

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Francis Phelps a resident at Chorlton Approved Premises on 10 June 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*



© Crown copyright 2018

This publication is licensed under the terms of the Open Government Licence v3.0 except where otherwise stated. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3 or write to the Information Policy Team, The National Archives, Kew, London TW9 4DU, or email: psi@nationalarchives.gsi.gov.uk.

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

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 Francis Phelps died on 10 June 2018 from cocaine and psychoactive substance (PS) toxicity at Chorlton Approved Premises (AP). He was 41 years old. I offer my condolences to his family and friends.

Mr Phelps was found dead in his room at the AP after using drugs. He appears to have used PS regularly at the AP since shortly after his arrival in mid-May.

I am concerned that although approved premises test for other drugs, they do not test for PS. I am also concerned that when staff suspected that Mr Phelps had taken PS in the hours before he died, they did not monitor him.

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

June 2019

Contents

Summary	1
The Investigation Process	3
Background Information	4
Key Events	6
Findings.....	10

Summary

Events

1. On 10 August 2017, Mr Francis Phelps was sentenced to two years and eight months in prison for robbery and went to HMP Forest Bank. On 18 May 2018, he was released on licence from Forest Bank to Chorlton Approved Premises.
2. On 29 May, Mr Phelps' roommate told staff at Chorlton that he was smoking psychoactive substances (PS) in their room. Staff searched the room but found no evidence that Mr Phelps was using PS. Mr Phelps took a drug test which tested for various drugs but not for PS. This also showed no evidence of drug misuse.
3. Mr Phelps' roommate told the investigator that at about 8.00pm on 9 June, Mr Phelps started smoking PS in their room. Staff were not aware of this at the time. Mr Phelps' roommate said that Mr Phelps left the room at around 11.30pm with another resident after a conversation about drugs, and later returned.
4. At some time between midnight and 1.00am, a residential support supervisor smelt what she thought was PS being smoked on the floor above Mr Phelps' room. She did not challenge the residents.
5. At 2.00am on 10 June, a probation officer saw Mr Phelps in the kitchen. Mr Phelps asked him for milk and food. The probation officer said that because of his appearance and his body gestures, he thought that Mr Phelps might have taken an illicit substance, probably PS. He took no action and allowed him to return to his room.
6. At 7.30am, Mr Phelps' roommate woke up and saw Mr Phelps on the floor, not breathing. He went to the office and told staff that he thought that his roommate was dead.
7. The three members of staff on duty went to Mr Phelps' room and saw him lying on the floor, with his head under the bed. When they turned him over, they identified the presence of rigor mortis.
8. A post-mortem examination found that Mr Phelps died of cocaine and synthetic cannabinoid (PS) toxicity.

Findings

Substance misuse

9. It appears that a number of residents, including Mr Phelps, were using PS at Chorlton AP before his death.
10. Chorlton staff were reluctant to challenge residents when they suspected that they were using PS because they could not test for PS. Residents were aware of this.

11. When a member of staff suspected Mr Phelps of taking PS in the early hours of 10 June, he should have arranged for him to be monitored so that he could seek medical advice if Mr Phelps' condition worsened.
12. We are concerned that the National Probation Service has not developed an effective strategy and testing regime to deal with suspected PS use in approved premises.

Recommendations

- The National Probation Service should ensure that when staff suspect that a resident is under the influence of an illicit substance, they monitor him appropriately and seek medical assistance immediately if his condition worsens, in line with the requirements of the AP Manual.
- The National Approved Premises Team should review its strategy to reduce the supply and demand for PS in Approved Premises, including developing mechanisms to test for PS use.

The Investigation Process

13. The investigator issued notices to staff and residents at Chorlton Approved Premises informing them of the investigation and asking anyone with relevant information to contact him. No one responded
14. The investigator visited Chorlton on 28 June. He obtained copies of relevant extracts from Mr Phelps' probation records.
15. The investigator interviewed nine members of staff at Chorlton on 28 and 29 June, and a resident by telephone on 18 July.
16. We informed HM Coroner for Greater Manchester of the investigation. He gave us the results of the post-mortem examination. We have sent the Coroner a copy of this report.
17. The investigator wrote to Mr Phelps' former girlfriend to explain the investigation and to ask if she had any matters she wanted us to consider. She did not respond to our letter.
18. We shared the initial report with the National Probation Service. There were no factual inaccuracies.

Background Information

Chorlton Approved Premises

19. Approved premises (APs) provide an advanced level of residential supervision in the community for offenders who have been released from custody, within a supportive and structured environment. They are staffed 24 hours a day. Residents are required to comply with their licence or bail conditions, curfews, drug and alcohol testing, welfare checks, room searches and the approved premises' rules. Serious breaches of the rules or any licence requirements, or increased concerns about risk of harm to others, will lead to residents being recalled to custody.
20. Chorlton Approved Premises is a four-storey building run by Manchester Probation Service. It has 27 beds, four of which are in double rooms. It accommodates male residents for a 12-week period, which can be extended under exceptional circumstances. All residents at Chorlton are subject to an overnight curfew from 11.00pm to 6.00am.

