

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Douglas Ferguson a prisoner at HMP High Down on 23 November 2017

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*



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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 Douglas Ferguson died on 23 November 2017 of pneumonia, with prostate cancer as a contributory factor, while a prisoner at HMP High Down. He was 83 years old. We offer our condolences to Mr Ferguson's family and friends.

Mr Ferguson was diagnosed with prostate cancer before arriving at High Down. Healthcare staff managed his condition appropriately and communicated well with secondary services. We are satisfied that Mr Ferguson's care while at High Down was equivalent to that which he could have expected to receive in the community.

We are, though, very concerned to see that a very ill, elderly man with very limited mobility, who posed minimal risk, was restrained when he was taken to hospital. Prison managers should properly address the legal requirements of the risk assessment process when considering the use of restraints.

We have made recommendations to High Down about the use of restraints on eight occasions since January 2013. On each occasion, Highdown accepted our recommendations and committed to act on them. Effective action must now be taken to implement our recommendation and we draw this unsatisfactory state of affairs to the attention of the Prison Group Director as well as the Governor.

We are also concerned that the prison did not make an application for compassionate release on Mr Ferguson's behalf.

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

April 2018

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1. Action plan

Summary

Events

1. On 3 May 2017, Mr Ferguson was sentenced to 4 years imprisonment for sexual offences. He had been in poor health before being sent to prison and had been diagnosed with prostate cancer in November 2015.
2. On 25 September, Mr Ferguson was admitted to Epsom Hospital High Dependency Unit for treatment of septicaemia secondary to a urine infection. He was given intravenous antibiotics. He was discharged from hospital and was transferred back to High Down on 10 October.
3. On 12 October, a prison GP explained to Mr Ferguson that the computerised tomography (CT) scan he had while in hospital identified the cancer had spread to his bones and possibly his bladder. Mr Ferguson had become increasingly frail and bedbound. He told his GP he did not want to be resuscitated if his heart or breathing stopped. The GP implemented a Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) order.
4. On 30 October, Mr Ferguson was moved to St Raphael's Hospice for care. By 8 November, his condition had sufficiently improved for him to be transferred back to High Down.
5. On 22 November, Mr Ferguson was moved back to St Raphael's hospice. His condition continued to deteriorate and he died on 23 November.

Findings

6. We are satisfied that Mr Ferguson's clinical care was equivalent to that which he could have expected to receive in the community. There was evidence of good communication between healthcare staff and secondary services. Mr Ferguson lived in the prison's healthcare unit and was seen frequently by healthcare staff each day. Prison GPs appropriately reviewed him when necessary.
7. Mr Ferguson was not restrained when admitted to the hospice. He was, though, restrained for his hospital admissions and appointments. The risk assessment considered him a 'normal' level of risk. There is no evidence to demonstrate that the risk assessment process took any account of his poor health and limited mobility in justifying the use of restraints.
8. The prison did not make an application for compassionate release. There was a six-week period between Mr Ferguson's condition deteriorating and his death. We consider that the prison would have had sufficient time to obtain relevant information and submit an application for compassionate release.
9. We make the following recommendations.

Recommendations

- The Governor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position and that risk assessments show clear justification for the use of restraints.
- The Prison Group Director, Surrey and Sussex, should assure himself that the Governor takes effective action to address the inappropriate use of restraints at HMP High Down.
- The Governor should ensure that when prisoners are considered as terminally ill, with a short time left to live, the option of compassionate release is fully considered with the patient and documented.

The Investigation Process

10. The investigator, issued notices to staff and prisoners at HMP High Down 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 Ferguson's prison and medical records.
12. NHS England commissioned a clinical reviewer to review Mr Ferguson's clinical care at the prison.
13. We informed HM Coroner for Surrey of the investigation. The coroner informed us of the cause of death. We have sent the coroner a copy of this report.
14. We wrote to Mr Ferguson's next of kin to explain the investigation and to ask if they had any matters they wanted the investigation to consider. They did not respond to our letter.
15. The investigation has assessed the main issues involved in Mr Ferguson'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.
16. 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.

