Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Brian Ball a prisoner at HMP Birmingham on 17 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.

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 Brian Ball died of sepsis and rectal cancer on 17 December 2017 while a prisoner at HMP Birmingham. He was 67 years old. I offer my condolences to Mr Ball's family and friends.

Mr Ball received a good standard of care at Birmingham, equivalent to that which he could have expected to receive in the community. I am pleased that the prison released Mr Ball on temporary licence to hospital while early release on compassionate grounds was being considered.

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**

Contents

Summary

Events

1. On 9 July 2015, Mr Brian Ball was convicted of historic sex offences and was sent to HMP Birmingham.

2. During his initial healthcare induction, Mr Ball told a nurse that he had been diagnosed with rectal cancer that year, and was waiting for treatment.

3. On 24 July, Mr Ball was transferred to HMP Stafford but was returned to Birmingham on 7 August as he was waiting for treatment at hospital.

4. Mr Ball has an operation on 12 August. His chemotherapy started on 7 September, and radiotherapy on 8 September.

5. In November, a CT scan showed that the treatment had not been fully effective, and Mr Ball underwent further surgery to remove part of his rectum in January 2016.

6. In April 2016, Mr Ball had a further course of chemotherapy, which he completed on 17 October.

7. A CT scan taken on 28 November showed a possible recurrence of cancer, which was confirmed by a further scan taken on 9 January.

8. Mr Ball decided to undergo further treatment, and on 7 June 2017, he had a further operation to try to remove the tumour, and a stoma was put in place. Mr Ball was diagnosed with sepsis, and remained in hospital until 20 June when he was returned to HMP Birmingham

9. Over the following months, Mr Ball was cared for in the inpatient unit at HMP Birmingham. On 26 October, he had a CT scan, which showed that the cancer had returned, and he was given a terminal prognosis of no more than one year.

10. On 12 November, Mr Ball was admitted to hospital with an infection. He remained there until 11 December when he was returned to the healthcare unit at HMP Birmingham.

11. On 15 December, a prison nurse checked on Mr Ball and noted that he had been vomiting, and that he looked frail. A prison GP reviewed him that day but he had stopped vomiting, and a plan was put into place to continue monitoring him. Mr Ball raised no further concerns throughout the night.

12. The next day, Mr Ball started vomiting again, and his temperature was raised. He was admitted to hospital and diagnosed with sepsis. On 17 December, Mr Ball died in hospital, with his family by his side.

Findings

13. We are satisfied that Mr Ball's care at Birmingham was equivalent to that which he could have expected to receive in the community. Mr Ball arrived at prison with a diagnosis of cancer, and healthcare staff liaised well with hospitals to continue his treatment. His care was considerate, well managed and addressed both his physical and psychological needs.

14. We found that HMP Birmingham appropriately removed Mr Ball's restraints when he was undergoing treatment, and reduced the level of restraint used as his health declined.

15. When Mr Ball was given a terminal diagnosis, the prison correctly appointed a family liaison officer, who maintained contact with Mr Ball's mother. Prison staff started the process for compassionate release but as Mr Ball was not given a prognosis of three months or less before he died, it was reasonable that the process was not completed. The prison appropriately released Mr Ball on temporary licence for his last hospital admissions.

16. We are, however, concerned that the prison transferred Mr Ball to HMP Stafford in July 2015 while he was waiting for cancer treatment at hospital in Birmingham.

Recommendation

- The Head of Healthcare should ensure that there is effective information sharing between the healthcare team and prison staff so that prisoners undergoing clinical care for a serious condition are not transferred inappropriately.

The Investigation Process

17. 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.

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

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

20. We informed HM Coroner for Birmingham and Solihull of the investigation who provided us with the cause of death. We have sent the Coroner a copy of this report.

21. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS did not find any factual inaccuracies and their action plan is annexed to this report.

22. Our investigation assessed Mr Ball'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.

Background Information

HMP Birmingham

23. 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

24. The most recent inspection of HMP Birmingham was in February 2017. Inspectors noted that the health interactions were good. 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

25. 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

26. Mr Ball was the ninth prisoner to die from natural causes at Birmingham since January 2016. We found no similarities between these cases and Mr Ball's death.