HM Inspectorate of Probation

21. The last themed inspection of approved premises was in July 2017, and measured how they contributed to public protection, rehabilitation and resettlement. The inspection found that they were exceptionally good at protecting the public. The quality of resettlement and rehabilitation services was, however, mixed. The report did not cover testing residents for PS.

Previous deaths at Chorlton Approved Premises

22. The last death at Chorlton was in September 2010. There were no similarities between this death and Mr Phelps' death.

Psychoactive Substances (PS)

23. Psychoactive substances (formerly known as 'new psychoactive substances' or 'legal highs') are a serious problem. They are difficult to detect and can affect people in a number of ways, including increasing heart rate, raising blood pressure, reducing blood supply to the heart and vomiting. People under the influence of PS can present with marked levels of disinhibition, heightened energy levels, a high tolerance of pain and a potential for violence. Besides emerging evidence of such dangers to physical health, there is potential for precipitating or exacerbating the deterioration of mental health with links to suicide or self-harm.
24. Approved premises test for six controlled drugs (amphetamine, benzodiazepine, cocaine, methamphetamine, methadone, opiates and cannabis) using an oral swab test. They do not test for PS, which requires a urine sample.
25. In a Learning Lessons Bulletin that we published in November 2017, we raised concerns about the implications of PS for the approved premises' estate. We found deficiencies in information sharing about substance misuse by residents of approved premises and in the effectiveness of welfare checks. We identified the need for the National Probation Service to review its drug testing policy in APs

and to consider introducing testing for PS and to give staff better guidance on PS use.

26. Her Majesty's Prison and Probation Service (HMPPS) issued guidance on PS to prisons and approved premises in August 2017 but it did not specify that approved premises should start testing for PS.
27. The National Probation Service accepted our recommendation from a previous investigation in January 2017 that they should review drug testing arrangements in approved premises and take steps to enable staff to identify PS use and advise residents of the dangers of using PS.

Key Events

28. On 10 August 2017, Mr Francis Phelps was sentenced to two years eight months in prison for robbery and went to HMP Forest Bank. On 18 May 2018, he was released on licence from Forest Bank. His licence conditions required him to live at Chorlton Approved Premises. His curfew required him to be at Chorlton between 9.00pm and 9.00am every day.
29. Before his release from prison, Mr Phelps' probation officer, spoke to an offender supervisor at Forest Bank. She told him that Mr Phelps had started to take PS again just before his release. The probation officer said that when he met Mr Phelps, he admitted that he had taken PS in prison.
30. Another probation officer completed Mr Phelps' induction at Chorlton. He signed the Approved Premises Rules to say that he would not bring illicit substances into the premises. She said that Mr Phelps appeared motivated to get through the 12 weeks at Chorlton and wanted to get a job.
31. On 21 May, Mr Phelps' probation officer met Mr Phelps at Chorlton and explained his licence conditions. On 30 May and 7 June, he met Mr Phelps at the probation office, and spoke to him frequently by telephone. Mr Phelps told him that he was substance-free.
32. On 29 May, Mr Phelps' roommate at the AP told another probation officer, that Mr Phelps was smoking PS in their room. Probation staff searched the room and found no evidence of drugs. A residential services worker, tested Mr Phelps for drugs. The results found no evidence of illicit drugs, although PS was not tested for.
33. The roommate told us that he arrived at Chorlton four days before Mr Phelps. He said that Mr Phelps did not take any drugs initially but started using crack cocaine and 'mamba' or 'spice' (types of PS) about five days after he arrived. He said that Mr Phelps took drugs in their shared room and with his friends in other rooms at the AP. The roommate said that he always saw him take drugs with a pipe. He said that the PS made Mr Phelps fall to one side and slur his words. He said that he would be affected for about 30 minutes before he came around but remained drowsy afterwards. He said Mr Phelps told him that he was upset that he had relapsed, and that he wanted to stop taking drugs.
34. His roommate said that he got sick of Mr Phelps' PS use because it was not a nice drug to be around. He said that he told staff at Chorlton and told his own offender manager that Mr Phelps was taking drugs. (There is no evidence that the roommate's offender manager told staff at Chorlton of his concerns.) He said that there was a drug culture at Chorlton and that residents took drugs in their rooms and in the garden by the smoking shed.

Events of 9 and 10 June

35. The roommate said that Mr Phelps started smoking PS in their room at about 8.00pm on 9 June. He said that Mr Phelps was now taking a lot of PS and that night, he saw him smoke from his pipe at least eight times. He said that the substance was in a tissue and was green and looked like "ground-up weed".

