Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Gordon Morrison a prisoner at HMP Birmingham on 3 March 2018

A report by the Prisons and Probation Ombudsman

PO Box 70769
London, SE1P 4XY
Email: mail@ppo.gsi.gov.uk
Web: www.ppo.gov.uk
T | 020 7633 4100
F | 020 7633 4141

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.

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 Gordon Morrison died on 3 March 2018 of tongue cancer while a prisoner at HMP Birmingham. He was 61 years old. I offer my condolences to those who knew him.

The investigation found that the care that Mr Morrison received at Birmingham was of a good standard and equivalent to that which he could have expected to receive in the community.

It was inappropriate, though, that officers restrained him on two occasions when he went to hospital on 8 and 11 February 2018, given that he was very unwell and wheelchair-bound. We are concerned that this is not the first time that we have made recommendations to Birmingham about the inappropriate use of restraints.

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

Richard Pickering
Deputy Prisons and Probation Ombudsman **September 2018**

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Summary

Events

1. Mr Gordon Morrison had been at HMP Birmingham since 16 October 2014. In February 2015, a prison dentist referred him urgently to a maxillofacial specialist under the NHS pathway, which requires a person suspected of having cancer to be seen by a specialist within two weeks.

2. On 29 April 2015, a maxillofacial consultant told Mr Morrison that he had tongue cancer and needed surgery, which took place on 19 May.

3. Healthcare staff created care plans to limit any pain and ensure he was comfortable.

4. During a follow up hospital appointment on 24 March 2016, specialists found that the tongue cancer had returned. Mr Morrison had surgery to remove the cancer in July 2016 and began radiotherapy which was completed on 23 September 2016.

5. On 18 October 2017, a hospital specialist told Mr Morrison that the cancer had returned and was in his neck and lung. He began palliative treatment with chemotherapy and radiotherapy.

6. For a hospital appointment on 8 February 2018, two escorts accompanied Mr Morrison for his chemotherapy appointment and they used handcuffs. On 9 February 2018, Mr Morrison had a scheduled hospital appointment and hospital staff admitted him and administered intravenous fluids and antibiotics.

7. On 11 February Mr Morrison became unwell in his cell. Nurses arranged for paramedics to take him to hospital. Two officers escorted and restrained him.

8. Mr Morrison's condition deteriorated in hospital, and on 22 February, he moved to the hospice, where he died on 3 March.

Findings

9. The care that Mr Morrison received at Birmingham was of a good standard and equivalent to that which he could have expected to receive in the community. Prison GPs saw him many times, and they investigated appropriately, including arranging tests and facilitating his cancer treatment.

10. It was not appropriate for prison staff to restrain Mr Morrison when he went to hospital on 8 and 11 February.

Recommendation

- The Director and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position on the use of restraints and that assessments fully take into account the health of a prisoner and are based on the actual risk the prisoner presents at the time.

The Investigation Process

11. The investigator issued notices to staff and prisoners at HMP Birmingham informing them of the investigation and asking anyone with relevant information to contact her. No one responded.

12. The investigator obtained copies of relevant extracts from Mr Morrison's prison and medical records. She conducted telephone interviews with two members of staff on 11 and 16 April 2018.

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

14. We informed HM Coroner for Birmingham of the investigation who gave us the cause of death. We have sent the Coroner a copy of this report.

15. We were unable to contact Mr Morrison's family to inform them of the investigation. They had no contact with him.

16. The investigation has assessed the main issues involved in Mr Morrison'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.

17. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS did not find any factual inaccuracies.

Background Information

HMP Birmingham

18. HMP Birmingham is a local prison, and holds up to 1,450 men. It is managed by G4S Care and Justice Services. Birmingham and Solihull Mental Health Foundation Trust provides 24-hour health services at the prison and sub-contract Birmingham Community Healthcare NHS Trust to provide primary care services, including a 15-bed healthcare unit.

HM Inspectorate of Prisons

19. The most recent inspection of HMP Birmingham was in February 2017. Inspectors noted that the interactions between healthcare staff and prisoners were good. They found that clinical records and care planning were mostly good, and patients were involved in decision making, as evidenced by mental health records (but not always in other documents).

Independent Monitoring Board

20. 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 June 2017, the IMB reported that waiting times to see a GP were comparable to those in the community.

Previous deaths at HMP Birmingham

21. Mr Morrison was the twentieth prisoner to die at HMP Birmingham since January 2015, and the fifteenth to die from natural causes. We have previously made recommendations about the unjustified use of restraints.

Findings

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

22. Mr Morrison was serving a 10-year sentence and had been at HMP Birmingham since 16 October 2014. He had complained about gum problems since 16 February 2015.