Findings

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

27. On 9 July 2015, Mr Brian Ball was convicted of historic sex offences and was sent to HMP Birmingham.

28. During his initial health screen with a nurse, Mr Ball confirmed that, following a colonoscopy that year, he had been diagnosed with cancer of the upper rectum which had already spread through the bowel wall.

Mr Ball's clinical care

29. When Mr Ball arrived at Birmingham, he was waiting to have a temporary ileostomy at a local hospital. (Ileostomies are formed to stop digestive waste passing through the full length of the small intestine or colon.) This would enable him to have chemotherapy and radiotherapy to the pelvis to attempt to shrink and remove the tumour.

30. On 24 July, Mr Ball was transferred to HMP Stafford. Healthcare staff at Stafford immediately recognised that he was waiting for cancer treatment at hospital in Birmingham. On 7 August, he was returned to HMP Birmingham.

31. On 12 August, Mr Ball attended hospital, where he had an ileostomy and a stoma (an artificial opening that allows faeces or urine either from the intestine or from the urinary tract to pass) fitted. On 15 August, a nurse visited Mr Ball and was told how to manage his stoma. She recorded in his medical records that he would receive daily radiotherapy for five and a half weeks, and that he also would have to take chemotherapy tablets as this made the radiotherapy more effective. She noted that Mr Ball knew that his cancer was locally advanced, and that it might reduce his life expectancy but at this stage, he was not terminally ill and aggressive treatment was planned.

32. On 17 August, Mr Ball returned to the prison, where he saw a visiting GP. He recorded that Mr Ball was doing well, that he could care for himself and was managing his pain with paracetamol.

33. On 7 September, Mr Ball started his oral chemotherapy, and the course of radiotherapy started the next day.

34. On 13 November, Mr Ball was taken to hospital, unrestrained but escorted by two officers, for a CT scan of his abdomen. The scan showed a partial response to the radiotherapy and chemotherapy, and a plan was put in place for Mr Ball to have a lower anterior resection (removal of an area of the rectum and/or the bowel) with ileostomy formation.

35. The surgery took place on 12 January 2016. A nurse contacted the hospital after Mr Ball's surgery, and was told that he would likely stay in hospital for 7-10 days to check that the ileostomy was working, and that Mr Ball was able to change the bag himself.

36. Mr Ball developed a wound infection after the operation, and remained in hospital until 2 February when he was returned to the prison's inpatient unit.

37. On 4 February, Mr Ball had his first appointment with a prison psychologist, to help address the psychological issues of coming to terms with his diagnosis. These sessions continued until April.

38. On 18 April, Mr Ball attended an outpatient appointment at hospital. A nurse recorded in his medical records that he no longer needed his abdomen dressing and that he could now start his next round of chemotherapy.

39. On 20 April, Mr Ball started a course of chemotherapy, during which he had side effects, which made him physically unwell. His medical records note that he remained positive about the outcome of his treatment, which finished on 17 October.

40. On 28 November, Mr Ball attended an outpatient appointment for a CT scan to check how the treatment had impacted on his cancer. On 12 December, the prison healthcare department received an appointment letter for that day to see the consultant oncologist to discuss the CT results.

41. On 13 December, a prison GP spoke to an oncologist at hospital who confirmed that the CT scan had shown a possible recurrence of the cancer.

42. On 15 December, a prison GP saw Mr Ball to discuss the CT results. He said that the results were not conclusive and that it would need to be investigated further. He noted in Mr Ball's medical records that he took the information well.

43. On 9 January 2017, Mr Ball had a further CT scan, which showed that the cancer had returned. There is evidence in Mr Ball's medical record that he was supported throughout this time.

44. On 17 February, Mr Ball returned to hospital and had a colonoscopy and biopsy. A nurse recorded in his care plan that he was in good spirits, and was aware that he had two treatment options; palliative chemotherapy or further surgery.