Background Information

HMP High Down

17. HMP High Down is a local prison near Sutton in Surrey, which at the time of Mr Ferguson's death held up to 1,150 men. Central and North West London NHS Foundation Trust provides primary health services and in-reach mental health care at the prison. The healthcare unit has inpatient facilities with 24-hour nursing cover.

HM Inspectorate of Prisons

18. The most recent inspection of High Down was in January 2015. Inspectors reported that health services were good overall. The healthcare team had a rich skills mix. Nurses were always on site and the core team normally covered staffing shortages. A local GP practice provided regular GP clinics. Inspectors observed good practice, but ongoing training, supervision and quality assurance processes were weak. Prisoners over 55 had good access to annual health checks and relevant community screening programmes. Access to mobility and health aids was satisfactory. Prisoners with lifelong conditions were identified effectively and relevant clinics, including a weekly GP-led clinic were provided. Prisoners had prompt access to a range of pharmacy services, which reduced the need for GP appointments, which the inspectorate considered good practice.

Independent Monitoring Board

19. 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 December 2016, the IMB noted that the healthcare partners and prison management met regularly to discuss issues and take forward a Health Improvement Plan. The IMB also noted that under the Social Care Act 2015, Surrey County Council has a duty to provide relevant prisoners with social care interventions. Since August 2016, nine prisoners were receiving support from both the Care Team and Peer workers.

Previous deaths at HMP High Down

20. Mr Ferguson was the sixth prisoner to die of natural causes at High Down since January 2016. We have raised the issue of the unjustified use of restraints on eight previous occasions. On each occasion, the Governor accepted our recommendation and committed to ensuring that this would not happen again.

Findings

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

21. On 8 May 2017, Mr Douglas Ferguson was sentenced to 4 years in prison for sexual offences and was sent to HMP High Down. He had been diagnosed with prostate cancer 18 months before being sent prison.

Mr Ferguson's clinical care

22. During his initial healthscreen on arrival at Highdown, Mr Ferguson told a nurse that he took medication to reduce the size of his prostate and was due to have a review at the hospital in September. He said he tired easily and did not have any strength. He had an irregular fast heartbeat, heart disease, gout, glaucoma, a catheter and used a walking stick.
23. Mr Ferguson saw nursing staff numerous times a day for medication and support. Prison GPs reviewed him weekly. A prison GP prescribed a liquid food supplement to increase his calorie intake.
24. On 18 May, the prison GP discussed implementing 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. All other appropriate treatment and care would continue to be provided). The prison GP said she would give Mr Ferguson time to consider the decision.
25. On 18 June, Mr Ferguson was sent to Epsom General Hospital as an emergency because his catheter bag had filled up with blood. The hospital doctor prescribed an antibiotic for a suspected urine infection and referred him for an urgent urology follow-up appointment. Mr Ferguson was discharged from hospital and was transferred back to High Down later that day.
26. On 13 July, Mr Ferguson attended a follow-up appointment with a Consultant Urological Surgeon at East Surrey Hospital. The consultant arranged an appointment for Mr Ferguson to have an ultrasound scan of his urinary tract and a cystoscopy (a procedure to look inside the bladder using a thin, flexible camera), which took place on 30 August. There is no evidence in the medical record of the results of these tests.
27. On 19 September, Mr Ferguson fell in his cell and suffered a minor injury to his head. He said he felt weak and was taken to East Surrey Accident and Emergency department. Mr Ferguson was transferred back to High Down later that evening. Hospital staff could find no clinical cause for the fall.
28. On 25 September, Mr Ferguson was admitted to Epsom Hospital High Dependency Unit for treatment of septicaemia secondary to a urine infection and was given intravenous antibiotics. Hospital staff noted Mr Ferguson's condition was deteriorating and he needed full assistance with all aspects of his personal care. He was discharged from hospital and was transferred back to High Down on 10 October. The prison had arranged for a hospital bed and air pressure mattress to be put in Mr Ferguson's cell on his return.

