Prisons & Probation
Ombudsman
Independent Investigations

# Independent investigation into the death of Mr Adrian Smith a prisoner at HMP Exeter on 15 January 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 Adrian Smith died on 15 January 2017 of heart failure caused by chronic lung disease while a prisoner at HMP Exeter. Mr Smith was 75 years old. I offer my condolences to Mr Smith's family and friends.

Mr Smith was diagnosed with a terminal illness prior to entering prison, and also suffered from a number of other serious health complaints. The investigation found that Mr Smith received good care at Exeter, which was equivalent to that he would have expected to receive in the community. However, I believe that the prison should have treated an application to release Mr Smith on compassionate grounds with greater priority.

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** **July 2017**

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# Summary

## Events

1. On 13 June 2016, Mr Adrian Smith was sentenced to four years imprisonment for historic sex offences. He was initially sent to HMP Bristol but was transferred to HMP Exeter on 4 July due to their superior facilities for social and palliative care.

2. Mr Smith was diagnosed with pulmonary fibrosis (a progressive and fatal lung disease) prior to entering prison, and told healthcare staff that he was terminally ill with 12 months to live. Mr Smith also had several other serious health concerns which required ongoing care. He was placed on a number of care plans which were reviewed regularly.

3. Mr Smith lost weight gradually throughout the year, but this was largely attributed to his dislike for prison food and his poor appetite. Other than that, Mr Smith's health appeared stable and his clinical needs had not increased during that time.

4. By December, healthcare staff were concerned that Mr Smith was declining food and making choices which might cause him to die earlier than he should. A daily care journal was started to monitor Mr Smith's condition and food intake regularly. On 16 December, Mr Smith's condition was discussed at a multi-disciplinary care meeting, where it was noted that he was approaching the end of his life.

5. By early January 2017, it was clear that Mr Smith's condition was deteriorating and that he was dying. On 12 January, a prison GP noted that he was at the terminal phase of his life.

6. Mr Smith was found unresponsive in his cell at 4.57am on 15 January, and was pronounced dead by a prison GP at 6.22pm.

## Findings

### Mr Smith's clinical care

7. The clinical reviewer found that the care Mr Smith received was of a high standard and that clinical record keeping was of a consistently good quality. Healthcare staff reviewed Mr Smith frequently and monitored his conditions well. We are satisfied that Mr Smith's care was equivalent to that he could have expected to receive in the community.

### Compassionate release

8. We are concerned, however, that an opportunity was missed for Mr Smith to be considered for compassionate release. The application process could have been started earlier, to ensure Mr Smith had every chance of being released on compassionate grounds once a prognosis of his imminent death became clear.

## Recommendations

- The Governor should ensure that appropriate priority is given to dealing with applications for compassionate release for terminally ill prisoners and that they are submitted without delay.

# The Investigation Process

9. 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.

10. The investigator obtained copies of relevant extracts from Mr Smith's prison and medical records.

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

12. We informed HM Coroner for Exeter and Greater Devon of the investigation. He gave us the results of the post-mortem examination, and we have sent the coroner a copy of this report.

13. The investigator wrote to Mr Smith's daughter to explain the investigation and to ask whether she had any matters she wanted the investigation to consider. She did not respond to our letter.

14. The investigation has assessed the main issues involved in Mr Smith'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.

15. The initial report was shared with the Prison Service. The Prison Service did not find any factual inaccuracies.

# Background Information

## HMP 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. Dorset NHS University Foundation Trust provides health services, including mental health services. The prison has 24 hours healthcare cover. The prison also has a palliative care suite for terminally ill prisoners.

## HM Inspectorate of Prisons

17. The most recent inspection of HMP Exeter was conducted in August 2016. Inspectors reported that when a prisoner needed a cell with special adjustments, he had to wait for a cell on the social care unit to become available. They also reported that the palliative care service was inconsistent as, owing to the lack of staff, prisoners did not always receive care and medication in a timely way. They also noted that there were not enough social care staff to meet prisoners' needs.