23. A dental surgeon referred him urgently to the maxillofacial department at the hospital under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks.

24. Mr Morrison attended the maxillofacial clinic on 25 February for tests. On 29 April 2015, a maxillofacial consultant told Mr Morrison that he had a squamous cell carcinoma of the tongue (tongue cancer) and needed surgery, which took place on 19 May.

25. During a check up appointment on 24 March 2016, specialists at the hospital found that the tongue cancer had returned.

26. The clinical reviewer was satisfied that prison clinicians appropriately referred Mr Morrison for tests in line with National Institute for Health and Care Excellence (NICE) guidelines and there was no delay in diagnosis. He was well informed and supported throughout the investigations by both prison and hospital staff.

Mr Morrison's clinical care

27. After his diagnosis, the specialists at the hospital supervised and managed Mr Morrison's care. Prison healthcare staff offered him support and reviewed him frequently.

28. Mr Morrison said that he did not want to be resuscitated if his heart or breathing stopped, and he signed an order to that effect.

29. On 11 July 2016, Mr Morrison had major surgery. He had a tracheostomy (a tube inserted through his windpipe to help him breathe), a glossectomy (removal of the tongue) and reconstruction using his forearm flap and removal of his lymph nodes in his neck.

30. On 27 July, Mr Morrison returned to Birmingham. Records show that healthcare staff at Birmingham looked after him well. They ensured that he received liquid medication, soft mashable food and dressings to his forearm.

31. On 1 August, a locum prison GP noted that the graft area was infected and that Mr Morrison had trouble swallowing. He prescribed antibiotics and nutritional drinks to supplement Mr Morrison's nutrition.

32. On 1 August, specialists at the hospital recommended ointments and dressings for his wound.

33. From 30 August until 23 September, Mr Morrison attended hospital daily for radiotherapy.

2017

34. Slowly, Mr Morrison's wound healed and he had a period of good health until 3 January 2017, when he complained of swelling on the right side of his neck. He attended frequent check ups in the maxillofacial clinic but no recurrence of his cancer was found until his appointment on 18 October when the maxillofacial consultant told him that he had cancer in his neck and lung and referred him to the oncology department.

35. On 3 November, a prison GP reviewed Mr Morrison and noted that his neck was still swollen, he had some skin lesions and had lost weight, which might indicate that the cancer had spread. He asked the prison healthcare administration team to chase the oncology department for an appointment. They did so and, on 15 November, Mr Morrison attended an oncology appointment at hospital, where he was told that he would receive palliative treatment of chemotherapy and radiotherapy. This began on 7 December.

2018

36. On 8 January, Mr Morrison had a blood transfusion. When he returned to Birmingham, he told a nurse that he had back pain. She administered oramorph to relieve his pain. Mr Morrison received frequent pain relief when he asked for it, and staff noted that he was eating and drinking well.

37. On 23 January, a locum prison GP noted that Mr Morrison was deteriorating. He had a discussion with staff at a hospice, who arranged to visit Mr Morrison later that day. At the meeting they discussed family issues, pain medication and his wishes for his end of life care. Hospice staff told a nurse that if Mr Morrison needed to use a pain relief syringe driver, prison staff would need to arrange his transfer to the hospice as the prison healthcare team did not have facilities for this.

38. Mr Morrison attended a hospital appointment on 8 February. A nurse administered his medication before his appointment and noted that he was "fragile". He was handcuffed for this journey.

39. On 9 February, a nurse noted that there was swelling on Mr Morrison's neck and that he had another scheduled hospital appointment. She checked his observations, which were within the normal range, and said that when he returned from hospital he should be reviewed. However, Mr Morrison was admitted to hospital due to his face swelling. Hospital staff discharged him on 11 February with further pain relief.

40. Later that morning, a nurse went to Mr Morrison's cell as he was unable to walk to the medication hatch to collect his medication. She noted that he was very pale, restless and confused. She checked his observations: his blood pressure was low (82/54), his pulse was high (154 beats per minute) and his respiratory state was high (22 breaths per minute). She called for an ambulance. Paramedics arrived and took Mr Morrison to hospital. Hospital staff admitted him for observations and administered intravenous fluids and antibiotics.

41. Mr Morrison's condition declined in hospital and, on 15 February, he was referred for palliative care at a hospice, where he was admitted on 22 February for terminal care and symptom control. Mr Morrison died on 3 March.

