

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Kenneth Edge a prisoner at HMP Liverpool on 8 September 2018

A report by the Prisons and Probation Ombudsman

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 Kenneth Edge died on 8 September 2018, of bone and soft tissue cancer, while a prisoner at HMP Liverpool. He was 72 years old. I offer my condolences to Mr Edge's family and friends.

Mr Edge had been diagnosed with cancer a few months before he arrived at Liverpool and received ongoing treatment, including radiotherapy and chemotherapy and appointments with hospital specialists.

I am satisfied that the healthcare Mr Edge received at Liverpool was equivalent to that which he could have expected to receive in the community.

However, I am concerned that the decision to use restraints on Mr Edge when he was taken to hospital between May and July 2018 was clearly unjustified, and did not take account of his age, mobility and serious ill-health. It is disappointing to have to raise this matter with the prison again.

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

January 2019

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Summary

Events

1. On 22 November 2017, Mr Kenneth Edge was sentenced to 13 years imprisonment and was sent to HMP Liverpool.
2. Mr Edge had suffered from poor health since July 2017, when he was diagnosed with spindle cell sarcoma, a fast-growing bone and soft tissue cancer.
3. He received ongoing treatment for his cancer and other conditions, and attended hospital for radiotherapy.
4. In April, Mr Edge was told that the cancer had spread to his lungs and that it could be slowed using chemotherapy but it could not be cured. Mr Edge opted to have chemotherapy. On the same day, Mr Edge found out that his daughter had died. He was referred to the mental health team for support.
5. He had three sessions of chemotherapy, but on 12 June, he told healthcare staff that he did not want any more.
6. His health gradually deteriorated and on 3 September, he was transferred to St Joseph's hospice. He died there at 7.15am, on 8 September.
7. The coroner gave the cause of death as carcinomatosis (cancer at multiple sites) due to leiomyosarcoma (a type of soft tissue cancer) of the right leg, with heart disease as an underlying factor.

Findings

8. We agree with the clinical reviewer that Mr Edge's cancer and other health concerns were appropriately managed and that his care including his diagnosis, was equivalent to that which he could have expected to receive in the community.
9. We are, however, concerned that the risk assessments undertaken by the prison when Mr Edge went to hospital from April to July 2018 were not informed by medical information. We do not consider it was appropriate or proportionate to use restraints, given that Mr Edge was a 72 year old man in poor health and with poor mobility.

Recommendations

- The Governor 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 Governor should revise the prison's escort risk assessment form to ensure that it requires:
 - healthcare staff to say whether the prisoner's current state of health has an impact on his mobility; and

- prison staff to show that they have taken this information into account in assessing the prisoner's current level of risk.
- The Governor should ensure that prisoners' documentation is stored securely and can be retrieved, as necessary.

The Investigation Process

10. The investigator issued notices to staff and prisoners at HMP Liverpool informing them of the investigation and asking anyone with relevant information to contact her. No one responded.
11. The investigator obtained copies of relevant extracts from Mr Edge's prison and medical records.
12. NHS England commissioned a clinical reviewer to review Mr Edge's clinical care at the prison.
13. We informed HM Coroner for Merseyside of the investigation. The coroner gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.
14. The investigator wrote to Mr Edge's next of kin, to explain the investigation and to ask if she had any matters she wanted the investigation to consider. She did not raise any issues.
15. The investigation has assessed the main issues involved in Mr Edge'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 Liverpool

16. HMP Liverpool is a local prison serving the courts of Merseyside. It holds up to 1,400 adult men. Lancashire Care NHS Foundation Trust provides health care services at the prison. There is a 24-hour inpatient unit.
17. On 1 June 2018, Liverpool was placed in special measures by HM Prison and Probation Service (HMPPS), meaning HMPPS considers that it needs additional, specialist support to improve performance.

HM Inspectorate of Prisons (HMIP)

18. The most recent inspection of HMP Liverpool was in September 2017. Inspectors reported an abject failure of the prison to offer a safe, decent and purposeful environment. The inspection team could not recall having seen worse living conditions, which they described as squalid. Many cells were not fit to be used. Some had emergency cell bells that were not working but were still occupied, presenting a danger to prisoners. There were hundreds of unrepaired broken windows, with jagged glass left in the frames. Many toilets were filthy, blocked or leaking. There were infestations of cockroaches in some areas, broken furniture, graffiti, damp and dirt.
19. While primary health care had improved, inspectors found that staff shortages had had a negative impact on all aspects of health services, especially mental health care. Inpatients had a very poor regime and were offered little therapeutic activity. The integrated mental health and substance misuse team did not have capacity to meet the needs of a complex population.
20. Inspectors found that there did not appear to be effective leadership or sufficiently rigorous oversight to drive the prison forward in a meaningful way.

