Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Kenneth Hutchinson a prisoner at HMP Birmingham on 5 August 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 we oversee can improve their work in the future.

Mr Kenneth Hutchinson died of lung cancer on 5 August 2018 at HMP Birmingham. His cancer had spread to the brain. He was 71 years old. I offer my condolences to his family and friends.

I agree with the clinical reviewer that Mr Hutchinson received a high standard of care and support at Birmingham, equivalent to that which he could have expected to receive in the community. Despite his reluctance to go to hospital, prison healthcare staff referred Mr Hutchinson to hospital specialists when his health declined, facilitated subsequent hospital visits and provided compassionate end-of-life care.

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

Sue McAllister CB
Prisons and Probation Ombudsman **February 2019**

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Summary

Events

1. On 5 November 2015, Mr Kenneth Hutchinson was sentenced to 18 years in prison for sexual offences and sent to HMP Birmingham. He had a complex medical history of heart disease, high blood pressure, cervical spondylosis (a condition where the bones and tissues in the neck deteriorate) a slipped disc (which reduced his mobility), mini strokes (which had left him epileptic) and chronic obstructive pulmonary disease (COPD, a lung disease). Due to his complex medical conditions, healthcare staff saw him frequently.

2. On 14 March 2017, Mr Hutchinson slipped twice in his cell during the night. A prison GP examined him and arranged an emergency ambulance to take him to hospital.

3. While Mr Hutchinson was in hospital undergoing tests, he was diagnosed with lung cancer, which had spread to the brain. He also had bleeding on the brain.

4. Mr Hutchinson spent long periods of time in hospital as hospital staff stabilised his condition. On 26 March 2018, he was admitted to the prison's inpatient unit.

5. On 19 July, Mr Hutchinson became unwell and had seizures in his cell. Nurses arranged for paramedics to take him to hospital. Two officers escorted and did not restrain him.

6. Mr Hutchinson's condition deteriorated in hospital, and on 27 July, he moved to a hospice, where he died on 5 August.

Findings

7. The clinical reviewer considered that staff at Birmingham provided a high standard of care to Mr Hutchinson. He said Mr Hutchinson's care was equivalent to that which he could have expected to receive in the community. We agree and make no recommendations.

The Investigation Process

8. 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.

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

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

11. We informed HM Coroner for Birmingham and Solihull of the investigation. There was no post-mortem report but she informed us of Mr Hutchinson's cause of death. We have sent the Coroner a copy of this report.

12. The investigator wrote to Mr Hutchinson's daughter to explain the investigation and to ask if she had any matters that she wanted us to consider. She did not respond to our letter.

13. We have assessed the main issues involved in Mr Hutchinson's care, including his diagnosis and treatment, whether appropriate palliative care was provided, his location, security arrangements for hospital escorts, the prison's liaison with his family, and whether compassionate release was considered.

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

Background Information

HMP Birmingham

15. HMP Birmingham is a local prison which holds up to 1,450 prisoners. It was managed by G4S Care and Justice Services at the time of Mr Hutchinson's death but is now managed by HM Prison and Probation Service (HMPPS). Birmingham and Solihull Mental Health Foundation Trust continue to provide 24-hour healthcare 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

16. HM Inspectorate of Prisons (HMIP) carried out an unannounced inspection of Birmingham during the week of 30 July 2018, and found the prison to be fundamentally unsafe. On 16 August 2018, HMIP invoked the Urgent Notification (UN) process which committed the Secretary of State to respond publicly to the concerns raised within 28 calendar days. Key findings from the inspection about health provision included that:

- Health services had improved slightly. The working relationships between the health providers, commissioners and the prison were good.
- Healthcare staff recruitment and retention had improved. Staffing levels were generally adequate and there was sufficient cover overnight and at weekends.
- Clinical records were generally completed to a good standard, although care plans were not consistently used, particularly for patients with long-term conditions.
- There were courteous and caring interactions between healthcare staff and patients.
- Appointment waiting times were generally short, although access to some clinics for prisoners with reduced mobility was hampered by an intermittently broken lift.
- The environment in the healthcare centre was generally good, although many wing-based clinical rooms were dirty and failed to meet infection control standards.
- Living conditions in the prison were as poor as seen anywhere in recent years and staff and managers appeared to have become accustomed to the decay in standards.

17. Following the Inspection and the Urgent Notification, HMPPS took over the management of Birmingham.

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

Previous deaths at HMP Birmingham

19. Mr Hutchinson was the thirty-ninth prisoner to die at Birmingham since January 2015, including nineteen prisoners who died from natural causes. There are no similarities between Mr Hutchinson's death and the previous deaths.

Findings

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

20. On 5 November 2015, Mr Kenneth Hutchinson was sentenced to 18 years in prison for sexual offences and sent to HMP Birmingham. He had a complex medical history of heart disease, high blood pressure, cervical spondylosis (a condition where the bones and tissues in the neck deteriorate) a slipped disc (which reduced his mobility), mini strokes (which left him with epilepsy) and COPD. He was a smoker who declined help to stop smoking. Due to his complex medical conditions, healthcare staff saw him frequently.

