

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Kenneth Tucker a prisoner at HMP Exeter on 6 November 2016

**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 Kenneth Tucker died on 7 November 2016, of pneumonia resulting from colon cancer while a prisoner at HMP Exeter. He was 85 years old. I offer my condolences to Mr Tucker's family and friends.

I consider that, overall; Mr Tucker received appropriate and compassionate clinical care at both HMP's Dartmoor and Exeter, equivalent to that he could have expected to receive in the community.

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

Contents

Summary	1
The Investigation Process	3
Background Information	4
Findings	6

Summary

Events

1. On 21 January 2016, Mr Kenneth Tucker was sentenced to 21 years and six months imprisonment for sexual offences and was sent to HMP Exeter. Mr Tucker was registered partially blind, had hearing difficulties, anaemia and struggled with mobility due to a previous stroke. On 12 May, Mr Tucker was transferred to HMP Dartmoor.
2. While at Dartmoor, healthcare staff sent Mr Tucker to hospital for tests and examinations because he had swollen ankles. A prison GP reviewed Mr Tucker on 7 June, and requested blood tests. They were taken on 20 June, and the GP did not review the results for three days. He decided to request further blood tests because of ongoing anaemia, which were taken on 5 July. The GP reviewed the results and saw Mr Tucker on 20 July. Due to Mr Tucker's anaemia, raised prostate specific antigen (PSA – a raised level shows problems with the prostate) and raised brain natriuretic peptide (BNP – a raised level can indicate heart failure), the GP made an urgent referral to the colorectal and urology departments.
3. On 16 August, a urology consultant examined Mr Tucker and diagnosed low grade prostate cancer (a cancer that was unlikely to spread and was very common for a man of Mr Tucker's age). It did not require further treatment. On 31 August, a consultant informed Mr Tucker that he had colon cancer and informed him that his only treatment would be palliative care. On this date a nurse manager spoke to Mr Tucker about a transfer to HMP Exeter where there is a palliative care suite.
4. A prison GP examined Mr Tucker at Dartmoor on 30 September, and found that he was dehydrated. He sent him to hospital. Mr Tucker told the doctor that he did not want anyone to resuscitate him if his heart or breathing stopped and signed an order to that effect. Mr Tucker was returned to Dartmoor on 8 October.
5. On 17 October, Mr Tucker was transferred to Exeter, where he received palliative and enhanced social care. Mr Tucker died of pneumonia caused by colon cancer in Exeter's palliative care unit on the evening of 7 November.

Findings

6. We agree with the clinical reviewer's conclusion that, overall, Mr Tucker received appropriate and compassionate clinical care, equivalent to that which he could have expected in the community. However, we agree that some requested blood tests were not completed or reviewed in a timely manner.
7. We are also concerned that neither Dartmoor nor Exeter started an application for compassionate release before Mr Tucker died.

Recommendations

- The Head of Healthcare at HMP Dartmoor should ensure that blood tests are carried out in accordance with GP instructions and the results are promptly reviewed.
- The Governors of HMP Dartmoor and HMP Exeter should ensure that applications for early release on compassionate grounds are submitted without delay, kept under review and reconsidered quickly when a terminally ill prisoner's condition deteriorates.

The Investigation Process

8. 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.
9. The investigator obtained copies of relevant extracts from Mr Tucker's prison and medical records.
10. NHS England commissioned a clinical reviewer to review Mr Tucker's clinical care at the prison.
11. We informed HM Coroner for Exeter and Greater Devon of the investigation, who sent us the results of the post mortem examination. We have sent the coroner a copy of this report.
12. The investigator wrote to Mr Tucker's wife to explain the investigation and to ask if she had any matters she wanted the investigation to consider. She did not respond to our letter.
13. The investigation has assessed the main issues involved in Mr Tucker'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. We shared the initial report with the Prison Service. There were no factual inaccuracies.

Background Information

HMP Dartmoor

15. HMP Dartmoor holds up to 642 adult male prisoners. The prison comprises six residential wings. Dorset Healthcare Unit Foundation Trust provides the prison's healthcare. Healthcare staff are on duty between 7.45am and 5.30pm on weekdays and between 8.15am and 5.15pm at weekends.

HM Inspectorate of Prisons

16. 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. Palliative care and end-of-life policies and protocols were available in healthcare.

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 September 2016, the IMB reported that the requirements of an ageing prison population increased the interventions needed by healthcare. The IMB remained concerned about the provision of appropriate end of life care.

Previous deaths at HMP Dartmoor

18. Three prisoners have died from natural causes at Dartmoor since January 2016. We have highlighted in a previous death at Dartmoor that the prison failed to review and follow up blood tests in a timely manner.

HMP Exeter

19. HMP Exeter is a local prison holding up to 561 men. Dorset Healthcare University Foundation Trust provides health services. There are ten 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

20. The most recent inspection of HMP Exeter was in August 2016. Inspectors reported that healthcare staffing was precarious at times with insufficient healthcare professionals to provide the expected standards of care. Prisoners aged 50 years and older had a dedicated clinic, although there was no coordinated approach to the needs of older prisoners. The palliative care service was inconsistent; prisoners did not always receive care and medication in a timely way owing to lack of staff.