29. The prison GP reviewed Mr Ferguson on 12 October. She noted that while he was in hospital, he had a computerised tomography (CT) scan, which showed the cancer had spread to his bones and possibly his bladder. He was due to have a cystoscopy once he was stronger, which was booked for 22 November.
30. Mr Ferguson had become increasingly frail and bedbound. The prison GP discussed his condition with him and told him his health would continue to deteriorate. She would refer Mr Ferguson to the palliative care team at the local hospice and the prison Chaplaincy team for support. During the review, Mr Ferguson said he did not want to be resuscitated if his heart or breathing stopped. The prison GP implemented a DNACPR order.
31. On 13 October, the palliative care nurse specialist visited Mr Ferguson and discussed a move to the local hospice when needed. She told staff that there were no beds available, but if his condition deteriorated, they should let them know. In the meantime, Mr Ferguson would receive the same level of care in healthcare as he would in the hospice.
32. On 14 October, a prison GP, reviewed Mr Ferguson's medication and prescribed liquid medications in anticipation of him not being able to swallow.
33. On 27 October, a specialist nurse from the hospice visited Mr Ferguson for review. Mr Ferguson said he was experiencing some discomfort. The nurse added an opiate based pain relief to his medications.
34. On 30 October, Mr Ferguson was moved to St Raphael's Hospice for on-going care. His condition improved and he was transferred back to High Down on 8 November. Healthcare staff remained in contact with the hospice about Mr Ferguson's condition and for advice on medications and pain relief. Healthcare staff amended his medications accordingly.
35. On 19 November, a nurse noted in Mr Ferguson's medical record that he was frail and lethargic. He was refusing to eat solid food and was struggling to swallow.
36. On 20 November, a palliative medicine consultant, and a specialist Nurse, reviewed Mr Ferguson. They noted it was likely he would develop pneumonia. They spoke to a prison GP, and advised him to reduce Mr Ferguson's pain relief patch as it was making him drowsy and to prescribe anticipatory medications to ensure he was comfortable at all times.
37. On 22 November, a bed became available at St Raphael's hospice. Mr Ferguson was transferred there that afternoon. His condition continued to deteriorate and he died on 23 November.
38. The clinical reviewer concluded that the clinical care Mr Ferguson received while at High Down was equivalent to that which he could have expected to receive in the community. Communication between nursing staff and secondary services was good. The care healthcare staff provided was compassionate and evidence of good practice.

Mr Ferguson's location

39. When Mr Ferguson arrived at HMP High Down, he was located in the healthcare unit because of his medical and physical condition. On 11 October, an open-door policy was approved by security staff to enable healthcare staff access Mr Ferguson's cell at any time, to attend to his care needs.
40. On 30 October, Mr Ferguson was moved to St Raphael's hospice for care until 9 November. Mr Ferguson remained in a cell in the prison healthcare until 22 November, when he was moved back to the hospice for end of life care.
41. We are satisfied that Mr Ferguson's location was appropriate at all times and relevant to his care needs.

