Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Reginald Doughty a prisoner at HMP Birmingham on 5 August 2016

A report by the Prisons and Probation Ombudsman
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Our Vision

To carry out independent investigations to make custody and community supervision safer and fairer.

Our Values

We are:

Impartial: *we do not take sides*
Respectful: *we are considerate and courteous*
Inclusive: *we value diversity*
Dedicated: *we are determined and focused*
Fair: *we are honest and act with integrity*

The Prisons and Probation Ombudsman aims to make a significant contribution to safer, fairer custody and community supervision. One of the most important ways in which we work towards that aim is by carrying out **independent** investigations into deaths, due to any cause, of prisoners, young people in detention, residents of approved premises and detainees in immigration centres.

My office carries out investigations to understand what happened and identify how the organisations whose actions we oversee can improve their work in the future.

Mr Albert Doughty died in a hospice on 5 August 2016, of chronic obstructive pulmonary disease while a prisoner at HMP Birmingham. He was 75 years old. I offer my condolences to Mr Doughty's family and friends.

I am satisfied that Mr Doughty received a good standard of care at Birmingham. In particular, healthcare staff managed his chronic conditions well and treated him with care and respect. This care was equivalent to that he could have expected to receive in the community. Although Mr Doughty was not restrained in the hospice where he died, I am not satisfied that all previous decisions on the use of restraints were adequately justified.

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

Nigel Newcomen CBE
Prisons and Probation Ombudsman **March 2017**

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Summary

Events

1. On 29 June 2015, Mr Reginald Doughty was sentenced to 20 years in prison. He was sent to HMP Birmingham the same day.

2. Mr Doughty suffered from chronic obstructive pulmonary disease (COPD), asthma, angina and an abdominal hernia. He also suffered from reduced mobility. He used an inhaler and oral steroids to ease the symptoms of COPD and took medication for his other conditions.

3. On 4 November, a doctor sent Mr Doughty to hospital when his COPD deteriorated. Officers restrained Mr Doughty by an escort chain. Doctors diagnosed end stage COPD and treated him with oral antibiotics and steroids. He refused long term oxygen therapy, but agreed to use short bursts of oxygen as required. Doctors advised that he should have palliative care and Mr Doughty said he did not want to be resuscitated if his heart or breathing stopped.

4. Mr Doughty returned to Birmingham on 10 November. Nurses drew up care plans to manage Mr Doughty's COPD and his other health conditions. Nurses monitored him every day and updated his careplans as his condition deteriorated. He was transferred to hospital a further two times, and at least once restrained by a single cuff. Healthcare staff made contact with a local hospice and arranged for them to provide Mr Doughty with end of life care when it became necessary.

5. On 1 August 2016, Mr Doughty's condition deteriorated further. He was admitted to the hospice, and he died on 5 August.

Findings

6. The clinical reviewer found that healthcare staff managed Mr Doughty's chronic illnesses in a caring and responsive way and he received a good standard of palliative care. Healthcare staff reviewed Mr Doughty frequently and monitored his chronic conditions well. We are satisfied that Mr Doughty's care was equivalent to that he could have expected to receive in the community.

7. The prison provided two out of three risk assessments for Mr Doughty's escorts outside of prison in July. He was not restrained when he went to the hospice. Before that it is clear a single cuff or escort chain (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) were used. The decisions on the use of restraints were not adequately justified.

Recommendation

- The Governor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position of the use of restraints and that assessments fully take into account the health of a prisoner and are based on the actual risk the prison presents at the time. All decisions should be fully documented.

The Investigation Process

8. The investigator issued notices to staff and prisoners at HMP Birmingham informing them of the investigation and asking anyone with relevant information to contact her. No one responded.

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

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

11. We informed HM Coroner for Birmingham and Solihull District of the investigation who gave us the results of the post-mortem examination. We have sent the coroner a copy of this report.

12. The investigation has assessed the main issues involved in Mr Doughty'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.

13. The initial report was shared with the Prison Service. The Prison Service did not find any factual inaccuracies.

Background Information

HMP Birmingham

14. HMP Birmingham is a large local prison managed by G4S Care and Justice Services. It principally serves the West Midlands courts and holds up to 1,450 remand and sentenced men.

15. Birmingham and Solihull Mental Health Foundation Trust provide 24-hour health services at the prison. Primary care services are subcontracted to Birmingham Community Healthcare NHS Trust.

HM Inspectorate of Prisons

16. The most recent inspection of HMP Birmingham was in March 2014. Inspectors reported that healthcare provision was generally good. Mental health care support for the relatively high number of prisoners who required it was also good. In addition, there were 24-hour health services and a wide range of well organised clinics. Patients with complex or acute chronic needs had access to a range of services delivered by caring staff.

Independent Monitoring Board

17. 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 2016, the IMB reported that healthcare staff sickness levels had had a negative impact on the department. However, there continued to be a high level of prisoner satisfaction with the service provided by the healthcare department.