36. On 9 June, the night staff at Chorlton were a probation officer, a residential support supervisor and a residential support worker. Each resident has a room key and staff have a master key for each room. Staff can go into a room at any time to make checks if there is an operational need.
37. At 11.00pm, the residential support worker checked the garden for residents, completed a curfew check to make sure that all the residents were in the building and locked the front and back doors. All three-night staff conducted hourly checks by walking through the corridors and communal areas of the building.
38. At about 11.30pm, the roommate who was in bed sleeping, said he heard someone knock at the door of the room he shared with Mr Phelps and ask Mr Phelps to test some drugs that they had just bought, and Mr Phelps left the room. He did not know if Mr Phelps took these drugs because he went back to sleep. He said that Mr Phelps returned to the room and carried on smoking drugs until the early morning.
39. The residential support supervisor said that when she conducted her hourly check at 12.00pm or 1.00am, she could smell what she thought was PS in a room on the first floor, but she said that this was normal. She said that her practice was to question the resident suspected of using PS, but the resident would deny it, knowing that there was no test for PS. Mr Phelps' room was in the basement.
40. At about 2.00am on 10 June, the probation officer saw Mr Phelps in the kitchen. He thought Mr Phelps had come down from an upper floor. Mr Phelps asked him for milk and food. He told him that he was not allowed to have food, other than some bread for toast. He declined but had some milk. He said that because of his appearance and his gestures, he thought that Mr Phelps might have taken an illicit substance, probably PS. He also said that he knew that people liked to drink milk after using heroin and PS as they believed it was a kind of antidote. He did not know where Mr Phelps had come from, although he had the impression that he had not come from the basement, or whether he went back to his room. He took no further action.
41. The probation officer said that he heard later that Mr Phelps had smoked cannabis in another resident's room. (He did not say who told him.) He said that if they thought that a resident was in another resident's room, then they could open the door and return them to their own room. He said that they did not record every time that a resident was in another resident's room unless it happened frequently.
42. The roommate said that at about 2.30 to 3.00am, he woke up and heard Mr Phelps make a 'weird noise' like a scream, a moan and a groan. He went back to sleep.
43. The roommate said that he woke up at about 7.30am and saw Mr Phelps on the floor, with the bed throw over his head. He thought that he had fallen asleep on the floor but he became concerned because Mr Phelps was normally a heavy breather when he was asleep. He realised when he put his face near to his head, that Mr Phelps was not breathing. He saw a smoking pipe on the floor next to Mr

Phelps. He went straight to the office and told the staff that he thought that Mr Phelps was dead.

44. The residential support supervisor said that she took the emergency bag and went to Mr Phelps' room. She knocked on the door, went in and saw Mr Phelps lying face down, with his head under the bed. She called out to him and tried to shake him. She said that his body felt tight and stiff. She said that she knew then that he was dead, even though she did not see his face. She went out of the room because she could not get a mobile telephone signal. She told the two other night staff that Mr Phelps was dead and that she was going to telephone for an ambulance.
45. The probation officer said that he followed residential support supervisor and the residential support supervisor to Mr Phelps' room. He said that he saw Mr Phelps lying on the floor, with his head under the middle of the bed and a sheet over his face. He felt his neck for a pulse but did not find one. He said that Mr Phelps was not completely cold. He lifted the bed up and unwrapped the sheet from his face. He saw that Mr Phelps was lying almost in the recovery position, with his face to one side, wearing the same clothes that he had been wearing earlier in the kitchen. He turned him over and saw that his arm was stiff and pointed up in the air, indicating the presence of rigor mortis. He said that he saw that there was blood coming from Mr Phelps' mouth.
46. The residential support worker saw Mr Phelps lying on the floor, with his head down and under the bed. He said that Mr Phelps' arms were stiff and there was nothing they could do for him.
47. The residential support supervisor said that she went back to the office and removed Mr Phelps' file and telephoned the ambulance. The operator told her to take the defibrillator to Mr Phelps' room which she did, but when she got there she told the operator that Mr Phelps' arms were stiff so they did not administer CPR or use the defibrillator.
48. When the police arrived, a detective inspector found a small 'crack pipe' next to Mr Phelps' body which he said had recently been used.

Contact with Mr Phelps' family

49. At 1.30pm on 10 June, in line with National Probation Service's instructions, a police constable went to Mr Phelps' former girlfriend's home and told her that Mr Phelps had died.
50. At 1.30pm on 11 June, Mr Phelps's probation officer telephoned Mr Phelps' former girlfriend and offered his condolences.
51. At 4.10pm, a member of staff telephoned Mr Phelps' former girlfriend and offered her condolences and support. She told her that she was the family liaison officer (FLO).
52. On 15 June, Mr Phelps' former girlfriend went to Chorlton, met the manager of the AP, and went to Mr Phelps' room. She asked her why some people in prison and in the community, were aware of Mr Phelps' death before she was told. The manager told her that the residents have access to mobile telephones. Although

staff told them not to tell anyone about the death, they could not stop residents using their phones.