2016

21. On 14 April 2016, a long-term care specialist was appointed and she completed an assessment. She noted Mr Hutchinson used a Zimmer frame for short distances, and a wheelchair for longer distances. She referred him to prison GPs, occupational health practitioners, physiotherapists, chiropodists and social services to review Mr Hutchinson regularly.

22. On 12 December, Mr Hutchinson told a nurse that he felt unwell. She checked his observations and noted that he was coughing up green sputum, his pulse was in the normal range at 83 beats per minute (bpm) and his oxygen saturation levels were low at 84%. She consulted a locum prison GP who said that Mr Hutchinson needed to go to hospital. However, Mr Hutchinson discharged himself from hospital and when he returned to Birmingham, he told a nurse that he did not like hospital and did not want any examinations. The nurse explained the possible consequences. The next day, a nurse reviewed Mr Hutchinson, noted his breathing was laboured and saw him smoking. He checked his observations. His oxygen saturation was low at 78%, his pulse was within the normal range. Mr Hutchinson refused to consider treatment so he scheduled another review later that day.

23. A nurse completed the review. He noted that Mr Hutchinson had breathing difficulties, his lips were turning blue, he denied having discomfort and continued to smoke. Mr Hutchinson refused to go to hospital but agreed to go to the healthcare unit, where another nurse noted that Mr Hutchinson's COPD had got worse, he was using his nebuliser and his oxygen saturation level was low at 74%. Mr Hutchinson continued to refuse to go to hospital and she noted that he had the mental capacity. She asked the locum prison GP to review him.

24. The locum prison GP completed his review and noted that Mr Hutchinson was increasingly breathless, an increased cough with yellow sputum but continued to refuse any medical intervention. He told him that he was at risk of death if his health deteriorated. He said that Mr Hutchinson understood and said that "everyone has to die sometime". He diagnosed Mr Hutchinson with infective exacerbation of COPD and advised that Mr Hutchinson should continue with his course of antibiotics. He said that nurses should continue to monitor his oxygen saturation levels. During the night, nurses carefully monitored Mr Hutchinson

and tried to encourage him to go to hospital. However, Mr Hutchinson was adamant that he was not going.

25. Mr Hutchinson continuously refused to go to hospital. On 14 December, a nurse called an ambulance because of his fluctuating saturation levels (between 75-80%). However, Mr Hutchinson still refused to go to hospital and told the ambulance crew that he was not going. He signed their disclaimer to that effect. Later that day, Mr Hutchinson said that he did not want to be resuscitated if his heart or breathing stopped, and signed an order to that effect. He told a nurse that he did not care if he died in prison or a hospice.

26. On 15 December, a prison GP noted that Mr Hutchinson's condition had deteriorated. He diagnosed septicaemia and arranged for an ambulance to take him to hospital. Two officers escorted him and he was not restrained.

27. In hospital, Mr Hutchinson was on a ventilator and his oxygen saturation levels were maintained. Once these stabilised, he returned to Birmingham on 21 December but he was unhappy that he returned to the healthcare wing as he wanted to return to a normal wing so that he could smoke. The prison GP completed his review and noted that Mr Hutchinson was better but was at risk of relapsing. He said that Mr Hutchinson would remain in the healthcare unit as the hospital was investigating the possibility of lung cancer. On 31 December, Mr Hutchinson discharged himself from healthcare and moved to a normal location. Mental health nurses assessed that he had full mental capacity.

2017

28. On 14 March 2017, Mr Hutchinson slipped twice in his cell during the night and his cellmate alerted staff. The prison GP examined him and noted that he had vomited and had a reduced level of consciousness. He requested an emergency ambulance.

29. While Mr Hutchinson was in hospital undergoing tests, he was diagnosed with lung cancer which had spread to his brain. He also had bleeding on his brain.

30. We are satisfied that prison GPs appropriately referred Mr Hutchinson to hospital specialists to investigate his symptoms.

Mr Hutchinson's clinical care

31. After his diagnosis, Mr Hutchinson remained in hospital until 26 June when his condition stabilised and he returned to Birmingham. Mr Hutchinson told a nurse he did not want to be resuscitated if his heart or breathing stopped. He signed an order to that effect.

32. A nurse discussed proposed care plans with Mr Hutchinson who received pain relief and other palliative medication. Records indicated that nurses looked after him well.

33. On 13 October, a nurse was completing a check on Mr Hutchinson and found that he was having a seizure. She checked his observations. His blood pressure was high at 159/117, and his heart rate was fast at 154 beats per minute (bpm).

She called an ambulance. In hospital, Mr Hutchinson received antibiotics for a chest infection.

34. Mr Hutchinson returned to Birmingham on 19 October and was admitted to the healthcare unit. Healthcare staff created care plans for end-of-life care and staff completed regular assessments to ensure that Mr Hutchinson remained comfortable. They ensured that he had appropriate food, and records noted that he was frail and his door was left unlocked so that nurses had unrestricted access to provide care.