45. Mr Ball chose to have further surgery, and in April, a healthcare administrator, contacted the hospital to find out when Mr Ball's appointment was. It was confirmed that no appointment had been organised, and it was subsequently arranged that he should be admitted for surgery on 4 June.

46. On 7 June, Mr Ball had a resection of the rectal tumour, removal of his sacrum, a colostomy and urostomy (a bag is designed to stick onto the abdomen, where it collects urine from the stoma). While Mr Ball was an inpatient, his wound became infected and he was diagnosed with sepsis. This was treated with intravenous antibiotics. Healthcare staff at the prison maintained regular contact with hospital and Mr Ball was discharged on 30 June.

47. On 3 July, a clinical team manager and a prison GP met Mr Ball as he had had a temperature throughout the day, and was generally unwell. It was agreed that Mr Ball should be taken to hospital, where he was admitted and diagnosed with a urinary tract infection. When he returned on 5 July he was admitted to the prison's inpatient unit. Care plans were put into place to address his bowel function, the urostomy, stoma care and pain management. These were regularly updated by all the nurses involved in his care.

48. There were no significant entries in Mr Ball's medical records until 31 October, when a prison GP noted that a scan taken on 26 October had confirmed that there was a recurrence of the tumour, and that it was inoperable.

49. A nurse met Mr Ball the next day. They discussed that Mr Ball had not received a prognosis but there were no more treatment options. Mr Ball outlined his funeral wishes. She noted that it was not appropriate to discuss A Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) order at this appointment, as the consultant had not asked for this to be done.

50. On 6 November, a nurse discussed Mr Ball's prognosis with his consultant oncologist. He advised she that patients who have had this treatment would have a 50 percent chance of living longer than 12 months.

51. On 11 November, a nurse met Mr Ball and recorded that he had vomited that morning. She checked his physical observations, and took his oxygen saturation level, which was at 99% (a healthy reading is between 95-100%). She arranged for Mr Ball to see a prison GP on 13 November.

52. The following evening, Mr Ball pressed his cell bell and a nurse attended. She noted in his medical records that he looked flushed and generally unwell. His feet were cold and cyanosed (blue in colour), his right hand was swollen, and he had a high temperature. She asked the control room to call an ambulance, and Mr Ball was taken as an emergency patient to hospital.

53. Mr Ball remained in hospital until 11 December, during which time he was treated with intravenous antibiotics, and had his swellings drained. He was visited by prison healthcare staff during this time.

54. On 13 December, a nurse saw Mr Ball in his cell. Mr Ball complained of back pain, and was unable to move. She contacted a prison GP for stronger pain relief, and advised him to try and leave his cell, if possible.

55. A visiting GP, reviewed Mr Ball's pain relief that same day. During this appointment, he noted that they had started to discuss a DNACPR order, and Mr Ball confirmed that he wanted to be resuscitated.

56. On 15 December, at 6.25am, a nurse checked on Mr Ball, and recorded that he had been vomiting. She met him later that morning and recorded that Mr Ball had declined his morning medication but accepted an antiemetic (a drug that is effective against vomiting and nausea). She recorded that he looked weak and frail, that if his vomiting continued, a prison GP would have to review

57. At 11.07am, a prison GP reviewed Mr Ball, and by 12.16pm, he stopped vomiting. Healthcare staff continued to monitor Mr Ball throughout the day and there were no further instances of vomiting.

58. A nurse visited Mr Ball at 6.49am on 16 December, and recorded that he had no new concerns.

59. A nurse went to Mr Ball's cell at 10.26am, and recorded that he had vomited extensively. She offered him an anti-sickness injection, which he declined. She took his observations, and recorded his respiratory rate as abnormal, his oxygen

saturation levels were normal, and his temperature was high. She discussed his observations with a prison GP, and it was agreed that he should be taken to hospital in an emergency ambulance.

60. Mr Ball was admitted to hospital, where he was treated for sepsis. Mr Ball's health declined, and on 17 December at 3.30pm, Mr Ball died, with his family by his side.

