Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Herman Rowe a prisoner at HMP Highpoint on 1 June 2018

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*

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 I oversee can improve their work in the future.

Mr Rowe died on 1 June 2018 of metastatic lung cancer while a prisoner at HMP Highpoint. He was 50 years old. I offer my condolences to Mr Rowe's family and friends.

I am satisfied that Mr Rowe received a good standard of care at Highpoint and that healthcare staff were respectful and managed his care around his preference to maintain his privacy.

However, I consider the use of restraints on Mr Rowe when he was taken to hospital was excessive. I have previously raised this issue with Highpoint, and I now bring it to the attention of the Governor's manager, the Prison Group Director.

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
Deputy Prisons and Probation Ombudsman **November 2018**

Contents

Summary 1
The Investigation Process 2
Background Information 3
Findings 4

Summary

Events

1. On 3 January 2017, Mr Rowe was sentenced to five years imprisonment for possession of a weapon. He arrived at HMP Highpoint on 26 June 2017 and on arrival it was noted that he had suffered from epilepsy since 2004 and had type 2 diabetes that was controlled by diet alone.

2. On 7 March 2018, Mr Rowe complained to a doctor that he had been feeling unwell since the beginning of the year, had a chesty cough and was coughing up blood. A chest x-ray revealed that he had advanced lung cancer which had spread to his brain. Active treatment was not possible and Mr Rowe was provided with palliative care.

3. Mr Rowe was a very private person and did not welcome constant attention from healthcare. At times, this meant that he chose not to accept provisions that would help his daily life, such as a pressure-relieving mattress or shower rails, when they were first offered. Healthcare staff managed his wishes respectfully and provided him with a good standard of care.

4. Mr Rowe went to hospital on a several occasions and each time he was placed in restraints. The risk assessments did not take into account his medical condition and did not provide a clear and justified reason why the use of restraints was necessary.

5. Mr Rowe was very keen to be released on compassionate grounds after receiving his terminal diagnosis. Prison staff started the process immediately but there were delays in obtaining a release address. Mr Rowe gained release on compassionate grounds shortly before his death in hospital on 1 June at 7.30pm.

Findings

6. We agree with the clinical reviewer that the care Mr Rowe received was equivalent to that which he could have expected to receive in the community. The clinical reviewer commended the healthcare manager for the palliative care and clinical leadership she provides at Highpoint.

7. We are disappointed to have to make another recommendation to Highpoint about the inappropriate use of restraints. We repeat our recommendation which we draw to the attention of the area Prison Group Director.

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 risk assessments show clear justification on the use of restraints.**
- **The Prison Group Director, Hertfordshire, Essex and Suffolk Group should assure himself that meaningful action is taken to address this recommendation.**

The Investigation Process

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

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

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

12. The investigator wrote to Mr Rowe's sister to explain the investigation and to ask whether she had any matters she wanted the investigation to consider. She made contact with the investigator by telephone and said that she was concerned that Mr Rowe had been neglected in prison.

13. Mr Rowe's sister received a copy of the initial report. She did not raise any further issues, or comment on the factual accuracy of the report.

14. The investigation has assessed the main issues involved in Mr Rowe'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 HM Prison and Probation Service (HMPPS). HMPPS did not find any factual inaccuracies.

Background Information

HM Prison Highpoint

16. HMP Highpoint is a medium security prison on two sites, Highpoint South and Highpoint North, and holds up to 1,319 men. Care UK provides general and mental healthcare services at the prison. The healthcare centre is open from 7.45am to 6.15pm, Monday to Friday, and from 8.00am to 6.00pm at weekends. Care UK delivers the GP Services, and there is a range of nurse-led clinics. There are no inpatient beds at the prison.

HM Inspectorate of Prisons

17. The last inspection of HMP Highpoint was conducted in October 2015. Inspectors reported that health services were reasonable and continued to improve, with good local partnership arrangements and effective governance processes. Prisoners were treated respectfully and could access an appropriate range of services. Operational leadership was clear and staffing levels appropriate. Staff had good access to relevant training and development opportunities. There was good access to appointments, both within the prison and externally. External appointments were risk-rated to ensure that critical appointments were prioritised. Cancellations were rare and activity was monitored routinely.

