

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Kevin Fox a prisoner at HMP Stafford on 9 December 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.

We carry out investigations to understand what happened and identify how the organisations whose actions we oversee can improve their work in the future.

Mr Kevin Fox died on 9 December of lung cancer while a prisoner at HMP Stafford. He was 75 years old. We offer our condolences to Mr Fox's family and friends.

When Mr Fox reported chest pains, healthcare staff appropriately referred him to specialists, leading to a quick diagnosis. We are satisfied that Mr Fox received care in prison equivalent to that which he could have expected to receive in the community.

The authorising prison managers appropriately considered the gravity of Mr Fox's condition and its impact on his risk and concluded that staff should not apply restraints. We make no recommendations.

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

May 2018

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Summary

Events

1. Mr Kevin Fox was serving a seven-and-a-half-year sentence for sexual offences and had been at HMP Stafford since 22 July 2016. In 2005, Mr Fox had been diagnosed with, and successfully treated for, oesophageal cancer. In 2008, he had an operation to remove part of his lung after he was diagnosed with lung cancer from which he also recovered.
2. On 16 February 2017, Mr Fox told a prison GP he had chest pain and, given his cancer history, the GP referred him to a specialist. Investigations began and on 7 June, a specialist confirmed Mr Fox had advanced lung cancer. It was inoperable and the specialist offered palliative chemotherapy, which Mr Fox accepted.
3. Staff appropriately managed Mr Fox's pain. He remained mobile and could tend to his personal care (until his last admission to hospital) and did not require any special aids or equipment.
4. Mr Fox's condition slowly deteriorated and the local hospital admitted him on four occasions before his last admission on 10 November. Restraints were not used during any of these admissions.
5. On 5 December, Mr Fox was transferred to a hospice where he died on 9 December 2017.

Findings

6. We are satisfied that the care Mr Fox received at Stafford was equivalent to that which he could have expected to receive in the community. The prison appropriately considered release on compassionate grounds and did not apply restraints during his admissions to hospital following diagnosis. We make no recommendations.

The Investigation Process

7. The investigator issued notices to staff and prisoners at HMP Stafford informing them of the investigation and asking anyone with relevant information to contact her. One person responded.
8. The investigator obtained copies of relevant extracts from Mr Fox's prison and medical records. NHS England commissioned a clinical reviewer to review Mr Fox's clinical care at the prison.
9. We informed HM Coroner for South Staffordshire District of the investigation who gave us the cause of death. We have sent the coroner a copy of this report.
10. The investigator wrote to Mr Fox's son to explain the investigation and to ask if he had any matters he wanted the investigation to consider. He did not respond to our letter.
11. The investigation has assessed the main issues involved in Mr Fox'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.
12. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS did not find any factual inaccuracies.

Background Information

HM Prison

13. HMP Stafford is a medium security prison in Staffordshire for adult sex offenders, which can hold around 750 prisoners across seven wings. Care UK provides healthcare services. Nurses are on duty daily between 7.30am and 5.30pm and there is a weekday GP service, with on-call GPs outside these hours.

HM Inspectorate of Prisons

14. The most recent inspection of HMP Stafford was conducted in February 2016. Inspectors found that health provision was not consistently meeting the needs of the ageing population. Governance was reasonable overall, with effective working between providers and the prison. The range of primary care services was appropriate and access to nurses and GPs was good. There was a very high need for hospital appointments and at times over a quarter of appointments were cancelled or rescheduled because there were not enough escort staff. Prisoners over 65 and those with mobility problems were not routinely handcuffed for external hospital appointments except when a specific risk had been identified.

Independent Monitoring Board

15. 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 their latest annual report, for the year to 30 April 2017, the IMB reported that healthcare had improved substantially since its last report, with a reduction in waiting lists for internal services, and fewer cancelled escorts for external appointments. The waiting time for GP appointments was comparable to that in the community.

Previous deaths at HMP Stafford

16. Mr Fox was the tenth prisoner to die from natural causes at Stafford since 1 January 2016, which is not remarkable, given the prison's population. There has been one death from natural causes since.

Findings

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

17. Mr Kevin Fox was serving a seven-and-a-half-year sentence for sexual offences and had been at HMP Stafford since 22 July 2016. In 2005, Mr Fox had been diagnosed with oesophageal cancer and his treatment was successful. In 2008, Mr Fox had an operation to remove part of his lung after he was diagnosed with lung cancer from which he also recovered.
18. On his arrival, a nurse carried out Mr Fox's initial health screen. She noted his history of cancer and long-term problems with asthma for which he was prescribed inhalers.
19. On 16 February 2017, Mr Fox saw prison GP and complained of chest pain. The prison GP was aware of Mr Fox's cancer history and made an urgent referral to an Ear Nose and Throat (ENT) specialist under the NHS pathway, which requires patients with suspected cancer to be seen by a specialist within two weeks. He also made a referral for him to have an urgent chest X-ray and for a gastroenterologist to see him.
20. On 21 February, Mr Fox had an X-ray and a CT (computerised tomography) scan on 28 February and 8 March. An administrator at Stafford noted that the hospital had not received the ENT referral because the hospital's fax machine had not been working properly. She re-sent the referral and Mr Fox had an ENT appointment on 14 March.
21. On 29 March, a prison GP noted that the ENT and gastroenterology investigations were inconclusive but the scans had identified a shadow on Mr Fox's lung. Given Mr Fox's history, a prison GP made a fast track referral for further lung cancer investigations that day. Specialists saw Mr Fox on 31 March and he had a gastroscopy (a procedure where a camera inspects the upper digestive tract) on 6 April and an endobronchial ultrasound (a procedure to look at the lungs) and biopsy on 7 April.
22. On 7 April, a Macmillan nurse spoke to Mr Fox to discuss practical issues in the light of any forthcoming diagnosis including diet, activities and care planning approaches. They also discussed the potential emotional impacts on Mr Fox and his friends and family. Healthcare staff continued to support Mr Fox in the weeks before his diagnosis.
23. On 14 April, a nurse saw Mr Fox who reported he had been coughing up a significant amount of blood. He was taken to hospital and prescribed doxycycline (a drug that helps to fight bacterial infections).
24. On 27 April, a consultant respiratory physician wrote to the prison and confirmed that Mr Fox had a tumour on his left lung and that his lymph nodes (glands which transport lymphatic fluid around the body) were inflamed. He mentioned the presence of a lesion on Mr Fox's bladder, which might also be cancerous. He confirmed that Mr Fox needed further ultrasounds and scans to confirm the nature of the tumour and any other potential lesions or issues.

