levels were not always appropriate for the social care wing. The IMB noted that not all staff had training for the work on the wing, despite commendable efforts to provide an exceptional level of care to terminally ill prisoners.

Previous deaths at HMP Exeter

21. Mr Bailey was the thirteenth prisoner to die from natural causes at Exeter since January 2016. We have previously made a recommendation about the need to arrange follow up GP appointments promptly.

Findings

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

22. On 13 January 2016, Mr Frederick Bailey was sentenced to 21 years in prison for sexual offences and sent to HMP Exeter. He was aged 80 and suffered from several long-term health conditions, including diabetes, kidney failure and heart disease. He had a pacemaker fitted (a device placed in the chest to control abnormal heart rhythms). He was frail with poor mobility and used a wheelchair or Zimmer frame to get around.
23. Healthcare staff at Exeter reviewed and monitored Mr Bailey's chronic conditions frequently. Prison GPs saw him when required and they reviewed his medication after he presented with worsening heart failure throughout March and April. On 13 May, a prison GP reviewed the results of various blood tests and requested a follow up GP appointment, but there is no record that this took place. Staff continued to monitor Mr Bailey's complex health conditions and he was moved to HMP Dartmoor on 7 October.
24. At initial reception screen, a nurse recorded that Mr Bailey had multiple health problems and requested a GP appointment. A prison GP saw Mr Bailey on 26 October and noted that he had a growth on the back of his right thumb. The GP made an urgent referral to dermatology under the NHS pathway that requires patients with suspected cancer to be seen by a specialist within two weeks. On 8 November, a consultant plastic surgeon saw Mr Bailey at hospital and arranged for him to have a biopsy on 14 December. The biopsy found the growth was squamous cell carcinoma (skin cancer) and the prison received confirmation of the diagnosis by letter on 17 January 2017. A handwritten note on the letter requested a GP discuss the result with Mr Bailey, but despite the GP and other members of healthcare staff seeing him frequently, there is no record that he was told about his diagnosis.
25. On 7 February, Mr Bailey failed to collect his medication and a nurse went to his cell. When she arrived she noticed that Mr Bailey was sitting in a chair groaning in pain. His clinical observations indicated that he had low blood pressure and low blood sugar and she sent him by ambulance to hospital. Hospital staff admitted Mr Bailey and initially treated him for abdominal pain and multiple urinary tract infections. However, further investigations found enlarged lymph nodes (glands forming part of the lymph system that carries fluid between body tissues and the bloodstream) in his right armpit. A subsequent biopsy confirmed the cancer had spread there from the growth on his right thumb.
26. On 21 March, a consultant clinical oncologist met Mr Bailey in hospital to discuss his treatment options. The consultant told him that while he could have potentially curative radiotherapy, the long-term cure rates were quite low and could result in additional health problems. He suggested palliative radiotherapy and told Mr Bailey that although it would not be curative, it may be able to keep the disease under control for months or years. After discussing both approaches, Mr Bailey decided that he wanted to proceed with palliative radiotherapy.

27. The clinical reviewer considered that a prison GP referred Mr Bailey appropriately for further investigations and we are satisfied that the referral was made in a timely manner without delay.
28. However, the clinical reviewer also considered that healthcare staff at both prisons missed an opportunity to arrange follow up GP appointments when requested. The most notable failure was at Dartmoor, as it meant that Mr Bailey did not find out about his cancer diagnosis until his subsequent hospital admission. We make the following recommendation:

The Heads of Healthcare at HMP Dartmoor and HMP Exeter should ensure that all requests for follow up GP appointments are acted upon promptly.

Mr Bailey's clinical care

29. On 22 March, Mr Bailey was moved from hospital to the social care wing at HMP Exeter, which was better suited to his needs. When he arrived, a nurse conducted an initial assessment and a prison GP prescribed appropriate medication. Nurses reviewed Mr Bailey frequently and created care plans, while carers supported all his personal care needs.
30. On 3 April, a prison GP spoke to one of Mr Bailey's daughters by telephone. His daughter wanted to know about his radiotherapy treatment but the GP could not immediately find a reference to a referral. She read Mr Bailey's hospital discharge summary and noted a need to fully review his medical record to ensure that any follow up appointments with oncology were in place. She also requested blood tests, weekly weight monitoring and a multi-disciplinary meeting to plan Mr Bailey's ongoing care.
31. The prison GP saw Mr Bailey for a thorough examination on 6 April and recorded that his blood test showed his cancer had spread to his lymph system. She also noted that a review of Mr Bailey's medical record and liaison with staff at the hospital had indicated that radiotherapy was planned, but she made another referral to be sure. Records suggest that staff at the hospital had transferred Mr Bailey's care to oncology at another hospital, and requested treatment be arranged within two months. Over the next two weeks, healthcare staff attended a multidisciplinary planning meeting, arranged for a specialist palliative care nurse to visit Mr Bailey and reviewed his care plans. Carers supported all of his personal care needs and staff assisted him to get out of bed and to make use of the day room when he felt well enough.
32. On 21 April, a prison GP confirmed that Mr Bailey did not want to be resuscitated if his heart or breathing stopped and completed an order to that effect. Three days later, a consultant oncologist saw Mr Bailey at the hospital and noted that his cancer remained confined to his armpit. She indicated that it may be possible to keep the disease under control with a course of radiotherapy and gave him a prognosis of 3-6 months. On 28 April, Mr Bailey reported pain in his arm, back and legs to the GP and she prescribed oramorph to treat acute onset of pain when required.
33. Over the next three weeks, Mr Bailey's condition deteriorated and his increased frailty had an impact on his ability to attend hospital. Prison staff facilitated his

radiotherapy appointments when he felt well enough to attend and participated in multidisciplinary meetings. Healthcare staff reviewed his existing care plans, created new ones and helped him to mobilise using a wheelchair or Zimmer frame. They conducted regular pain assessments and GPs prescribed appropriate medication.