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 latest annual report, for the year to 31 December 2017, the IMB reported that routine and emergency appointments were readily available in GP clinics and nurse-led clinics were well established. They found that robust links were in place with the local hospital, hospice and MacMillan services to enable long term palliative care.

Previous deaths at HMP Highpoint

19. Including Mr Rowe, we have investigated 5 deaths at Highpoint since 2015. Of the other deaths, two prisoners died of natural causes and two deaths were self-inflicted. We have previously made a recommendation about the inappropriate use of restraints which we repeat in this report.

Findings

Diagnosis of Mr Rowe's terminal illness and informing him of his condition

20. Mr Rowe was sentenced to five years imprisonment on 3 January 2017 for possession of a weapon. This was not his first time in prison. On 26 June 2017, Mr Rowe transferred to HMP Highpoint and at his reception health screen on arrival, a nurse documented that Mr Rowe had suffered from epilepsy since 2004 and had type 2 diabetes that was controlled by diet alone.

21. Mr Rowe refused to attend the prison diabetes clinic, although several appointments were arranged for him. On 7 March 2018, a prison GP reviewed Mr Rowe who said he had been feeling unwell since having flu in January. He said that he had a chesty cough, was coughing up blood and thought he had lost weight. The GP confirmed that Mr Rowe's weight was the same as on his arrival but prescribed antibiotics for a chest infection and referred him for a chest x-ray.

22. On 9 March, Mr Rowe was taken to hospital for a chest x-ray. He was admitted to hospital for further investigation as an abnormality was detected. On 14 March, Mr Rowe received a diagnosis of advanced lung cancer which had spread to his brain. Active treatment was not possible and he was told he would receive palliative end of life care.

Mr Rowe's clinical care

23. On 16 March, the Head of Healthcare and an operational manager visited Mr Rowe in hospital. During their visit they arranged for his restraints to be removed, discussed compassionate release which Mr Rowe was keen for and the Head of Healthcare agreed to be the point of contact for his sister to be kept informed about his care.

24. On 22 March, Mr Rowe returned to Highpoint from hospital. Mr Rowe was not happy to return to prison and wanted to be released on compassionate grounds. A nurse liaised with the kitchen to ensure Mr Rowe's dietary needs were met, requested a social care referral and added Mr Rowe to the multidisciplinary complex case meetings. A mental health nurse completed a mental health assessment and confirmed there were no immediate concerns and he had full mental capacity.

25. After his return to prison, healthcare staff became aware that Mr Rowe was a very private person and did not welcome constant attention from staff. As a result, they agreed to refrain from visiting him daily. The Head of Healthcare spoke to Mr Rowe's sister who confirmed that he preferred his own company. Mr Rowe refused to see the occupational therapist and to use a pressure-relieving mattress that had been ordered for him.

26. On 18 April, Mr Rowe had a fall in his cell and appeared dazed. A nurse was concerned that his illness was progressing and recommended that he go to hospital. He noted that Mr Rowe had a Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) order in place. At hospital Mr Rowe refused to engage with doctors and declined any further investigation. He, therefore, returned to prison the same day.

27. A nurse met with Mr Rowe on his return. She had a lengthy conversation with him where he expressed his upset at not being released on compassionate grounds. She explained the process was complex and had a long discussion about how they could support him in prison. He agreed to meet with an occupational therapist, to use the pressure-relieving mattress and for prisoner carers to be arranged.

28. On his return from hospital, a nurse noted that Mr Rowe did not have a DNACPR in place. The Head of Healthcare explained that this mistake was due to the community palliative care team wrongly inputting this information onto Mr Rowe's file which was linked to his prison medical record. On 2 May, Mr Rowe said he did not want anyone to resuscitate him if his heart or breathing stopped and signed an order to that effect.

29. On 21 May, Mr Rowe reported abdominal pain and was taken to hospital for investigation. He pulled a cannula out of his arm on the way to hospital and declined investigation. He asked to be discharged and returned to prison.

