Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Michael Boylan a prisoner at HMP Berwyn on 14 May 2018

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 Michael Boylan died in a hospice on 14 May 2018 of pneumonia while a prisoner at HMP Berwyn. He had been diagnosed with terminal cancer of the tongue. He was 61 years old. I offer my condolences to Mr Boylan's family and friends.

My investigation found that the care Mr Boylan received at Berwyn and at his previous prison, HMP Forest Bank, was equivalent to the care he could have expected to receive in the community. I am satisfied that Mr Boylan's death was not preventable and that he received appropriate end of life care.

Although an application for early release on compassionate grounds was made for Mr Boylan, I am concerned that it was not progressed as quickly as it should have been.

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 **November 2018**

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Summary

Events

1. Mr Michael Boylan was recalled to custody on 29 September 2016 and was sent to HMP Forest Bank. He was subsequently sentenced to six years in prison for burglary and possession of a firearm.

2. Mr Boylan had been treated for oral cancer in 2011 and 2012 and was in remission when he arrived at Forest Bank. In August 2017 he complained of pain in his face and throat and was worried his cancer had returned, but a prison GP thought the pain was possibly dental related.

3. Mr Boylan was transferred to HMP Berwyn on 21 September. He saw a prison dentist on 25 September, who, although he found nothing to cause concern, made an urgent hospital referral given Mr Boylan's history of cancer.

4. After a number of tests and scans, hospital doctors identified a large tumour at the base of Mr Boylan's tongue, which they considered inoperable. Mr Boylan was told his cancer was terminal on 29 January 2018. Mr Boylan said he wanted a second opinion from the consultant who had treated his cancer previously.

5. On 14 March, Mr Boylan was told he would have six months to live without treatment, and up to 12 months with palliative chemotherapy. He was told his chemotherapy could not start while he was waiting for a second opinion as it might prevent further treatment options. He withdrew his request for a second opinion and on 19 April, started chemotherapy.

6. On 27 April, Mr Boylan was admitted to hospital because the prison was struggling to manage his pain and he had stopped eating and drinking. While in hospital, he was diagnosed with pneumonia. He declined further chemotherapy.

7. Mr Boylan was moved to a hospice on 11 May and he died three days later. The post-mortem report concluded that he died from bronchopneumonia, which had been caused by cancer of the tongue.

Findings

8. The clinical reviewer was satisfied that Mr Boylan was able to access primary healthcare services and was appropriately referred for specialist review. He found that Mr Boylan's care at Forest Bank and at Berwyn was equivalent to that which he could have expected to receive in the community.

9. Healthcare staff at Berwyn started an application for Mr Boylan's early release on compassionate grounds on 13 April, but the completed application was not submitted until 11 May, almost one month later and three days before Mr Boylan died. It should have been submitted sooner.

Recommendations

- The Governor and Head of Healthcare should ensure that applications for early release are progressed without delay.

The Investigation Process

10. The investigator issued notices to staff and prisoners at HMP Berwyn 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 Boylan's prison and medical records.

12. NHS England commissioned a clinical reviewer to review Mr Boylan's clinical care at the prison. He interviewed three members of healthcare staff at Berwyn on 11 and 12 July 2018.

13. We informed HM Coroner for North East Wales District of the investigation who gave us the results of the post-mortem examination. We have sent the Coroner a copy of this report.

14. The investigator wrote to Mr Boylan's daughter and sister to explain the investigation and to ask if they had any matters they wanted the investigation to consider. Mr Boylan's daughter raised the following issues:

    - She was concerned that there had been a delay in diagnosing the recurrence of her father's cancer.
    - She said her father missed some biopsy appointments because there were not enough prison staff to take him to hospital.
    - She was concerned that her father did not receive appropriate care when he was undergoing chemotherapy, which led to her father contracting pneumonia.
    - She was upset that despite her father being granted release on temporary licence so that he could go to a hospice, a prison guard remained at his bedside throughout.

15. The investigation has assessed the main issues involved in Mr Boylan'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. Mr Boylan's family received a copy of the initial report. They raised a number of issues that do not impact on the factual accuracy of this report and have been addressed through separate correspondence.