35. During October, a prison GP noted that Mr Hutchinson appeared to be deteriorating. Arrangements began for his transfer to the Sheldon Unit at the hospital in Birmingham for palliative care. He was transferred on 27 October. One officer escorted him. Prison healthcare staff frequently visited him at the Sheldon Unit to obtain updates about his condition.

2018

36. Mr Hutchinson returned to Birmingham on 26 March 2018, and his condition stabilised.

37. On 26 April, a nurse confirmed that Mr Hutchinson was on the palliative care register, a referral had been made to the Specialist Palliative Care Service in the community and she had discussed his wishes with him. Mr Hutchinson told her that he did not want any religious involvement and had no funeral arrangement preferences.

38. On 12 July, the nurse applied to refer Mr Hutchinson to the Hospice in Birmingham. However, the next day, Mr Hutchinson was coughing up blood. A nurse called an emergency ambulance to take him to hospital.

39. On 14 July, a nurse noted that at 4.00pm, Mr Hutchinson and two prison staff had arrived at the prison in a taxi. She noted that there had been no information from the hospital and she said that Mr Hutchinson was slumped in a wheelchair, with dried faeces on his incontinence pad, a pressure sore and bruising on his left buttock. She made Mr Hutchinson comfortable and safe in the prison's inpatient unit. Senior healthcare staff raised the manner of Mr Hutchinson's discharge from hospital and his pressure sore as a safeguarding issue to Birmingham City Council and Birmingham Community Healthcare and made a formal complaint to Sandwell Hospital.

40. On 19 July, a nurse checked on Mr Hutchinson and found that he was having a seizure. She arranged for an emergency ambulance to take him to hospital.

41. In the hospital, Sandwell Palliative Care Services provided end-of-life care until Mr Hutchinson was transferred to the hospice on 27 July. His condition deteriorated and he died in the hospice at 10.20am on 5 August.

42. The Coroner noted that Mr Hutchinson had died from lung cancer, with brain metastases (spread of cancer to the brain).

43. We agree with the clinical reviewer that Mr Hutchinson's care and treatment in prison was equivalent to that which he could have expected to receive in the

community. Healthcare staff liaised effectively with the hospitals and hospice about his care, staff looked after Mr Hutchinson well and maintained his dignity throughout his decline. We are satisfied that he received excellent support and treatment from prison healthcare staff throughout his illness.

Mr Hutchinson's location

44. After his diagnosis, Mr Hutchinson told staff that he wanted to remain on his wing. He spent time between his wing and the prison's inpatient unit until 26 June 2017 when staff arranged for him to be admitted to the healthcare unit to manage his pain and for frequent nurse observations. We are satisfied that Mr Hutchinson's location was appropriate throughout his illness.

Restraints, security and escorts

45. When prisoners 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.

46. Mr Hutchinson had numerous hospital appointments. He was a Category B prisoner and a full and extensive risk assessment was conducted for his hospital appointments, with individual aspects of Mr Hutchinson's risk being noted in the assessments. Mr Hutchinson's risk assessments considered his history of sex offending, and he was assessed as being a medium risk to the public and hospital staff. Healthcare staff did not raise any objections to the use of restraints. Two officers escorted Mr Hutchinson and taking into account his medical condition, he was not restrained. We are satisfied that the prison appropriately considered the use of restraints when Mr Hutchinson went to hospital.

Liaison with Mr Hutchinson's family

47. On 3 June 2016, Mr Hutchinson told a nurse that his next of kin was his elderly mother.

48. When Mr Hutchinson was admitted to hospital on 14 March 2017, a nurse rang his mother to let her know. His mother told the nurse that she was unable to visit but wanted to be updated by telephone. After several months of updates, his mother said that Mr Hutchinson's daughter would be next of kin.

49. On 1 November, the prison appointed a prison intelligence analyst as the family liaison officer when Mr Hutchinson was again in hospital. The prison FLO telephoned Mr Hutchinson's daughter to tell her that he was seriously ill in hospital. She asked for telephone updates.

50. After Mr Hutchinson moved to the hospice, the prison FLO telephoned his daughter to update her. She told him that she would not visit her father and asked to be telephoned after he died. As agreed, when Mr Hutchinson died, the FLO contacted his daughter to break the news to her.

51. Mr Hutchinson's funeral was held on 14 November 2018. The prison arranged and contributed to the costs of the funeral in line with national instructions.

Early compassionate release and release on temporary licence

52. 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.

53. On 1 August 2018, prison staff considered the possibility of releasing Mr Hutchinson on compassionate grounds. However, Mr Hutchinson did not have a suitable release address and there were no evident support mechanisms to release him safely and appropriately. Staff therefore considered that compassionate release was not appropriate. We are satisfied that the prison appropriately considered the suitability of early compassionate release.

54. Release on temporary licence (ROTL) 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 on whether the prisoner is to be accompanied by staff.

55. When Mr Hutchinson was in hospital and the hospice, the Director of the prison granted him release on temporary licence, and one member of staff accompanied him. Mr Hutchinson completed more than 20 periods on ROTL as he received palliative care for his cancer. We are satisfied that this was appropriate.

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