30. On 25 May, a nurse noted that Mr Rowe looked frail and was breathing slowly. On 27 May, a nurse found Mr Rowe to be weak, frail and unable to mobilise. He called the community palliative care team for advice, who said they would get in contact the next day. Mr Rowe's prisoner carers said that they were struggling to move him. On 28 May, Mr Rowe was taken to hospital after having a suspected epileptic seizure.

31. On 1 June, the Head of Healthcare visited Mr Rowe in hospital and was told that his death could be expected very soon. During her visit, she received notification that Mr Rowe could be released on compassionate grounds. Mr Rowe's family were not present at the time and, although the prison escort was officially withdrawn, staff remained with Mr Rowe until he passed away at 7.30pm.

32. We agree with the clinical reviewer that Mr Rowe's care was equivalent to that he could have expected to receive in the community. The clinical reviewer also commends the Head of Healthcare for the good palliative care and clinical leadership she provides at Highpoint. The clinical reviewer makes recommendations that the Head of Healthcare will want to consider.

Mr Rowe's location

33. Mr Rowe lived on a normal wing at Highpoint during his illness and was taken to hospital when his symptoms could not be managed in prison. Highpoint does not have inpatient facilities or 24-hour healthcare but several measures were put in place to support him in his cell including prisoner carers, a pressure relieving mattress, grab rails for the shower and an arrangement for the provision of his preferred Jamaican food. We are satisfied that Mr Rowe was located appropriately during his illness.

Restraints, security and escorts

34. 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.

35. Mr Rowe was taken to hospital four times while at Highpoint and each time he was restrained with single cuffs and an escort chain, apart from one occasion, when he was restrained with just 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.) On each occasion, contrary to the requirements of the High Court judgement, there was no medical information provided on the risk assessment.

36. On 28 May 21018, Mr Rowe was taken to hospital as an emergency case. Although the escort risk assessment was only minimally completed, with no medical information included, Mr Rowe was restrained both with single cuffs and an escort chain. The Head of Healthcare said that the nurse involved in the risk assessment did not challenge operational staff about using cuffs, as there were no senior staff present and she did not think it was her role at that time. An operational manager decided to restrain Mr Rowe with single cuffs after consulting with colleagues about his condition and the transfer to hospital. He told the investigator that because Mr Rowe was conscious and alert, he decided to apply single cuffs. Due to the limited information included in the risk assessment and Mr Rowe's poor health, we are unable to say whether this decision was appropriate.

37. We previously made a recommendation to Highpoint in March 2018 about the inappropriate use of restraints. This was accepted and an action plan to address it was produced. We are troubled that, despite this, staff at the prison appear not to understand a fundamental aspect of the High Court judgement – the need for a medically-informed assessment of the impact of the prisoner's condition on their risk of escape and, in the event of their escape, the risk to the public. We therefore repeat our previous recommendation and draw this unsatisfactory state of affairs to the attention of the Director for Hertfordshire, Essex and Suffolk Group prisons:

The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understands the legal position and that risk assessments show clear justification on the use of restraints.

The Prison Group Director, Hertfordshire, Essex and Suffolk Group should assure himself that meaningful action is taken to address this recommendation.

Liaison with Mr Rowe's family

38. After Mr Rowe received a terminal diagnosis, the Head of Healthcare agreed with him that she would contact his sister and be a point of contact for his family

regarding his illness and treatment. She kept in regular contact with Mr Rowe's sister, provided information on the compassionate release process and supported her when she called with concerns about his welfare. We commend the Head of Healthcare for the contact she maintained with Mr Rowe's family.

39. On 30 May, a Supervising Officer was appointed as family liaison officer. She contacted Mr Rowe's sister and offered help with his funeral arrangements. The prison contributed to the funeral costs in line with national policy and we are satisfied that the prison liaised with Mr Rowe's family appropriately.

Compassionate release

40. 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.

41. When Mr Rowe was initially diagnosed, the Head of Healthcare visited him at hospital and discussed compassionate release which Mr Rowe was keen to pursue. A compassionate release application was first submitted on 8 May 2018, as there were some delays in obtaining a release address. Release on compassionate grounds was approved on 1 June 2018 when Mr Rowe was in hospital and he died later that evening. We are satisfied that the prison acted appropriately in relation to compassionate release.

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