Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Taher Javaid, a prisoner at HMP Frankland, on 13 November 2020

A report by the Prisons and Probation Ombudsman

Third Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
Email: mail@ppo.gov.uk
Web: www.ppo.gov.uk
T I 020 7633 4100
F I 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*

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

3. Mr Taher Javaid died in hospital of acute COVID-19 related bronchopneumonia on 13 November 2020 while a prisoner at HMP Frankland. He was 55 years old. I offer my condolences to Mr Javaid's family and friends.

4. The clinical reviewer concluded that the clinical care Mr Javaid received at Frankland was of a reasonable standard and equivalent to that which he could have expected to receive in the community. She did, however, identify some concerns and made five recommendations which we have recast and included in this report.

5. In particular, she noted that there is no evidence that Mr Javaid was advised that his underlying medical conditions increased his risk of becoming seriously ill if he contracted COVID-19, or that he was regularly monitored after he tested positive for the virus. We also share the clinical reviewer's view that the healthcare input into the escort risk assessment when Mr Javaid was taken to hospital was inadequate.

6. Mr Javaid had not left the prison during the month before he developed symptoms of COVID-19. While we cannot say for certain when or where he contracted the virus, it seems likely that it was at the prison.

7. We found one non-clinical issue of concern regarding the use of restraints and include a recommendation about this.

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

Recommendations

- **The Head of Healthcare should ensure that:**
    - **all patients with suspected or confirmed COVID-19 have a clinical management plan that reflects their individual needs; and**
    - **healthcare staff record regular clinical observations and monitor any deterioration in the condition of such patients.**
- **The Head of Healthcare should ensure that all healthcare staff understand the importance of full and contemporaneous clinical records.**

- **The Head of Healthcare should ensure that where patients have life limiting conditions, they are advised of their right to refuse life-saving treatment including resuscitation, and in particular of the use of an Advanced Treatment Directive and a Do Not Attempt Resuscitation order.**

- **The Head of Healthcare should:**

    - **ensure that all healthcare contributions to the prison restraint risk assessments are accurate and sufficiently detailed and reflect the patient's current clinical condition; and**

    - **work with the Governor to ensure the use of/type of restraints are proportionate and reflect any change in the patient's condition.**

- **The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, 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 Investigation Process

8. NHS England commissioned an independent clinical reviewer, to review Mr Javaid's clinical care at HMP Frankland. Her report is attached as annex 1.

9. The PPO's investigator reviewed Mr Javaid's personal records, as well as HMPPS and local policy documents. She investigated non-clinical issues, including aspects of the prison's response to COVID-19 and shielding prisoners; Mr Javaid's location; liaison with his family; and whether early release was considered.

10. The PPO family liaison officer wrote to Mr Javaid's next of kin, his wife and daughter, to explain the investigation. They did not respond to our letter.

11. 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.

Previous deaths at HMP Frankland

12. Mr Javaid was the 14th prisoner to die at Frankland since November 2018. All the previous deaths were from natural causes, two of which were related to COVID-19. Since Mr Javaid's death there have been two deaths, both were related to COVID-19.

13. We made a recommendation about the inappropriate use of restraints following the death of a prisoner in October 2019.

Coronavirus (COVID-19)

14. COVID-19 is an infectious disease that affects the lungs and airways. It is mainly spread through droplets when an infected person coughs, sneezes, speaks or breathes heavily. On 11 March 2020, the World Health Organisation (WHO) declared COVID-19 a worldwide pandemic.

15. COVID-19 can make anyone seriously ill, but some people are at higher risk of severe illness and developing complications from the infection. People at high risk (clinically extremely vulnerable) include those who have had an organ transplant, have severe lung or kidney disease or have certain types of cancer or other treatment which significantly increases the risk of infection. Examples of those at moderate risk (clinically vulnerable) are people over 70, people under 70 with an underlying health condition, such as diabetes, or chronic respiratory, heart, liver or kidney disease, those with a weakened immune system or who are very overweight. (These lists are not exhaustive.)

16. In response to the initial pandemic outbreak, HM Prison and Probation Service (HMPPS) introduced several measures to try and contain the outbreak - to be implemented at local level, depending on the needs of individual prisons. A key strategy is 'compartmentalisation' to cohort and protect prisoners at high and moderate risk, isolate those who are symptomatic, and separate newly arrived prisoners from the main prison population.