Independent Monitoring Board

21. 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 December 2017, the IMB reported that many cells were in poor condition, with no electrics, running water and blocked toilets. The number of elderly and frail prisoners were increasing across the whole estate, Liverpool struggled to cope with older prisoners with significant health care needs and staff were not trained in social care. Also, the Victorian design of the prison did not lend itself to those with mobility issues.

Previous deaths at HMP Liverpool

22. Mr Edge was the third prisoner to die at Liverpool from natural causes in the last two years.
23. In our report into the death of a man in November 2017, we recommended that the prison 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 prison accepted the recommendation and in May 2018, the Head of Safer Custody emailed operational staff to remind them of the legal position on the use of restraints. It is, therefore, disappointing that we have to make the same recommendation in this report.

Findings

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

24. On 22 November 2017, Mr Kenneth Edge was sentenced to 13 years imprisonment for sexual offences and was sent to HMP Liverpool.
25. Mr Edge had suffered from poor health since July, when he was diagnosed with spindle cell sarcoma, a rare, fast-growing cancer which develops in bone and/or soft tissue.
26. Mr Edge had also had a heart attack in 2009, which resulted in surgery to widen the arteries blocking blood supply to his heart, and had osteoarthritis, diagnosed in 2013, high cholesterol, diagnosed in 2009, and high blood pressure.
27. On 22 November, a nurse completed Mr Edge's initial health screening at the prison and noted that he had recently been diagnosed with spindle cell sarcoma for which he needed ongoing care, and that he was depressed about this. The nurse referred Mr Edge to a prison GP to discuss his ongoing treatment.
28. Over the following months, Mr Edge attended follow up appointments with hospital specialists and had radiotherapy to kill the cancer cells. The skin on his thigh around the radiotherapy site became inflamed and this was managed daily by the nurses at the prison with oversight by the Specialist Sarcoma Nurse at Liverpool Royal Hospital. Appropriate care plans and wound assessments were completed.
29. On 1 March 2018, as part of his ongoing cancer treatment, Mr Edge had a chest X-ray at Liverpool hospital. The results identified that Mr Edge had multiple shadows on both lungs. An urgent CT scan was completed on 23 March.
30. On 26 March, Mr Edge complained of chest pain. A prison GP examined him and concluded that this could be due to muscle strain, or possible spread of his existing cancer to his lungs. The GP noted that Mr Edge had recently had a CT scan, which would show if the cancer had spread. He prescribed strong painkillers in the meantime to manage Mr Edge's pain.
31. On 13 April, Mr Edge attended hospital. He was told that the cancer had spread to his lungs, and that it could be slowed using chemotherapy, but it could not be cured. Mr Edge decided to have the chemotherapy.
32. On the same day, Mr Edge was told that his daughter had died from a brain tumour.
33. When he returned to the prison, a chaplain visited him to offer support, and healthcare staff asked him if he had any thoughts of self-harm or suicide, which he said he did not. Mr Edge was asked if he wanted to spend the night in the care suite (a cell in the healthcare unit that has extra facilities and is therefore more comfortable), but he declined. He was referred to the mental health team for support and he had an appointment with the crisis/short term intervention team on 15 April.

34. We are satisfied that healthcare staff appropriately reviewed Mr Edge's symptoms, made timely referrals and discussed his diagnosis with him.