## Independent Monitoring Board

18. 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 most recently published 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 that 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

19. Mr Smith was the eleventh prisoner to die from natural causes at HMP Exeter since January 2016. There have been two subsequent deaths. We have previously made recommendations about the need to complete compassionate release applications in a timely manner.

# Findings

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

20. On 13 June 2016, Mr Adrian Smith was sentenced to four years imprisonment for historic sex offences. He was initially sent to HMP Bristol but was transferred to HMP Exeter on 4 July 2016.

21. A nurse reviewed Mr Smith at a reception health screen on his admission to Bristol. She noted that Mr Smith was in poor health and had been diagnosed with pulmonary fibrosis (a progressive and fatal lung disease). Mr Smith also had a history of chronic renal disease, prostate cancer which had been treated, type 2 diabetes, ischaemic heart disease, osteoarthritis and thromboembolic disease (a pulmonary embolus and deep vein thrombosis). Mr Smith had also acquired pneumonia in hospital and used oxygen at home.

22. Mr Smith was only at Bristol for a few hours before being admitted to hospital due to his physical health problems and the lack of facilities at the prison to care for him. Mr Smith returned to Bristol on 24 June after arrangements were made to install oxygen in his cell.

23. The same day, a prison GP noted that Mr Smith required palliation (treatment to alleviate pain rather than to cure a condition). The next day, Mr Smith told a mental health nurse that he was terminally ill and had 12 months to live.

24. Mr Smith had completed a Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) form at the hospital on 31 May. (A DNACPR order means that in the event of cardiac or respiratory arrest no attempt at resuscitation will be made. All other appropriate treatment and care will continue to be provided.)

25. On 27 June, a prison GP confirmed Mr Smith's DNACPR wishes with him, and completed the relevant forms for the prison. She also told Mr Smith that a suitable prison was being sought for him, and that compassionate release should be discussed at the appropriate time once he had moved. Mr Smith was transferred to Exeter on 4 July.

26. We are satisfied that Mr Smith's diagnosis was appropriately recorded and acted on by the prison.

### Mr Smith's clinical care

27. At Exeter, Mr Smith was immediately located on F wing, which has facilities for social and palliative care. A number of care plans were created for Mr Smith's personal needs, nutrition requirements and mobility. These were reviewed on a monthly basis.

28. Mr Smith was admitted to hospital on 19 July, complaining of a gastro-intestinal upset. It was also noted that he was distressed due to the heat in his cell. He was discharged two days later and reviewed by a prison GP on his return to Exeter. Extra steps were taken following this review, to ensure Mr Smith was more comfortable in his cell.

29. Throughout the summer, Mr Smith lost weight and was reviewed by a prison GP on 13 September. Mr Smith told him that he did not like the food he was given, was sometimes not hungry, and that his mood was low. The GP prescribed anti-depressants to improve Mr Smith's mood and appetite.

30. Mr Smith continued to lose weight and was reviewed regularly by healthcare staff. On 24 November, a prison GP examined Mr Smith and noted there were no other signs of physical deterioration, and that his bowels, bladder, skin and breathing were all stable. She prescribed supplement drinks to help combat Mr Smith's poor appetite.

31. On 1 December, a prison GP became concerned that Mr Smith was making choices that would shorten his life, and referred him to the mental health team. Three days later, a daily care journal was commenced to monitor Mr Smith and to record his food intake on a regular basis.

32. A multi-disciplinary care meeting was held on 16 December to discuss Mr Smith's condition. The minutes noted that Mr Smith was declining food and not always taking his supplements, but that he had full capacity to make decisions, and there was no evidence of deliberate self harm. A prison GP observed that Mr Smith had no symptoms indicating that palliative care was necessary, but would refer him for an assessment if required.

33. On 4 January 2017, a nurse recorded that Mr Smith looked notably thinner and more sullen than when she saw him the previous week. The next day, a prison GP noted that the prison had contacted Mr Smith's family, to inform them of his deteriorating condition.