34. On 22 May, at 9.43am, Mr Bailey reported increased pain to a nurse, who gave him oramorph and requested a GP review. Later that morning, a prison GP conducted an examination and spoke to Mr Bailey about his cancer diagnosis while he had a cup of tea. She noted that although he was able to drink without coughing, he needed support and presented as more frail and confused than normal. She prescribed an antibiotic (co-amoxiclav) to treat a chest infection and requested blood tests and a chest X-ray.
35. At 4.30pm, a carer helped Mr Bailey to have a meal and noted that he declined to eat after two small mouthfuls. She went to get him something else to try and when she returned she noticed that Mr Bailey was staring at the ceiling and appeared to have difficulty breathing. She requested medical assistance. At 4.38pm, a nurse examined Mr Bailey and found that he had shallow breathing, fixed pupils and no pulse. She acknowledged that he was not for resuscitation and went to get an officer, who called an emergency code blue (which indicates that a prisoner is unconscious or has breathing problems). When they returned to Mr Bailey's cell, they saw him take some more shallow breaths and stop breathing. At 4.45pm, a prison GP confirmed that Mr Bailey had died.
36. The clinical reviewer considered that Mr Bailey received a good standard of care in prison. Staff put in place care plans, prescribed appropriate medication and involved Mr Bailey in decisions about his ongoing care and treatment. The post mortem examination found that Mr Bailey's established heart disease and skin cancer contributed to his frailty and impaired his ability to swallow, leading to food entering his airway. The clinical reviewer noted that healthcare staff managed his chronic conditions and overall frailty well by monitoring his pain effectively and keeping him under regular review. He did not consider that a specialist assessment of Mr Bailey's ability to swallow was necessary as he was receiving end of life care. We are satisfied that the care Mr Bailey received at Exeter was equivalent to that which he could have expected to have received in the community.

Mr Bailey's location

37. On 7 March 2017, a nurse visited Mr Bailey at hospital to discuss his discharge planning and a possible move to Exeter. Two days later, another nurse attended a multidisciplinary meeting, where staff decided that Dartmoor did not have the facilities to meet Mr Bailey's care needs and that they would pursue a move to Exeter. We are satisfied that staff at Dartmoor took account of Mr Bailey's declining health and facilitated his transfer to the social care wing at Exeter, which was appropriate for his needs.

Restraints, security and escorts

38. When prisoners have to travel outside the prison, a risk assessment determines the nature and level of security arrangements, including restraints. The Prison Service has a duty to protect the public but this has to be balanced with a responsibility to treat prisoners with humanity. Any restraints used should be necessary and decisions should be based on the security risk taking into account factors such as the prisoner's health and mobility.
39. When Mr Bailey went to hospital from Dartmoor on 7 February, a prison manager reviewed his risk assessment and authorised two officers to escort him without restraints. He remained appropriately unrestrained throughout his admission. Mr Bailey's daughters raised concern about the way escort officers spoke to him in hospital but there is insufficient evidence for us to make a finding on this point.
40. The evidence shows that each time Mr Bailey went out to hospital from Exeter, prison managers reviewed his risk assessments and authorised two officers to escort him without using any restraints as he was so ill. We are pleased to note that, appropriately, Mr Bailey was not restrained.

Liaison with Mr Bailey's family

41. When Mr Bailey was taken to hospital on 7 February 2017, Dartmoor appointed the prison's managing chaplain as the family liaison officer and he made contact with Mr Bailey's son, who was his nominated next of kin at the time. The chaplain maintained regular contact with Mr Bailey's son and his wife, providing them with updates on his condition. He also spoke to two of Mr Bailey's daughters on a number of occasions and arranged for them to visit him in hospital.
42. An officer took over the role of family liaison officer following Mr Bailey's arrival at Exeter. On 30 March, Mr Bailey told her that he wanted to nominate two of his daughters as his next of kin and she made the arrangements. He briefly changed his next of kin to his sister on 11 April, but later changed it back to his daughters. The evidence shows that prison staff maintained regular contact with Mr Bailey's daughters and arranged for them to visit Mr Bailey on numerous occasions.
43. At 4.15pm, on 22 May, a prison GP responded to a request to call one of Mr Bailey's daughters to discuss his radiotherapy but there was no answer when she rang. At 4.50pm, she called Mr Bailey's daughter to break the news of his death and offer her condolences. A prison manager also spoke to her by telephone and offered his condolences and support. Another officer took over as family liaison officer on 30 May and provided ongoing support to Mr Bailey's daughters until his funeral, which took place on 23 June. The prison contributed towards the costs, in line with national policy.

Compassionate release

44. 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.

45. Exeter started the compassionate release process on 9 May and a prison GP completed the medical section of the application indicating that Mr Bailey had a life expectancy of three to six months. The Governor supported Mr Bailey's early release and signed the application form on 19 May. However, the prison was unable to complete the process before Mr Bailey died. We are satisfied that the prison appropriately considered early release.

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