Independent Monitoring Board

21. In its latest annual report, for the year to December 2015, the IMB reported that it believed that Exeter was a well-run and generally safe establishment and staff made a genuine effort to treat prisoners with dignity and respect. The IMB made

special mention of the work of healthcare staff but considered that healthcare resources were inadequate and did not reflect community provision.

Previous deaths at HMP Exeter

22. Mr Tucker was the eighth prisoner to die from natural causes at HMP Exeter since January 2016. There have been three subsequent deaths. We have consistently found that Exeter has provided good palliative and end of life care. There were no similarities between the circumstances of Mr Tucker's death and previous deaths at the prison.

Findings

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

23. On 21 January 2016, Mr Kenneth Tucker was sentenced to 21 years and six months in prison for sexual offences and was sent to HMP Exeter. A nurse carried out an initial health assessment of Mr Tucker. He had on-going health and social care needs, which included visual and hearing impairment and mobility issues as he used a wheelchair. He took medication for high blood pressure and raised cholesterol.
24. Healthcare staff liaised with his community GP and noted that Mr Tucker had long standing anaemia for which he received three monthly Vitamin B12 injections. He continued to receive these in prison. A prison GP requested a routine blood test for anaemia on 29 March, but there is no record that this was taken.
25. Doctors and medical staff monitored Mr Tucker's health during his stay at Exeter. He was assigned a 'buddy' (a prisoner who assists another prisoner in their daily life) to help with his physical needs.
26. On 12 May, Mr Tucker was transferred to HMP Dartmoor. On his arrival, a nurse conducted a medical assessment which did not show any new issues. She noted his on-going issues.
27. A prison GP reviewed Mr Tucker on 7 June, who was suffering with swollen ankles. He requested blood tests but these were not taken until 20 June. He did not review the results until 23 June, when he noted Mr Tucker's on-going anaemia. He considered referring Mr Tucker for colorectal and urology tests but decided to request further blood tests. These further blood tests were taken on 5 July. He reviewed the results on 20 July, which confirmed anaemia, a raised prostate specific antigen (PSA – a raised level shows problems with the prostate) and a raised brain natriuretic peptide (BNP – a raised level can indicate heart failure). He arranged to see Mr Tucker and made an urgent referral to the colorectal and urology departments under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks.
28. On 2 August, a consultant colorectal surgeon examined Mr Tucker at hospital. He diagnosed Mr Tucker with low grade prostate cancer (a cancer that was unlikely to spread and was very common for a man of Mr Tucker's age) which required no treatment. The surgeon referred Mr Tucker for a CT scan.
29. On 19 August, Mr Tucker had the CT scan of his colon and rectum. This identified that he had colon cancer which had spread to the liver. At a multidisciplinary team meeting later that day, it was recommended that if fit enough Mr Tucker should receive palliative chemotherapy and a colon stent (a flexible hollow tube designed to keep a segment of the colon open).
30. Healthcare staff at Dartmoor were not aware of Mr Tucker's full diagnosis and, on 31 August, a consultant saw Mr Tucker and informed him that he had colon

cancer. The consultant said that Mr Tucker's only treatment would be palliative care and the fitting of a stent. He was not told what his life expectancy would be. A clinical nurse specialist was also present to support him.

31. We are satisfied that Mr Tucker was supported appropriately during the diagnosis process, though we are concerned that there were delays in completing blood tests and reviewing the results. We agree with the clinical reviewer that these delays resulted in an unnecessary delay in the prison GP's referral to the colorectal and urology departments, although it was unlikely to have made any difference to the outcome for Mr Tucker. In the future, similar delays could impact on a patient's care so the prison should have a system in place to ensure that blood tests are taken and reviewed quickly. We make the following recommendation:

The Head of Healthcare at HMP Dartmoor should ensure that blood tests are carried out in accordance with GP instructions and the results are promptly reviewed.

Mr Tucker's clinical care

32. On 26 August, a nurse manager reviewed Mr Tucker's medication, suggested a transfer to Exeter and told him that the prison was looking at compassionate release. She also contacted Macmillan Nursing services for additional support and they regularly reviewed him. Five days later, a nurse manager spoke to Mr Tucker about a transfer to Exeter where they have a palliative care suite. Mr Tucker was happy to be moved to Exeter.
33. Mr Tucker attended hospital on 21 September, where oncology staff discussed end of life care with him. Mr Tucker received a blood transfusion and he commenced strong, opiate based pain relief medication. He returned to Dartmoor the same day.
34. On 26 September, healthcare staff reviewed Mr Tucker's healthcare needs. He required enhanced social care and they referred him for Continuing Health Care funding (a package of on-going care that is arranged and funded solely by the NHS). The funding was authorised and Mr Tucker received appropriate social care.
35. On 30 September, a prison GP examined Mr Tucker. The GP found that he was dehydrated and had blood in his stools so sent him to hospital. During the examination, Mr Tucker also told the GP that he did not wish to be resuscitated if his heart or breathing stopped. While in hospital, hospital staff treated Mr Tucker and created a social care plan for his return to prison.
36. On 8 October, Mr Tucker was returned to Dartmoor and, 11 days later, he transferred to Exeter and was located in the palliative care suite.
37. Healthcare staff and social care workers monitored Mr Tucker on a daily basis.
38. Mr Tucker's health deteriorated and he died at 0.20am on 7 November, in the palliative care suite. A wing care worker was with him when he died.