Mr Edge's clinical care

35. On 17 April, Mr Edge was moved to the prison's inpatient unit before the start of his palliative chemotherapy. Mr Edge was due to have six sessions of chemotherapy and he had his first treatment on 24 April. He was escorted by two officers and was restrained using an escort chain.
36. On 2 May, Mr Edge told a nurse that he had the shakes, felt cold and had diarrhoea. The nurse called a Macmillan nurse (a specialist palliative care nurse) who told her that this was likely to be because of the chemotherapy and that Mr Edge would need to be taken to hospital that day for blood tests. Later the same day, Mr Edge was taken to hospital and had his blood tests. He was escorted by two officers and restrained using an escort chain. He was discharged from hospital and was transferred back to the prison the following day.
37. On 3 May, Mr Edge said he did not want anyone to resuscitate him if his heart or breathing stopped and signed a Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) order (which means that, in the event of cardiac or respiratory arrest, no attempt at resuscitation will be made).
38. On 15 May, Mr Edge went to hospital for his second chemotherapy treatment. He was escorted by two officers and was restrained using an escort chain.
39. On 5 June, Mr Edge went to hospital for his third chemotherapy treatment. The prison was unable to provide the escort paperwork for this visit.
40. On 12 June, Mr Edge told a counsellor and a psychotherapist that he wanted to stop the palliative chemotherapy. He said that he wanted to have a good standard of life for the time that he had left to live, rather than feeling unwell due to the chemotherapy.
41. On 14 June, a prison GP assessed Mr Edge's capacity to refuse treatment and he decided that Mr Edge could fully explain his reasons for stopping the chemotherapy and that he had the capacity to make an informed decision.
42. On 19 June, a multidisciplinary meeting took place to discuss Mr Edge's decision to stop his treatment. Mr Edge and his cousin (his next of kin) attended, as well as representatives from healthcare, Talking Therapies, Safer Custody and Mr Edge's probation officer. The meeting discussed future care planning, including organising a social care assessment and a risk assessment for a compassionate release application.
43. On 27 July, Mr Edge was admitted to hospital for treatment for a chest infection. He was not restrained due to his age and ill health. He was discharged from hospital and transferred back to the prison on 2 August. He was not restrained on any further escorted visits to hospital.
44. On 11 August, a prison GP reviewed Mr Edge. Mr Edge said that he had radiating pain in his left arm. An ECG was completed and the results were abnormal. An ambulance was called and Mr Edge was taken to hospital. The

hospital identified that he had fluid on his lungs. Mr Edge stayed in hospital until 21 August. His pain was treated using a controlled syringe driver (a mechanical device that delivers medications via a small tube under the skin).

45. On 21 August 2018, a multidisciplinary team meeting took place to discuss Mr Edge's care. The meeting confirmed that Mr Edge was now at the end of life care stage and that a compassionate release application was underway, but it was likely that Mr Edge would be transferred to a hospice when the time was right.
46. On 23 August, an 'open-door order' was put in place and Mr Edge's cell door was not locked to allow quick and easy access by healthcare staff.
47. The prison submitted an application for compassionate release on 24 August. This was rejected by HMPPS on 29 August.
48. On 31 August, funding was agreed for a place at St Joseph's Hospice. Over the next few days, prison healthcare staff met Mr Edge's needs and he was given full assistance with his personal care, and his diet and medications were monitored. On 3 September, Mr Edge was transferred to St Joseph's Hospice.
49. On 5 September, bedwatch staff at the hospice told a nurse at the prison that Mr Edge was in the last days of his life.
50. At 7.15am, on 8 September, it was confirmed that Mr Edge had died.
51. We share the clinical reviewer's view that the care Mr Edge received at Liverpool was of a good standard and equivalent to that which he could have expected to receive in the community.

Mr Edge's location

52. Mr Edge was initially located on a residential wing where suitable arrangements were made to care for him (For example, a couch was placed in the medication room of the wing to provide a suitable space for staff to change Mr Edge's dressings). Nurses visited him regularly to ensure his healthcare needs were met.
53. As Mr Edge's condition deteriorated, it became clear that he needed 24-hour nursing care. He was moved to the inpatient unit at the prison on 17 April 2018.
54. Mr Edge was transferred to St Joseph's hospice five days before he died.
55. We are satisfied that Mr Edge was appropriately located throughout his illness.