17. 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 Berwyn

18. HMP Berwyn is a newly built prison that opened on 28 February 2017 in Wrexham, North Wales. It can hold up to 2,106 men. Healthcare services are provided by Betsi Cadwaladr University Health Board. GP services are provided by Gables Medical Offender Health Ltd which includes an out of hours provision. Healthcare services are in operation from 7am to 8.30pm Monday to Friday and from 8am to 6pm on weekends and bank holidays. GPs provide 19 sessions a week and operate from 7.30am to 7.30pm Monday to Thursday and 7.30am to 5pm on Fridays.

HM Inspectorate of Prisons

19. HM Inspectorate of Prisons has not yet inspected HMP Berwyn.

Independent Monitoring Board

20. 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 first annual report for HMP Berwyn, for the year to 28 February 2018, the IMB reported that the relevant healthcare services met the 14-week referral to treatment target. However, the Board were concerned at the high number of appointments that prisoners failed to attend. They said the prison was aware of this issue and had an action plan in place, but it continued to be a concern.

Previous deaths at HMP Berwyn

21. Mr Boylan was the second prisoner to die at Berwyn since it opened on 28 February 2017. The previous death was drugs related.

HMP Forest Bank

22. HMP Forest Bank is a local prison in Salford, serving courts in the North West. It holds 1,460 remanded and sentenced men. The prison is managed by Sodexo Justice Services. Sodexo provides primary health care services. There is a 19-bed inpatient unit with 24-hour nursing cover. An agency provides GP services with doctors available from 9.00am to 9.00pm Monday to Friday, 1.00pm to 5.00pm Saturday and 9.00am to 12.00pm Sunday. There is out of hours cover at other times.

HM Inspectorate of Prisons

23. The most recent inspection of HMP Forest Bank was in February 2016. Inspectors reported that most areas of health provision were reasonable, but some required considerable improvement. Prisoners had access to an appropriate range of primary care services and visiting specialist services. Urgent same-day appointments were available, but waiting times for routine appointments were slightly long. Long-term conditions were well managed.

Independent Monitoring Board

24. 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 31 October 2017, the IMB were satisfied with the overall quality of healthcare provision. They reported that there was a wide range of services, reasonable access to GPs and emergency appointments were dealt with in line with NHS standards.

Previous deaths at HMP Forest Bank

25. There have been nine deaths at HMP Forest Bank since May 2015, six from natural causes. There were no significant similarities between the circumstances of Mr Boylan's death and the previous deaths.

Findings

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

26. Mr Michael Boylan was recalled to custody on 29 September 2016 after committing further offences while released on licence. He was sent to HMP Forest Bank. He was subsequently sentenced to six years in prison for burglary and possession of a firearm.

27. On arrival at Forest Bank, the reception screening nurse noted that Mr Boylan had previously had treatment for cancer and was in remission. (He had been diagnosed with oral cancer in 2011 and finished treatment in 2012.) The nurse offered to refer him for help to stop smoking but he declined.

28. On 3 November, Mr Boylan declined to attend a hospital appointment with the oncology department because he had a family visit. The hospital told the prison he would need to be re-referred as this was the third appointment he had missed. (The first was missed because Mr Boylan had been recalled to custody and the second had to be rearranged by the prison for security reasons.) An oncology appointment was rebooked for 22 December, which Mr Boylan attended.

29. Mr Boylan attended a hospital appointment with the maxillofacial department (specialty dealing with the face, mouth and jaws) on 11 May 2017 and was given a follow up appointment for 9 November.

30. On 31 August, Mr Boylan told a nurse that he had pain in his face and throat and was worried his cancer had returned. The nurse made a high priority referral to a GP. On 1 September, Mr Boylan was seen by a prison GP, who thought the pain could be nerve irritation and was possibly dental related. He prescribed pain relief.