Previous deaths at HMP Birmingham

18. Mr Doughty was the fourth of seven prisoners to die from natural causes at Birmingham since January 2015. We have consistently found that the prison provides good palliative care. There are no significant similarities with previous deaths.

Findings

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

19. On 29 June 2015, Mr Reginald Doughty was sentenced to 20 years in prison for sexual offences and sent to HMP Birmingham.

20. Mr Doughty had a history of chronic obstructive pulmonary disease for which he required the use of a nebuliser twice a day (COPD - the name for a collection of lung diseases such as chronic bronchitis and emphysema), asthma, angina (a chest pain caused by a restriction of the blood flow to the heart) and an abdominal hernia. He also suffered from reduced mobility. Healthcare staff implemented care plans for all of his conditions and monitored him regularly.

21. On 4 November 2015, healthcare staff noted that Mr Doughty was very short of breath. A prison GP reviewed him and decided to admit him to hospital by emergency ambulance.

22. While at the hospital, doctors diagnosed end stage COPD. Mr Doughty signed a do not resuscitate form (DNAR-a directive signed by an individual to indicate that they do not wish to be resuscitated in the event that their heart or breathing stops). A palliative care nurse at Birmingham visited Mr Doughty while he was in hospital. She spoke with hospital staff about any adaptations and treatment that Mr Doughty would require when he returned to the prison. She contacted the local hospice to make arrangements for Mr Doughty's future end of life care.

23. Doctors prescribed Mr Doughty amoxicillin and prednisolone (an antibiotic and a steroid, used to fight infection and inflammation) and salbutamol inhalers (used to open the airways). They also advised Mr Doughty to use long term oxygen therapy (a concentrated form of oxygen delivered through nasal tubes used to ease the symptoms of COPD). He declined, but agreed to the use of short bursts of oxygen as required.

24. We are satisfied that doctors promptly referred him to hospital, where they diagnosed end stage COPD at the earliest opportunity.

Mr Doughty's clinical care

25. Following Mr Doughty's discharge from hospital on 10 November, he returned to the inpatient ward within the healthcare department. The palliative care nurse reviewed Mr Doughty when he arrived back at Birmingham. She spoke with him about his refusal of oxygen therapy and explained to him the benefits of accepting the doctor's advice. However, he continued to refuse the treatment. She noted that he had the mental capacity to make that decision, and understood that it may shorten his life expectancy.

26. The following day, a prison GP reviewed Mr Doughty. He noted the hospital's diagnosis of end stage COPD. He also discussed with Mr Doughty his refusal to accept oxygen therapy, again explaining the benefits of the treatment to him. Mr Doughty maintained that he did not want to use long term oxygen, but agreed he would take all other medication and use short bursts of oxygen as required.

27. Healthcare staff were in daily contact with Mr Doughty throughout his time in prison, and monitored his respiratory rate and oxygen saturation (a measurement of the amount of oxygen in the blood). They arranged for a physiotherapist to review Mr Doughty. The physiotherapist supplied him with a walking stick to aid his mobility, a raised toilet seat and a backrest for his chair.

28. Mr Doughty remained in the healthcare department as an inpatient until 5 June 2016. He then moved to a cell in the main prison that was large enough to accommodate the equipment he required. Healthcare staff continued with their daily reviews and regularly reviewed and updated his care plans to reflect the change in his condition. In addition, prison GPs regularly reviewed the DNAR, which remained in place.

29. Mr Doughty went for an eye appointment in hospital on 8 July. On 18 July, a nurse reviewed Mr Doughty. While examining his chest she noted some abnormal noise and asked a prison GP to review him. The GP was concerned that Mr Doughty had developed ascites (a build up of fluid in between the lining of the abdomen) and sent him to hospital. Hospital staff diagnosed him as having fluid on the lungs and a kidney injury. He stayed in hospital as an inpatient overnight and returned to the prison healthcare department the following day.

30. On 29 July, in the early hours of the morning, Mr Doughty collapsed onto the floor after trying to get off the toilet. An officer was assisting him at the time and called a nurse to help move Mr Doughty back onto his bed. However, the nurse noted that Mr Doughty was very short of breath and, although conscious, was not responding to his name. He called for an ambulance. Paramedics gave Mr Doughty concentrated oxygen, after which his condition improved. They decided not to take him to hospital.

31. Later that morning, a nurse reviewed Mr Doughty. She noted his condition had improved. However, she was concerned that as he was not able to get out of bed and would be unable to reach the emergency cell bell should he require assistance. She gave him a personal alarm.

32. The palliative care nurse reviewed Mr Doughty later the same day. Following her review, she contacted the local hospice to update them on Mr Doughty's declining health and to ensure a bed would be available when he required end of life care. She also arranged for Mr Doughty's cell to be left unlocked overnight to give healthcare staff immediate access if necessary.