17. The Ministry of Justice and Public Health England later issued joint guidance, *Preventing and controlling outbreaks of COVID-19 in prisons and places of detention*. It provides operational recommendations for custodial and healthcare staff on preventing and managing outbreaks of COVID-19, including specific advice on population management, social distancing, actions to take if a prisoner, or staff member develops symptoms, and the use of personal protective equipment (PPE). (An outbreak is defined as two or more prisoners, or staff, who are clinically suspected or have tested positive for COVID-19 within 14 days.)

18. After a period of complete lockdown, the Ministry of Justice and HM Prison and Probation Service produced *COVID-19: National Framework for Prison Regimes and Services.* This outlines strategies for easing restrictions and modifying regimes, where severe constraints are disproportionate, or unsustainable. Prisons are expected to devise local policies within the parameters set in the framework.

Key Events

19. On 12 February 2013, Mr Taher Javaid was sentenced to 22 years imprisonment for sexual offences. He spent time in various prisons and a medium secure mental health unit.

20. Mr Javaid transferred to HMP Frankland on 4 December 2014.

21. During his reception health screen, it was noted that he had previously been diagnosed with asthma, rheumatoid arthritis, stiff man syndrome (a neurological disorder causing progressive rigidity), peripheral vascular disease (restricted blood supply to the arms/hands/legs/feet), depression, borderline personality disorder, persistent delusional disorder and type 2 diabetes. Healthcare staff saw Mr Javaid frequently as they monitored his conditions. Mr Javaid refused help to control his diabetes and high cholesterol. During his time at Frankland, Mr Javaid had reduced mobility and deteriorating eyesight.

22. On 13 October 2020, there was an outbreak of the COVID-19 virus at Frankland.

November 2020

23. On 3 November healthcare staff examined Mr Javaid and a swab was taken for COVID-19 testing. The result indicated that Mr Javaid was COVID-19 positive. Mr Javaid was isolated in his cell as a result.

24. On 10 November, a nurse examined Mr Javaid because he said that he was short of breath. She noted he was struggling to breathe and was distressed. She examined him and gave him oxygen. Mr Javaid was conscious and able to speak. She referred him to a prison GP. At 12.40pm, he examined Mr Javaid and noted this was the eighth or ninth day following the COVID-19 infection. He diagnosed a likely lower respiratory tract infection/developing pneumonia and arranged for Mr Javaid to be transferred to hospital.

25. Mr Javaid was taken to the Emergency Department at University Hospital Durham. He was escorted by two prison officers, using a single handcuff (where the prisoner has one wrist attached to a prison officer by a set of handcuffs.)

26. Mr Javaid was admitted to hospital as an inpatient. When he moved from the emergency department to a single room on a ward, the restraints were changed from a single handcuff to an escort chain (which is a long chain with a handcuff at each end, one of which is attached to the prisoner and the other to an officer). Later that day, the restraints were removed, following advice from hospital staff that the escorting officers were at risk of infection, and were never reapplied.

27. Hospital staff administered oxygen to support Mr Javaid's breathing and prescribed antibiotics and steroids (to treat infection and reduce inflammatory response). Mr Javaid said that he did not want anyone to resuscitate him if his heart or breathing stopped and signed an order to that effect.

28. Mr Javaid's condition deteriorated and he died at 9.20pm on 13 November.

29. A prison manager debriefed the escorting staff and offered support. Officers checked the wellbeing of the other prisoners on the wing. Staff and prisoners across the prison were also informed of Mr Javaid's death and offered support.

30. On 11 November, a prison family liaison officer (FLO) telephoned Mr Javaid's wife to break the news that he was in hospital and offer support. The FLO kept in touch with Mr Javaid's wife and assisted with advice and information. Family members were able to speak to Mr Javaid by telephone.

31. After Mr Javaid's death, the FLO offered condolences and assistance with the funeral arrangements. In line with national policy, the prison contributed to the funeral costs.

Post-mortem report

32. The post-mortem gave Mr Javaid's cause of death as acute COVID-19 related bronchopneumonia.

Findings

33. The clinical reviewer concluded that Mr Javaid received a reasonable standard of clinical care, equivalent to that which he could have expected to receive in the community.