53. Mr Phelps' funeral took place on 10 July. The National Probation Service contributed to the cost in line with national policy.

Support for residents and staff

54. After Mr Phelps' death, the on-call manager debriefed the staff to ensure they had the opportunity to discuss any issues arising, and to offer support. The AP manager offered staff involved support and counselling.
55. The probation officer said that the roommate appeared in shock after Mr Phelps' death. The residential support supervisor spoke to him and offered support. Because the roommate was distressed, staff took him to his girlfriend's house and arranged for him to be moved to Ascot House Approved Premises.

Post-mortem report

56. A post-mortem examination found that Mr Phelps died of cocaine and synthetic cannabinoid (PS) toxicity. The PS was identified as 5F-ADB.

Findings

Substance misuse

Testing for PS use

57. A number of people we spoke to told us that several Chorlton residents were using PS at the time of Mr Phelps' death. The roommate said there was a drug culture at the AP. A probation services officer said there was a really bad PS problem in the AP at the time. The AP manager said that the AP had waves of PS use, where four or five residents used PS. The residential support supervisor said that it was "normal" to smell PS being smoked and the probation officer said that it was obvious at the time that some residents were using PS.
58. The Approved Premises Manual says that residents should be tested for drugs and alcohol if they have a history of substance misuse or if staff reasonably suspect that they have taken a substance. However, approved premises do not currently test for PS.
59. On 29 May, when staff were told that Mr Phelps was using drugs in his room, they reacted appropriately by promptly searching his room and testing him for drugs, neither of which showed evidence of substance misuse. We note, however, that he was not tested for PS use.
60. The probation services officer said that it would be better if staff could test for PS because residents knew that staff could not do anything to stop them using PS without an effective test in place. The residential support supervisor told us that, although she did challenge suspected PS use, there was little point in doing so because residents knew that there was no test for PS. We note that although the residential support supervisor smelt PS use on the night of 9/10 June and probation officer suspected Mr Phelps of having used PS, neither of them challenged it at the time.
61. We are concerned that, in the absence of PS testing, staff at Chorlton were reluctant to challenge residents when they suspected them of using PS.

Monitoring residents suspected of using drugs

62. The Approved Premises Manual states that if staff are unable to find out what substance a resident has taken by asking him, they should monitor him, and seek medical advice immediately if he appears unwell.
63. The AP manager said that if a resident was found under the influence of a substance, staff should monitor them and, if necessary, bring them to the lounge overnight, where they would be monitored by CCTV. She said that the ambulance service was overrun by calls about PS misuse and therefore expected staff to monitor a resident rather than calling for an ambulance.
64. When the probation officer saw Mr Phelps in the kitchen at about 2.00am, he thought that he had taken an illicit substance, probably PS, because of his appearance and gestures. He considered that Mr Phelps was recovering because he was talking coherently and interacting with him. However, we consider that he should have asked him whether he had used an illicit substance

and if so, what he had taken. He should then have arranged for Mr Phelps to be monitored in line with the requirements of the AP Manual. Staff would have then been able to obtain medical assistance when Mr Phelps' condition worsened. It is possible that the outcome might have been different for Mr Phelps if he had been monitored appropriately. We make the following recommendation:

The National Probation Service should ensure that when staff suspect that a resident is under the influence of an illicit substance, they monitor him appropriately and seek medical assistance immediately if his condition worsens in line with the requirements of the AP Manual.

65. Our Learning Lessons Bulletin on substance misuse in approved premises, published in November 2017, discusses the challenges in managing the risks posed by PS in APs. It recommended that the National Probation Service should revise the Manual to provide up-to-date guidance on managing PS use, and that it should review its drug testing policy and consider introducing testing for PS.
66. The Head of the National Approved Premises Team, has told us that the following actions have been taken since the publication of our Bulletin:
- An approved premises PS toolkit/handbook, and associated training have been developed.
 - The National Probation Service (NPS) have agreed to the introduction of Naloxone (an emergency antidote for overdoses caused by heroin and other opiates/opioids) to APs and an implementation programme is being over seen by the AP Substance Misuse Sub Group.
 - A National AP Safe Working Practice Document is being rolled out nationally by division. This includes sections on PS.
67. We commend these initiatives. However, we remain of the view that more needs to be done and we repeat our recommendation:

The National Approved Premises Team should review its strategy to reduce the supply and demand for PS in Approved Premises, including developing mechanisms to test for PS use.

**Prisons &
Probation**

Ombudsman
Independent Investigations