Restraints, security and escorts

42. 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 has to be balanced with a responsibility to treat prisoners with humanity. 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.
43. The risk assessments for Mr Ferguson's hospital appointments showed him to be a 'normal' level of risk. Healthcare staff noted that he used a walking stick and needed a wheelchair for long distances but there was no other information about his clinical condition or the impact on his level of risk.
44. On 18 June, a prison manager authorised the use of double cuffs for Mr Ferguson's hospital appointment. For appointments thereafter, prison managers authorised the use of a single cuff and escort chain (a long chain with a handcuff at each end, one of which is attached to the prisoner and the other to an officer).
45. From September onwards, the risk information within the risk assessments remained the same, but medical staff updated the information to show that Mr Ferguson was terminally ill and prison managers appropriately authorised that restraints should not be used. While in the hospice, escort officers wore plain clothes rather than uniform.
46. When Mr Ferguson's condition deteriorated, prison staff appropriately considered Mr Ferguson's clinical condition in the risk assessment and no restraints were used. It is remarkable, though, given Mr Ferguson's age, physical condition and poor state of health, that prison staff ever authorised the use of restraints on an elderly, frail, unwell man for his hospital appointments. On each occasion the 83-year-old cancer sufferer, with very limited mobility, heart disease and glaucoma was also accompanied by prison staff. But the prison clearly considered that he was so risky as to require mechanical restraints, in addition, to manage his risk of escape.

47. 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. The High Court judgement set out very clearly the conditions, which need to be met to justify the use of restraints and it is hard to see that they were appropriately considered.
48. It is the Governor's responsibility to ensure that the process is managed properly, and all prison managers need to show a clear justification for any use of restraints when carrying out the risk assessment. We make the following recommendation:

The Governor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position and that risk assessments show clear justification for the use of restraints.

49. We are troubled that this is the eighth time we have expressed concern about the inappropriate use of restraints on prisoners at High Down. Given the prison's inability to introduce effective measures to address our concerns, we make the following recommendation:

The Prison Group Director, Surrey and Sussex, should assure himself that the Governor takes effective action to address the inappropriate use of restraints at HMP High Down.

Liaison with Mr Ferguson's family

50. The prison appointed a prison manager and a prison officer as the family liaison officers (FLO). On 26 September, the prison manager visited Mr Ferguson in hospital that day and he said he would like her to contact his daughter. The prison manager telephoned Mr Ferguson's daughter to explain he was unwell and met her at the hospital later that day to facilitate a visit.
51. A prison GP telephoned Mr Ferguson's daughter on 12 October. She explained the deterioration in Mr Ferguson's condition and offered the opportunity for his daughter to visit him.
52. The FLO kept Mr Ferguson's daughters up to date when he was moved to the hospice on 30 October and 22 November. As previously agreed, Mr Ferguson's stepdaughter was informed of his death via telephone. She then contacted his daughter. Mr Ferguson's daughter asked to be the main point of contact and the FLO provided on-going support to her.
53. The prison offered a financial contribution towards the cost of the funeral in line with national policy, but it had already been paid for via a funeral plan.
54. We are satisfied that the prison gave a good level of support to Mr Ferguson's family.

Compassionate release

55. Release on compassionate grounds is a means by which prisoners who are seriously ill, usually with a life expectancy of less than three months can be

permanently released from custody before their sentence has expired. A clear medical opinion of life expectancy is required. The criteria for early release for determinate sentenced prisoners are set out in Prison Service Order (PSO) 6000. Among the criteria is that the risk of re-offending is expected to be minimal, further imprisonment would reduce life expectancy, there are adequate arrangements for the prisoner's care and treatment outside prison, and release would benefit the prisoner and his family. An application for early release on compassionate grounds must be submitted to the Public Protection Casework Section (PPCS) of the Her Majesty's Prisons and Probation Service (HMPPS).

56. On 13 October, a note in the medical record during a multi-disciplinary meeting indicated that compassionate release was not being considered due to 'insufficient time to arrange'. The prison did not make any efforts to complete a compassionate release application for Mr Ferguson.
57. It is concerning that staff at High Down did not attempt to start the compassionate release process, regardless of whether they thought they had sufficient time to submit an application. Staff should have discussed compassionate release with Mr Ferguson as part of his end of life plan. Mr Ferguson died six weeks after the multi-disciplinary meeting. We consider this was sufficient time to complete and submit an application. We make the following recommendation:

The Governor should ensure that when prisoners are considered as terminally ill, with a short time left to live, the option of compassionate release is fully considered with the patient and documented.

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