34. However, she identified some weaknesses in Mr Javaid's care.

Management of Mr Javaid's risk of infection from COVID-19

35. Mr Javaid was at high risk of becoming seriously ill from COVID-19 due to his underlying medical conditions, which included type 2 diabetes and asthma. There is no indication in Mr Javaid's record that he was shielding due to his clinical vulnerability prior to 3 November. (The national guidance on shielding has since changed.)

36. In November 2020, Mr Javaid was tested for COVID-19 and found to be positive. No reason for the test was recorded. The Head of Healthcare said that there was no official clinical policy on the management of COVID-19 cases at that time. Any prisoner that a nurse suspected could have COVID-19 symptoms, would be offered a swab test.

37. It is not possible to say how Mr Javaid contracted COVID-19, but as he had not left Frankland in the weeks before his positive test, we have to assume he contracted it in prison.

38. The Head of Healthcare said that those who had a positive COVID-19 test were isolated for ten days and throughout any period of isolation, healthcare staff monitored prisoners for any signs of deterioration and clinical observations were recorded and acted on. When Mr Javaid tested positive for COVID-19, there is no record that healthcare staff completed a risk assessment, care plan or planned any specific support. There is also no evidence that healthcare staff monitored Mr Javaid for COVID-19 symptoms after his positive test, although he continued to receive his regular medication during this time.

The Head of Healthcare should ensure that:

- **all patients with suspected or confirmed COVID-19 have a clinical management plan that reflects their individual needs; and**
- **healthcare staff record regular clinical observations and monitor any deterioration in the condition of such patients.**

The Head of Healthcare should ensure that all healthcare staff understand the importance of full and contemporaneous clinical records.

DNACPR order

39. The clinical reviewer also found that given Mr Javaid's clinical vulnerabilities and refusal to have treatment for his diabetes, prison healthcare staff should have discussed his wishes for care and treatment in the event of his condition deteriorating. We make the following recommendation:

The Head of Healthcare should ensure that where patients have life limiting conditions, they are advised of their right to refuse life-saving treatment including resuscitation, and in particular of the use of an Advanced Treatment Directive and a Do Not Attempt Resuscitation order.

Restraints, security and escorts

40. 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.

41. 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 he has 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. The initial risk assessment requires input from healthcare staff. The medical section of the risk assessment form for Mr Javaid said that there were 'no medical objections to the use of restraints'. HMPPS issued national guidance regarding escort and bedwatch procedures during COVID-19. This states that:

    "Subject to a security risk assessment of the escort / bed watch, staff must seek to remain at least 2 metres from the resident / prisoner at all times including within the hospital environment. Where this is not possible for security reasons a surgical mask should be worn or an FFP2/3 during clinical interventions involving Aerosol Generating Procedures. Prison staff must liaise with clinical staff as to the risks and protocols applicable."

43. Healthcare staff did not provide any information for the prison manager or escorts as they were required to and did not alert the escorting prison staff to the COVID-19 risks.

44. The medical section also said that Mr Javaid's 'medical condition did not restrict his ability to escape' and made no mention of his reduced mobility, wheelchair use and poor eyesight, or the fact that he was extremely unwell and would have had difficulty breathing without oxygen support.

45. Mr Javaid was restrained when he was taken to hospital and remained in restraints when he was admitted to the hospital ward. The single escort chain was removed when hospital staff raised concerns about the escort officers remaining in an infectious area. They later moved outside the room, where they could observe Mr Javaid safely.

46. We are not satisfied that there was appropriate and considered healthcare input into Mr Javaid's risk assessment. We are also concerned that prison managers did not take into account how ill he was, even when the escorting staff reported that hospital staff were saying that his oxygen levels were very low.

47. Mr Javaid was acutely ill with a life-threatening condition. Taking into account his limited mobility, poor eyesight and breathing difficulties when he went to hospital, and his deteriorating health after his admission, we consider it is unlikely that Mr Javaid would have had the ability to escape while being escorted by two officers and we are not satisfied that staff properly considered whether restraints were justified. We recommend:

The Head of Healthcare should:

- **ensure that all healthcare contributions to the prison restraint risk assessments are accurate and sufficiently detailed and reflect the patient's current clinical condition; and**
- **work with the Governor to ensure the use of/type of restraints are proportionate and reflect any change in the patient's condition.**

The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, 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.

Sue McAllister, CB **June 2021**

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