Restraints, security and escorts

56. 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

57. After Mr Edge's diagnosis in April 2018, he went to hospital five times (April, May, June and July), four times for planned visits and once as an emergency, and he was escorted by two officers on each occasion. On the first three occasions, Mr Edge was restrained using either a single cuff or an escort chain. The prison could not find the escort risk assessment for the fourth visit. On the fifth visit, he was restrained using an escort chain.
58. On the first risk assessment in April, although there were no recorded medical objections to restraints being used in the first escort risk assessment in April, it was recorded that Mr Edge needed walking aids for short distances and a wheelchair for longer distances. Mr Edge was a category C prisoner, and was assessed as a medium risk to the public and a medium risk of escape. The assessment recorded that there was no intelligence to suggest that he was an escape risk, but it listed the potential triggers to escape - that Mr Edge had terminal cancer, his daughter had recently died and he was serving a 12 year sentence.
59. On 2 May, when Mr Edge was taken to hospital for urgent blood tests, the medical section of the risk assessment was not completed and Mr Edge was assessed as a low risk of harm and a low risk of escape. Initially, the assessment concluded that Mr Edge should be restrained using a single cuff, but this was then downgraded to an escort chain because Mr Edge used a walking stick.
60. On 15 May, Mr Edge was taken to hospital for his second course of chemotherapy. There were no medical objections recorded in the escort risk assessment and no indication that Mr Edge had any mobility issues. This assessment concluded that Mr Edge was assessed as a high risk of harm to the public, although there was no information to explain why his risk had increased. Mr Edge was assessed as being a medium risk of escape, with the same triggers listed, and it was recorded that he 'does have the ability to escape'. No information was recorded to explain why staff had come to this conclusion.
61. On 10 July, Mr Edge was taken to hospital again. Two officers escorted him and he was restrained using an escort chain. By this time, Mr Edge had very poor mobility and he used a wheelchair. There were no objections recorded in the medical section of the escort risk assessment, but it said that Mr Edge was a wheelchair user. Again, Mr Edge was assessed as a high risk of harm to the public, and a medium risk of escape, with a focus on his motivations to escape rather than means to do so.
62. We are concerned that restraints were used on these occasions. We do not consider that this was proportionate to the risks he posed, over and above the control already available through the two escorting officers, given that he was 72, in poor health and he had poor mobility. It seems that the judgements on the risk assessments and the decision to use restraints were influenced by Mr Edge's offences, rather than consideration of his risk at the time and the impact of his

poor health on his risk. We are also concerned that the prison could not provide us with a copy of the escort risk assessments for June.

63. We recognise that Mr Edge was not restrained on his final two hospital visits in July 2018, or when he was taken to the hospice in September, because of his age and ill health. We are satisfied that the prison's risk assessment on these occasions fully considered the medical implications for use of restraints.
64. It is the Governor's responsibility to ensure that the risk assessment process is managed properly, and all prison managers need to show a clear justification for any use of restraints in carrying out the risk assessment. Healthcare staff also need to understand their role in assessing the impact the prisoner's current state of health has on his mobility. We are concerned that the prison's escort risk assessment form does not make this sufficiently clear.
65. In our report on the death of a prisoner at Liverpool in November 2017, we recommended that the Governor ensure 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.
66. The prison accepted our recommendation and submitted an action plan setting out the steps they would take to implement it. This included ensuring that the full risk assessment considered the risk the prisoner presented at the time, which would determine the strength of the escort and the cuffing arrangements, would be subject to review following any changes of conditions in health, and all prisoners in outside hospital and under guard conditions would be visited on a daily basis by a custodial manager who would determine if any changes were required. In May 2018, the prison's Head of Safer Custody emailed all appropriate operational staff to remind them of the legal position on the use of restraints.
67. It is, therefore, disappointing that inappropriate decisions were made to restrain Mr Edge. We repeat our previous recommendation and make a new one:

The Governor 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 Governor should revise the prison's escort risk assessment form to ensure that it requires:

- **healthcare staff to say whether the prisoner's current state of health has an impact on his mobility; and**
- **prison staff to show that they have taken this information into account in assessing the prisoner's current level of risk.**

The Governor should ensure that prisoners' documentation is stored securely and can be retrieved, as necessary.

Liaison with Mr Edge's family

68. The prison appointed a family liaison officer (FLO) and a deputy FLO shortly after Mr Edge was diagnosed with terminal cancer. Mr Edge named his cousin as his next of kin.
69. In accordance with Mr Edge's wishes, his cousin was involved with his care planning and attended meetings about his care. The FLO notified Mr Edge's cousin when his health deteriorated and he was close to death. Mr Edge's cousin and daughter went to the hospice and spent time with Mr Edge. Good communication continued between the FLO and Mr Edge's family and his cousin was with him when he died.
70. Mr Edge's funeral was held on 20 September. The prison contributed to the funeral costs in line with national policy.

Compassionate release

71. 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.
72. We are satisfied that the prison appropriately considered compassionate release and made an application on Mr Edge's behalf. When this was refused he was transferred to a hospice for his final days.

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