34. At 7.20pm on 12 January, a prison GP noted that Mr Smith was obviously now deteriorating and dying. An hour and a half later, she recorded that Mr Smith was considerably more unwell and frail than when she last saw him, but he was breathing easily, talking in full sentences and had no cough or audible wheeze. She observed that Mr Smith was at the terminal phase of his life and had no clear reversible cause. The following day, she confirmed with Mr Smith that he did not want any hospital involvement.

35. At 4.57am on 15 January, Mr Smith was found unresponsive in his cell. A prison GP declared Mr Smith dead at 6.22pm.

36. The post-mortem report indicated that Mr Smith had died from cor pulmonale (a progressive enlargement of the heart muscle causing heart failure), itself caused by pulmonary fibrosis.

37. We are satisfied that Mr Smith was well looked after in prison, and agree with the clinical reviewer that the care he received was of a consistently high standard. Mr Smith was regularly reviewed by healthcare staff, and care plans were in place to deal with all of his needs. We are satisfied that Mr Smith's care was equivalent to that he could have expected to receive in the community.

### Mr Smith's location

38. Mr Smith was initially sent to Bristol following his conviction, but the prison lacked the facilities to cater for his needs adequately. There was then a delay of a few weeks before he was transferred to Exeter while a social care plan was finalised.

39. Once at Exeter, Mr Smith was located on F wing which had the resources and facilities to provide good palliative care. We are satisfied that Mr Smith was appropriately located during this time.

### Restraints, security and escorts

40. When prisoners have to travel outside of the prison, a risk assessment, which includes restraints, determines the nature and level of security arrangements. 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.

41. Mr Smith was, appropriately, never restrained during his time at Exeter, including during his only hospital escort in July 2016.

### Liaison with Mr Smith's family

42. Mr Smith's designated next of kin were his daughter and son, with his daughter being the primary contact. The prison appointed two officers as family liaison officers. One officer telephoned Mr Smith's daughter on 4 January 2017, to inform her that Mr Smith was hardly eating and growing weaker all the time. Mr Smith's daughter booked a visit and requested to be informed in person at any time of day or night in the event of her father's death.

43. On 13 January, Mr Smith's daughter and son visited him at the prison, where they were met by a family liaison officer and a prison GP, who explained Mr Smith's condition to them.

44. At 9.45am on 16 January, the duty governor visited Mr Smith's daughter at her home to inform her of Mr Smith's death and to offer support.

45. Mr Smith's funeral took place on 9 February. The prison contributed towards the costs of this funeral in line with national policy.

46. Mr Smith's next of kin both commented on the high standard of care he had received while at Exeter.

### Compassionate release

47. 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, *Parole Release and Recall*. These criteria include: 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).

48. On 27 June 2016, a prison GP discussed compassionate release with Mr Smith while he was at Bristol. At this stage, Mr Smith's prognosis was of a further 12 months to live. She noted that this issue should be followed up at Exeter.

49. Mr Smith's condition was monitored regularly at Exeter and despite suffering gradual weight loss he appeared not to have deteriorated significantly during the year. By December, concerns were raised that he had given up, and a home care daily journal was started to record his health, needs and eating habits, on a regular basis. A multi-disciplinary care meeting was held on 16 December, and compassionate release was discussed. It was recorded that Mr Smith would have to confirm whether he would like to go ahead with it. However, there is no evidence that this was discussed with Mr Smith.

50. On 12 January 2017, a prison GP began completing the compassionate release forms and emailed them to the prison. She noted that Mr Smith's original 12 month prognosis had not been supported by evidence from the consultant. She took the view that it was difficult to predict a three month prognosis for Mr Smith because his lung disease had appeared stable, his symptoms had not worsened, and he had not required increased oxygen.

51. While we accept that Mr Smith's deterioration was gradual and a three month prognosis was difficult to obtain, we feel that the compassionate release process could have been started sooner. We are concerned that the prison did not take any pro-active steps to prepare the application in advance, or to discuss it with Mr Smith in December. We therefore make the following recommendation:

**The Governor should ensure that appropriate priority is given to dealing with applications for compassionate release for terminally ill prisoners and that they are submitted without delay.**

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