33. On 31 July, a nurse reviewed Mr Doughty. She noted that he was struggling to breathe and that his oxygen saturation level was at 77% (a normal oxygen saturation level is between 95 and 100%). She administered oxygen therapy and his oxygen saturation level rose to 81%. However, after the oxygen therapy, it immediately fell to 77%. She decided to arrange for paramedics to review Mr Doughty and called for an ambulance. The paramedics were concerned that he had developed a chest infection and took him hospital. Hospital staff completed a chest X-ray but could find no evidence of an infection. They discharged him back to Birmingham the same day.

34. The following morning, a prison GP reviewed Mr Doughty. He noted that Mr Doughty's condition had deteriorated and that he was becoming confused. Later that morning, the palliative care nurse telephoned the local hospice and arranged for Mr Doughty to be admitted that day for end of life care. He arrived at the hospice at 4.10pm accompanied by two prison officers. He was not restrained.

35. Mr Doughty's condition continued to deteriorate. At 3.55am on 5 August, he became unresponsive. He died at 5.45am.

36. The post-mortem report indicated that Mr Doughty had died from respiratory failure and end stage COPD.

37. We are satisfied that Mr Doughty was well looked after in prison and received a good standard of end of life care. Healthcare staff created appropriate care plans and monitored him regularly, and involved Mr Doughty in decisions about his care. We consider that Mr Doughty's care was equivalent to that he could have expected to receive in the community.

Mr Doughty's location

38. When Mr Doughty arrived at HMP Birmingham, staff admitted him to the prison's inpatient unit in the healthcare department. He spent the next eleven months there, eventually moving onto the social care wing in the prison, on 20 June 2016. After a brief stay in hospital as an inpatient on 18 July, he returned to the healthcare department on 20 July, where he remained until he was moved to the hospice.

39. On 1 August, when it became clear that Mr Doughty's COPD had reached the end stage and he needed palliative care, prison managers moved him to the hospice, which had the resources and facilities to provide good palliative care. Mr Doughty stayed there until his death on 5 August.

40. Mr Doughty was cared for in an appropriate location throughout his time at Birmingham, both as an inpatient in the healthcare department and in the main prison, and after his move to the hospice when he required end of life care. We are satisfied that Mr Doughty was appropriately located throughout his illness.

Restraints, security and escorts

41. 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.

42. Mr Doughty was not restrained at any time following his admission to the hospice on 1 August. However, it is not clear if he was restrained when he went to

hospital on 31 July. On 8 July, security staff assessed Mr Doughty as a normal risk of harm to others and of escape, and restrained him with an escort chain because 'he requires the use of a wheelchair'. When he went to hospital on 18 July, an escort chain was again used. On this occasion, Mr Doughty was assessed as a low risk overall, and although the risk assessment included input from healthcare staff it did not mention his poor mobility or the use of a wheelchair.

43. There is evidence in Mr Doughty's medical record, that healthcare staff discussed the use of restraints with officers. However, not all the risk assessments were provided for the PPO investigation. On what we have seen, we do not believe the decision was fully justified. They did not always take into account the fact that Mr Doughty was very unwell at the time, and had never been particularly mobile. When that was taken into account, he was still assessed as a 'normal' level of risk, rather than low. We make the following recommendation:

The Governor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position of the use of restraints and that assessments fully take into account the health of a prisoner and are based on the actual risk the prison presents at the time. All decisions should be fully documented.

Liaison with Mr Doughty's next of kin

44. Mr Doughty had no contact with any family or friends. Prison staff asked him on a number of occasions if there was anyone he would like informed of his condition. Each time he told them he had no family or anyone else he would like told.

45. After Mr Doughty was moved to the hospice on 1 August, the prison appointed an officer as a family liaison officer. She spoke to Mr Doughty who requested a friend be told of his condition. She retrieved his mobile phone from his stored property to contact the friend.

46. After informing Mr Doughty's friend of his condition, the officer asked if they knew of any family she could contact. He told her he only knew of a brother, but he had died some years earlier. She then contacted Mr Doughty's probation officer for contact details for any family, but they also had no information.

47. We are satisfied that the prison made good efforts to find family or friends that they could contact on Mr Doughty's behalf.

48. Mr Doughty's funeral was held on 12 October. The prison paid funeral costs in line with national policy.

Compassionate release

49. Prisoners can be released 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.

50. On 1 August, once it was clear Mr Doughty was dying, the Public Protection manager at Birmingham began the process of collating information to make an application for compassionate release on Mr Doughty's behalf.

51. On 4 August, she sent the application to the Director of Birmingham and the Controller for Birmingham for their consideration. However, Mr Doughty died before the compassionate release application process was completed.

52. We are satisfied that the prison promptly discussed and considered compassionate release for Mr Doughty, although it is unfortunate it was not completed before he died.

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