42. The Coroner established that the cause of death was metastatic squamous cell carcinoma (tongue cancer).

43. We agree with the clinical reviewer that after his diagnosis, Mr Morrison received appropriate and timely referrals to hospital when needed and there was close liaison with palliative specialists. Mr Morrison was appropriately involved in decisions about his care and there was a close working relationship with the hospice. Staff at the prison treated Mr Morrison with compassion and dignity during his illness. We are satisfied that the care Mr Morrison received was equivalent to that which he could have expected to receive in the community.

Mr Morrison's location

44. On 22 February, staff arranged for Mr Morrison to transfer to the hospice for end of life care in line with his wishes.

45. We are satisfied that the prison appropriately took into account Mr Morrison's preferences about his location during his illness and that he had suitable accommodation to meet his needs.

Restraints, security and escorts

46. 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.

47. On 8 February, Mr Morrison needed to have chemotherapy in hospital. For the journey, the escort risk assessment for him noted that his escape potential, risk to the public and staff and overall risk of escape were medium. His risk of external assistance, hostage taking and to hospital staff were low. The hospital appointment co-ordinator completed the medical section of the risk assessment form. She noted that there were no medical objections to the use of restraints, his medical condition did not restrict his ability to escape unassisted and his treatment was unlikely to need the restraints to be removed. She ticked a box on the form to indicate that Mr Morrison was not a wheelchair user or registered as paraplegic or tetraplegic. She said that there were no medical conditions "likely to influence the escort". She said that she was not made aware of any medical objections to restraints being used and had not added any details to the form as "there was no further info to include".

48. A prison manager authorised officers to restrain Mr Morrison with single handcuffs for the journey. He said that he based his decision on the information from the escort risk assessment form.

49. On 11 February, the escort risk assessment for Mr Morrison noted that this was an emergency escort to hospital. The risk assessment concluded that Mr Morrison's escape potential, risk to the public and staff and overall risk of escape were medium. His likelihood of assistance, hostage taking and risk to hospital staff were low. The medical section of the risk assessment was not completed. A nurse noted in Mr Morrison's medical record when paramedics arrived to take him to hospital that he left the prison hospital ward in a wheelchair and she escorted him to the ambulance.

50. A prison manager authorised officers to restrain Mr Morrison with double handcuffs for the ambulance journey. (This meant that Mr Morrison's hands were handcuffed in front of him, with one wrist attached to a prison officer by an additional set of handcuffs.) He could not explain why a higher level of restraints was used than three days earlier.

51. We are concerned that a prison manager decided that it was appropriate to use double handcuffs on Mr Morrison. Double cuffing is usually required for moving Category A or Category B prisoners in good health. Mr Morrison was a Category C prisoner who used a walking stick and a wheelchair.

52. The prison's approach to the use of restraints was inconsistent and, we believe, misdirected. The appointments were within three days of each other. The Prison Service has a responsibility to protect the public but security must be balanced with humanity, and measures must be proportionate to a prisoner's individual circumstances. It is difficult to see how the assessments could conclude that a frail, very unwell man with very limited mobility had the ability to escape unaided from two escort officers. Staff failed to consider the actual risk of escape, as the High Court judgment requires.

53. We have previously made recommendations about the use of restraints and, and it is disappointing that, despite the prison's assurances that actions have been taken to improve the process, we have to repeat the following recommendation:

The Director and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, and that assessments fully take into account the health of the prisoner and are based on the actual risk the prisoner presents at the time.

Liaison with Mr Morrison's family

54. After Mr Morrison's diagnosis, the prison appointed an officer as the family liaison officer. She spoke to Mr Morrison's family on 12 January and found that his family had severed all contact with him.

55. The prison arranged and paid for Mr Morrison's funeral in line with national instructions. His funeral was held on 9 May 2018.

Compassionate release

56. Prisoners can be released from custody before their sentence has expired on compassionate grounds for medical reasons. This is usually when they have a terminal illness and a life expectancy of less than three months.

57. On 9 January 2018, prison staff considered the possibility of releasing Mr Morrison on compassionate grounds. His offender manager visited Mr Morrison in hospital. She noted that she could not support his application as he did not have a suitable release address and there were no evident support mechanisms to release him safely and appropriately. We are satisfied that the prison appropriately considered compassionate release as a potential option.

58. Release on temporary licence can be granted for precisely defined and specific activities which cannot be provided in the prison. A risk assessment is completed to ensure that the prisoner's temporary release does not present unacceptable risks. The Director of the prison is able to grant the temporary licence and will decide whether the prisoner is to be accompanied by staff.

59. When Mr Morrison was in hospital and the hospice, the Director of the prison granted him release on temporary licence, one officer accompanied him. We are satisfied that this was appropriate.

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