

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Brian Austin a prisoner at HMP Rye Hill on 28 November 2019

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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Summary

1. 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.
2. Our office carries out investigations to understand what happened and identify how the organisations whose actions we oversee can improve their work in the future.
3. Mr Brian Austin, who was 66 years old, died in a hospice from cancer of the oesophagus on 28 November 2019, while a prisoner at HMP Rye Hill. We offer our condolences to Mr Austin's family and friends.
4. The clinical reviewer concluded that the clinical care Mr Austin received at Rye Hill was equivalent to that which he could have expected to receive in the community. However, she made four recommendations. Two were not directly related to Mr Austin's cause of death and have not been included in our report.
5. We found that there was a delay in resubmitting an application for compassionate release when Mr Austin's condition deteriorated. As a result, the application was not considered before he died.

Recommendations

- The Head of Healthcare should review the difficulties experienced from 15 April to 21 June 2019 relating to administration of pain medication and ensure that prisoners with terminal conditions are given appropriate and timely pain relief medication.
- The Head of Healthcare should ensure that palliative pain management care plans are individualised and reviewed according to need, in line with NICE guidelines (Palliative care for adults: strong opioid for pain relief 2016).
- The Director and Head of Healthcare should ensure that applications for early release on compassionate grounds are submitted at the appropriate time and progressed without delay.

Investigation Process

6. NHS England commissioned an independent clinical reviewer to review Mr Austin's clinical care at HMP Rye Hill. The clinical review is attached to this report as Annex 1.
7. The PPO investigator has investigated the non-clinical issues in Mr Austin's care, including his location, the security arrangements for his hospital escorts, liaison with his family and whether compassionate release was considered.
8. One of the PPO's family liaison officers wrote to Mr Austin's next of kin, his sister, to explain the investigation. She did not have any specific questions for us to consider. The initial report was shared with Mr Austin's sister. She did not make any comments.
9. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS pointed out a factual inaccuracy and this report has been amended accordingly. The action plan has been annexed to this report.

Previous deaths at Rye Hill

10. Mr Austin was the 11th prisoner to die at Rye Hill since November 2017. Of the previous deaths, nine were from natural causes and one is awaiting classification. We have previously identified delays in submitting and progressing applications for compassionate release.

Key Events

11. On 22 February 2013, Mr Brian Austin was sentenced to 18 years imprisonment for sexual offences. He was moved to HMP Rye Hill on 3 April 2014.
12. On 28 April 2015, healthcare staff at Rye Hill told Mr Austin that he had terminal oesophageal cancer. Staff submitted an application for early release on compassionate grounds in 2015, but it was refused.
13. During 2019, Mr Austin started experiencing increased pain. On 15 April 2019, during a night shift, staff were unable to give Mr Austin morphine for his pain because two signatures were required but there was only one nurse on duty. The nurse advised Mr Austin to take paracetamol instead. There were similar incidents in May and June 2019, when Mr Austin was denied morphine because there was only one member of staff on duty.
14. Mr Austin was moved to Coventry Myton Hospice on 9 November 2019. Rye Hill began the paperwork for consideration of early release on compassionate grounds on 12 November. When completed more than a week later, it was sent to the Public Protection Casework Section (PPCS) of Her Majesty's Prisons and Probation Service (HMPPS), who requested further medical information. Mr Austin died before the process was concluded.
15. Mr Austin was accompanied by family members for most of the time he was in the hospice. He died there on 28 November.
16. There was no post-mortem examination as the coroner accepted the cause of death provided by a hospital doctor, who gave the cause of death as cancer of the oesophagus. The doctor noted that Mr Austin also had ischaemic heart disease (restriction of the blood supply to the heart).

Non- Clinical Findings

Early release on compassionate grounds

17. 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. The criteria include that the risk of reoffending 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 Her Majesty's Prison and Probation Service (HMPPS).
18. Staff submitted an application for compassionate release in 2015, but it was refused. They did not consider making a further application until 12 November 2019, three days after Mr Austin had been moved to a hospice and 16 days before he died. His sister's house had been identified as a suitable location in his initial application, but by the time compassionate release was being considered again, he was already too ill to be accommodated there.

19. Mr Austin did not want to die in hospital, and there was good planning around his move to a hospice. However, we consider that an application for compassionate release should have been considered before November 2019. We make the following recommendation:

The Director and Head of Healthcare should ensure that applications for early release on compassionate grounds are submitted at the appropriate time and progressed without delay.

**Louise Richards
Assistant Ombudsman**

June 2020