31. Mr Boylan was transferred to HMP Berwyn on 21 September. He told the reception screening nurse that he had pain in his jaw. The nurse noted that he was in remission for cancer and had recently reported pain in his face and throat, which was suspected to be dental related. She noted that Mr Boylan used a vape and offered to refer him for help to quit, but he declined.

32. On 25 September, Mr Boylan saw a prison dentist, and told him that he was experiencing pain in his jaw. He identified no concerns but decided that a maxillofacial opinion was needed given Mr Boylan's history of oral cancer. He made an urgent referral to the maxillofacial department at the hospital.

33. On 17 November, Mr Boylan was referred to a prison GP after being found slumped in a chair earlier that day. He saw a prison GP, later that day. He told the GP that he had been experiencing light headedness for the past year and he thought it was connected to his past cancer. The GP made a possible diagnosis of orthostatic hypotension (where a person's blood pressure falls when suddenly standing from a sitting or lying position). The GP arranged for blood tests and an electrocardiogram (ECG – a test to check the heart's rhythm), the results of which were normal.

34. On 21 November, Mr Boylan saw a speech and language therapist, for a review of his swallowing ability (which had been damaged as a result of his previous cancer treatment). He told her that he had been experiencing pain in his jaw and ear for the past 12 months, which had worsened in the past 3 to 4 weeks and was affecting his balance. She made an urgent referral to the audiologist to check his hearing and balance. An audiology review on 29 November noted no significant hearing impairment.

35. On 6 December, Mr Boylan saw a prison GP, and complained of dizziness while climbing stairs and sometimes when standing. She examined him but identified no immediate concerns.

36. On 14 December, Mr Boylan attended his maxillofacial appointment at the hospital. Hospital doctors said that they would need to take a biopsy to establish whether Mr Boylan's cancer had returned.

37. On 20 December, Mr Boylan saw a nurse and complained of pain in his right jaw and tongue. He referred him to a prison GP who prescribed pain relief.

38. On 29 December, Mr Boylan was taken to hospital for a computerised tomography (CT) scan of his thorax. No tumour was found.

39. Mr Boylan's biopsy appointment was scheduled for 11 January 2018, but as it was sent to him directly, it had to be rearranged for security reasons and was rebooked for 29 January.

40. On 23 January, Mr Boylan underwent a magnetic resonance imaging (MRI) scan (uses strong magnetic fields and radio waves to produce detailed images of the inside of the body) of his neck. Hospital doctors identified a tumour on his tongue.

41. On 29 January, Mr Boylan attended his biopsy appointment. At his follow up appointment on 13 February, the consultant oncologist told him that he had a large tumour at the base of his tongue, which was inoperable, and that his cancer was terminal. Mr Boylan said he wanted to be considered for palliative chemotherapy.

42. On 22 February, after a further hospital appointment, Mr Boylan told a prison GP that he wished to get a second opinion from the consultant in Manchester who had treated his cancer previously. The GP sent a letter to Mr Boylan's previous consultant the same day. His previous consultant requested further scans in order to give a second opinion.

43. On 14 March, the oncologist told Mr Boylan that he had six months to live without treatment, and up to 12 months with palliative chemotherapy. He was told that he would be unable to start palliative chemotherapy until he had got his second opinion as the chemotherapy might preclude certain treatment options. On 6 April, Mr Boylan withdrew his request for a second opinion so that he could start palliative chemotherapy.

44. We are satisfied that Mr Boylan was referred appropriately for hospital tests and his attendance at hospital was facilitated by the prison. We note that his first biopsy appointment for 11 January was rearranged by the prison for legitimate

security reasons, but there was minimal delay as the new appointment was 18 days later. We consider that Mr Boylan was informed appropriately of his terminal diagnosis.

Mr Boylan's clinical care

Management of his nutritional needs and his risk of aspiration

45. Mr Boylan had been identified as at risk of aspiration (the accidental inhalation of food particles or fluid into the lungs) because of the damage caused to his swallowing mechanism by his previous cancer treatment in 2011 and 2012. When he arrived at Forest Bank, healthcare staff noted that Mr Boylan had swallowing difficulties and although he managed a normal diet, he preferred soft foods that he could swallow more easily.