25. These investigations continued to take place over the next few weeks. Mr Fox had a PET scan (positron emission tomography produces three dimensional images of the inside of the body) on 3 May and an endoscopic ultrasound on 9 May.
26. On 7 June, Mr Fox had an appointment with a consultant clinical oncologist. He told Mr Fox that he had advanced lung cancer, which had spread to some of his lymph nodes. He said that the cancer was inoperable but he offered palliative chemotherapy, which Mr Fox accepted.

Mr Fox's clinical care

27. On 11 June, a nurse discussed Mr Fox's diagnosis and treatment plan with him. On 20 June, the consultant clinical oncologist wrote to the prison detailing what he had told Mr Fox about his treatment and diagnosis.
28. On 23 June, Mr Fox was admitted to hospital with chest pain related to his lung cancer. He was discharged from hospital on 29 June with a direction that healthcare staff administer morphine every 12 hours. As this was not possible because Stafford did not have 24-hour healthcare, the consultant clinical oncologist agreed it could be administered at 8.00am and 5.00pm but be reviewed if Mr Fox experienced breakthrough pain.
29. Mr Fox's chemotherapy started on 17 July. He had four sessions between July and November.
30. Towards the end of July, Mr Fox complained of breakthrough pain, nausea and vomiting and on 28 July, a nurse prescribed metaclopramide (for vomiting). On 31 July, a prison GP prescribed morphine sulphate (for pain). Mr Fox was also admitted to hospital, intermittently, for treatment of sepsis and neutropenia (a systemic infection and a potentially life threatening low white blood count). He also had various follow-up appointments and scans.
31. On 10 November, Mr Fox was admitted to hospital with water on the lungs and back and chest pain. He was treated for pneumonia and given nutritional drinks and antibiotics. He said he did not want anyone to resuscitate him if his heart or breathing stopped and signed a Do Not Attempt Cardiopulmonary Resuscitation (DNACR) order (which means that, in the event of cardiac or respiratory arrest, no attempt at resuscitation will be made, all other appropriate treatment and care would continue to be provided). An MRI scan identified his spinal cord was compressed and he was transferred to another hospital where he had palliative radiotherapy but remained in a lot of pain.
32. On 5 December, Mr Fox was transferred to a hospice for end of life care. He died on 9 December at 1.10am.
33. Up until his last hospital admission, Mr Fox was fully mobile and able to care for himself. He did not need any special aids or equipment but as he felt the cold, staff purchased a hat and gloves for him.

34. We agree with the clinical reviewer that Mr Fox's care was equivalent to that which he could have expected to receive in the community. Staff managed him well given that they could not provide 24-hour care.

Mr Fox's location

35. Staff nursed Mr Fox in his cell at Stafford. He was initially located on C wing but following his diagnosis in June 2017, he was moved to a single cell on D wing, which is close to healthcare. Although he sometimes experienced breakthrough pain, staff stayed in contact with the hospital specialists to work out how best to adjust his medication. They have since developed a policy to manage breakthrough pain. The clinical reviewer has no concerns about the appropriateness of Mr Fox's location. We are satisfied that Mr Fox's location was appropriate and that he was appropriately transferred to a hospice for end of life care.

Restraints, security and escorts

36. 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 must 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 considering factors such as the prisoner's health and mobility.
37. Staff carried out thorough risk assessments and following his diagnosis, staff did not restrain Mr Fox.

Liaison with Mr Fox's family

38. On 9 July, the prison appointed an officer as Mr Fox's family liaison officer (FLO). He stayed in contact with Mr Fox and regularly discussed his wishes with him. On 4 August, at Mr Fox's request, the FLO contacted Mr Fox's son, introduced himself and explained his father's condition. He maintained regular contact, providing information about Mr Fox's condition and any changes in location.
39. Mr Fox's funeral was held on 19 December 2017. The Acting Governor, the FLO and an officer attended. The prison contributed to the funeral costs in line with national policy.

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. On 5 October 2017, the prison contacted the Public Protection Casework Unit (PPCS) of the Ministry of Justice (MOJ) about Mr Fox's potential release. PPCS officials asked the prison to provide a more detailed Risk Management Plan for Mr Fox. Staff made efforts to arrange and provide this quickly, but when they were able to resubmit the application on 5 December, PPCS required more up to

date prognosis details. PPCS did not reconsider the application before Mr Fox's death but we are content that the prison appropriately applied for compassionate release.

42. We make no recommendations.

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