39. Following Mr Tucker's diagnosis, we agree with the clinical reviewer that healthcare staff at Dartmoor and Exeter cared for him appropriately. They modified his pain control as required and gave him adequate nutritional supplements. They also modified his cell and obtained additional social care funding to give Mr Tucker support from a carer. We agree with the clinical reviewer that Mr Tucker received appropriate healthcare, which was equivalent to that he would have expected to receive in the community.

Mr Tucker's location

40. On 31 August, when Mr Tucker was diagnosed with the terminal cancer he was at Dartmoor and lived on a standard wing. There was no healthcare wing at Dartmoor but he had a dedicated care assistant assigned to him. On 10 October, the Governor agreed that Mr Tucker's cell door would remain open to allow 24 hour care access.
41. On 17 October, Mr Tucker was moved to Exeter. He occupied the palliative care suite, located on the social care wing, and had access to 24 hour nursing care.
42. We are satisfied that Mr Tucker was appropriately located at Dartmoor and Exeter.

Restraints, security and escorts

43. When prisoners have to travel outside of 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.
44. When Mr Tucker was at Dartmoor, he made a number of journeys to Derriford Hospital. The risk assessments showed that Mr Tucker was frail and had medical conditions so prison managers authorised officers not to use restraints for these journeys.
45. When Mr Tucker transferred from Dartmoor to Exeter on 17 October, the risk assessment indicated that Mr Tucker presented a low risk due to his health. Again, prison managers decided that officers should not restrain Mr Tucker for this journey.
46. We are satisfied that Dartmoor appropriately considered the risks that Mr Tucker presented in deciding not to restrain him.

Liaison with Mr Tucker's family

47. On 29 August, Dartmoor appointed an officer as the family liaison officer. She contacted Mr Tucker's daughter in law, told her that Mr Tucker was ill and agreed to keep her informed of his condition.
48. Exeter appointed an officer as the family liaison officer on 2 November, who spoke to Mr Tucker's daughter in law. She explained how he was progressing and the process for a forthcoming visit.

49. At 1.30pm on 6 November, Mr Tucker's family visited him at Exeter. His daughter in law said she wanted the prison to tell her by telephone when Mr Tucker died.
50. At 0.30am on 7 November, the duty governor informed Mr Tucker's daughter in law that Mr Tucker had died. At 11.20am, the family liaison officer spoke to Mr Tucker's daughter in law offering condolences and support. She remained in contact with the family and offered on-going support.
51. Mr Tucker's funeral took place on 22 November, the prison contributed to the cost in line with national guidelines.
52. We are satisfied that Dartmoor and Exeter supported Mr Tucker and his family after his condition deteriorated and after he had died.

Compassionate release

53. Release on compassionate grounds is a means by which prisoners, who are seriously ill, usually with a life expectancy of less than three months, can be permanently released from custody before their sentence has expired. A clear medical opinion of life expectancy is required. The criteria for early release for determinate sentenced prisoners are set out in Prison Service Order (PSO) 6000. Among the criteria is that the risk of re-offending is expected to be minimal, further imprisonment would reduce life expectancy, there are adequate arrangements for the prisoner's care and treatment outside prison, and release would benefit the prisoner and his family. An application for early release on compassionate grounds must be submitted to the Public Protection Casework Section (PPCS) of the National Offender Management Service (NOMS).
54. On 19 August, Mr Tucker was diagnosed with a terminal illness. On 31 August, a consultant saw Mr Tucker and told him he had cancer, though he did not give him a clear indication of his life expectancy.
55. On 26 August, a nurse manager said that prison staff were looking at an application for early release, although there was no record that Dartmoor started the application process.
56. After Mr Tucker was transferred to Exeter for palliative care on 17 October, there was no record that they asked Dartmoor if they had commenced an application for compassionate release or that they began an application before Mr Tucker died.
57. While Mr Tucker had not been given a definitive prognosis, we consider that this is something that prison healthcare staff could have chased up if the application had been started. We are also concerned that Dartmoor did not start the application, despite the nurse manager having told Mr Tucker that prison staff were doing so. Finally, we are concerned that Exeter did not start their own application, despite Mr Tucker having spent three weeks there before his death. We make the following recommendation:

The Governors of HMP Dartmoor and HMP Exeter should ensure that applications for early release on compassionate grounds are submitted

without delay, kept under review and reconsidered quickly when a terminally ill prisoner's condition deteriorates.

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