46. In November 2016, Mr Boylan had a swallowing assessment at hospital, which found signs of aspiration when he had normal fluids but no aspiration when he had thickened fluids. The hospital recommended thickened fluids and a soft to normal diet. Staff at Forest Bank prescribed thickening powder.

47. In July 2017, following recurrent chest infections and ongoing swallowing difficulties, Mr Boylan had an X-ray at hospital and was found to be unsafe with all oral intake due to the risk of silent aspiration. The hospital advised that he may wish to consider being nil by mouth but he decided to continue to eat and drink, accepting the risks attached to this.

48. When Mr Boylan was transferred to Berwyn, healthcare staff continued to prescribe thickening powder and he was routinely seen by a speech and language therapist to monitor his swallowing ability. In November, he told the speech and language therapist that he was tolerating normal fluids with no thickener, but he said he was struggling to find moist, soft food that he could eat. She noted that she would liaise with the dietitian.

49. In November 2017, Mr Boylan was seen by the dietitian who noted he weighed 65kg. Two months later on 9 January 2018, during a nutrition review, the dietitian noted he weighed 63.8kg. He asked for additional food items, which the dietitian said she would request from the kitchen. He also agreed to trial nutritional drinks to supplement his diet.

50. On 15 January, Mr Boylan was seen by a prison GP, who noted his weight was now 62kg. Mr Boylan told him he was struggling a little with swallowing and maintaining his weight. He was also struggling to drink all his nutritional supplements at the medication hatch. It was subsequently agreed that Mr Boylan could collect his nutritional drinks and keep them in his possession rather than having to drink them at the hatch.

51. On 6 February, the dietitian noted that Mr Boylan weighed 61.6kg. He said he was struggling to manage most foods on the menu and was having a main meal only.

52. Following Mr Boylan's cancer diagnosis, staff started a dietary care plan on 5 March. The next day, the dietitian noted Mr Boylan's weight was 62kg, although

he said he was still not receiving extra milk, a breakfast pack or puddings, which he needed for additional calories.

53. On 6 April, the prison GP noted that Mr Boylan was consuming liquids only.

54. The clinical reviewer was satisfied that prison healthcare staff took appropriate steps to assess and respond to Mr Boylan's nutritional needs. Mr Boylan understood that eating and drinking carried a risk of aspiration but decided to continue to do so, and healthcare staff respected his decision.

Pain management and end of life care

55. On 8 April, Mr Boylan attended hospital to have a PICC line (an intravenous catheter used to administer medications) inserted in preparation for chemotherapy. On 9 April, a nurse examined him and noted that his temperature was high. He spoke to a prison GP who advised that Mr Boylan should be taken to hospital, but Mr Boylan refused to go and said he was fine. The nurse told Mr Boylan that he was showing signs of infection and explained the implications, but Mr Boylan continued to refuse to be taken to hospital.

56. On 10 April, a nurse noted that the healthcare team had held an urgent multidisciplinary team (MDT) meeting because they were very concerned that Mr Boylan was acutely unwell with possible ongoing infection. He had had a productive cough for four days. A prison GP arranged blood tests and a chest X-ray. The blood tests were abnormal so later that afternoon, Mr Boylan agreed to be taken to hospital where he was diagnosed with bronchitis and prescribed antibiotics. He was returned to Berwyn the next day, 11 April. At an MDT the same day, healthcare staff agreed to conduct welfare checks on Mr Boylan twice a day and he also had a personal alarm to alert staff if necessary.

57. On 17 April, Mr Boylan signed a Do Not Attempt Cardiopulmonary Resuscitation (DNACPR) order (stating he did not want anyone to resuscitate him if his heart or breathing stopped).

58. On 19 April, Mr Boylan attended hospital as an outpatient and commenced a five-day course of chemotherapy.

59. On 26 April, a speech and language therapist, noted that she had received a call from an officer saying that Mr Boylan was very distressed, that he could not bear the pain in his throat and wanted a 'large dose of medication'. Staff were concerned that he planned to take a deliberate overdose and took all his medication out of his cell. They also started suicide and self-harm prevention procedures (known as ACCT).