61. The clinical reviewer concluded that Mr Ball received a standard of care at HMP Birmingham equivalent to that which he could have expected to receive in the community. He was given the standard combination of radiotherapy, chemotherapy and surgery but the cancer was aggressive and required further treatment. She concluded that he was taken to hospital regularly, and was admitted to hospital promptly when he developed infections.

Mr Ball's location

62. On 24 July 2015, just over two weeks after Mr Ball arrived at HMP Birmingham, he was transferred to HMP Stafford as part of his sentence plan. During his initial health screen at HMP Stafford, a nurse noted that Mr Ball was awaiting treatment at hospital in Birmingham. As he was due to have treatment, HMP Stafford returned Mr Ball to HMP Birmingham on 5 August.

63. During chemotherapy and radiotherapy, Mr Ball was located in the inpatient unit. On 19 October, he asked a nurse whether he could be assessed as medically fit for discharge as he wanted to return to standard location. She booked him an appointment to discuss this with the prison GP the next day. On 29 October, the nurse applied for Mr Ball to be moved to J wing. On 11 November, Mr Ball was moved to J wing. Another nurse asked for a single cell for Mr Ball's dignity as he had a colostomy bag.

64. On 26 May 2017, Mr Ball was moved back to the inpatient unit after a period of consistent vomiting, and remained there when he was not in hospital.

65. Mr Ball's location at HMP Birmingham was appropriate, and this was reflected in the decision to admit him to the inpatient unit during treatment and when his health needed closer monitoring. However, we are concerned that the prison considered him suitable for transfer soon after he arrived at HMP Birmingham, and healthcare staff did not consider the option of allowing him to remain at Birmingham for medical reasons. We acknowledge that the move to HMP Stafford did not affect the care that Mr Ball ultimately received, as he was returned to HMP Birmingham soon after his arrival there. However, in other instances, this might not be the case. We make the following recommendation:

The Head of Healthcare should ensure that there is effective information sharing between the healthcare team and prison staff so that prisoners undergoing clinical care for a serious condition are not transferred inappropriately.

Restraints, security and escorts

66. 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.

67. Mr Ball's escort risk assessments for 2017 indicated that his overall risk was consistently assessed as low and he was restrained with a single cuff. There is evidence that Mr Ball was not restrained when undergoing treatment. When Mr Ball's health declined, there was a decrease in the restraints used and from September 2017 onwards, Mr Ball was restrained by an escort chain only. 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.

68. Mr Ball was not restrained for hospital admissions from November 2017 onwards as he was granted release on temporary licence.

Liaison with Mr Ball's family

69. On 30 October, after Mr Ball was told that his cancer had returned and that it was inoperable, a healthcare manager was appointed as Mr Ball's family liaison officer (FLO). She discussed Mr Ball's diagnosis with him and he consented to her being his family liaison officer. He asked her not to contact his family as he wanted to tell them himself. Mr Ball had capacity to make this decision.

70. On 24 November, with Mr Ball's consent, the FLO contacted his sister. She confirmed that the family were allowed to visit Mr Ball as many times as they wanted, in line with the hospital's visiting policy.

71. The FLO remained in contact with Mr Ball's sister, and on 17 December, after his death, she contacted her to offer further support.

72. On 28 December, the FLO visited Mr Ball's sister.

73. The prison contributed to the cost of Mr Ball's funeral in line with national policy

Compassionate release

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

75. On 31 October 2017, the FLO discussed with Mr Ball whether early release on compassionate grounds was possible and whether releasing him on temporary licence was an option. Release on temporary licence can be granted for precisely defined and specific activities which cannot be provided in prison. A risk assessment is completed to ensure that the prisoner's temporary release does not present unacceptable risks. The prison granted Mr ball release on temporary licence when he was admitted to hospital on 14 November, and for subsequent hospital admissions.

76. On 3 November a nurse contacted the hospital to find out Mr Ball's prognosis. Mr Ball did not receive a prognosis before he died. Mr Ball died of complications

from his cancer and treatment, and it was reasonable that the process for compassionate release had not been completed at the time of his death.

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