60. Later that day, a nurse noted that she was very concerned at the prison's ability to give Mr Boylan access to all the medication he needed to control his pain, particularly overnight when no healthcare staff were on duty, while at the same time ensuring he did not have access to medication that he could use to overdose.

61. On 27 April, a nurse noted that Mr Boylan's pain had not been well-controlled overnight and she arranged for him to be admitted to hospital. Hospital doctors

subsequently diagnosed him with bronchopneumonia. He remained in hospital until he was moved to a hospice on 11 May.

62. Mr Boylan died on 14 May. His cause of death was bronchopneumonia, which was caused by cancer of the tongue.

63. The clinical reviewer was satisfied that Mr Boylan was able to access primary healthcare services without difficulty and he was regularly reviewed by a range of professionals. He was appropriately referred for specialist review and was able to attend hospital appointments, though this was once delayed due to security considerations. Overall, he was satisfied that the care Mr Boylan received was equivalent to that which he could have expected to receive in the community. He considered Mr Boylan's death was not preventable.

64. The clinical reviewer concluded that Mr Boylan's pain control was regularly monitored and there were appropriate and timely interventions to manage his pain. Healthcare staff sought and responded to advice from specialist services in managing Mr Boylan's pain.

Mr Boylan's location

65. On 26 February 2018, two weeks after his terminal cancer diagnosis, Mr Boylan was recategorized from a Category C prisoner (a prisoner who cannot be trusted in open conditions but who is assessed as unlikely to make a determined escape attempt) to a Category D prisoner (a prisoner who poses a low risk and can be trusted in open conditions), with a view to transferring him to HMP Thorn Cross, an open prison nearer to his family in Manchester. However, the healthcare manager at Thorn Cross said the prison was unable to accept him as it did not have 24-hour healthcare, which in his view, Mr Boylan, as a terminally ill patient, would require.

66. At the MDT on 10 April, healthcare staff expressed concern that they could not properly manage Mr Boylan at Berwyn and thought he needed to be in a prison with 24-hour healthcare. Their preference was HMP Liverpool but Mr Boylan did not want to go there because it was further from his family.

67. On 11 April, Mr Boylan's hospital consultant advised that his condition could be managed in a setting without healthcare and the chemotherapy service advised that he could be nursed at Berwyn.

68. On the same day, an occupational therapist, met with a custodial manager, to discuss adapting a room to make it suitable for Mr Boylan's needs. (The work was not completed before Mr Boylan was taken to hospital on 27 April.)

69. On 19 April, the Governor of Thorn Cross contacted Berwyn to say that he would arrange for the Head of Healthcare to visit Berwyn to discuss whether Mr Boylan could be cared for at Thorn Cross. The Head of Healthcare at Thorn Cross visited on 25 April and said that he would discuss a potential transfer with the Governor.

70. Mr Boylan was taken to hospital on 27 April and he did not return to Berwyn before moving to a hospice on 11 May.

71. The clinical reviewer concluded that the healthcare staff at Berwyn recognised and responded to changes in Mr Boylan's condition and made appropriate decisions in facilitating his care in the most appropriate environment.

Restraints, security and escorts

72. When prisoners have to travel outside 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. Any restraints used should be necessary and decisions should be based on the security risk taking into account factors such as the prisoner's health and mobility.

73. Up to 13 February 2018, the date on which Mr Boylan received his terminal diagnosis, he was restrained with a single set of handcuffs during his hospital visits. He was not restrained during medical procedures apart from on one occasion on 29 December 2017, when he was restrained with an escort chain during his CT scan. (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.)

74. Mr Boylan was assessed as low risk of escape and low risk to the public. However, prior to 13 February, he had not been diagnosed with cancer and was mobile. We consider it was reasonable to restrain him with single cuffs. We note that Mr Boylan was restrained during his CT scan on 29 December, but during his subsequent MRI scan and biopsy he was not restrained. Therefore, we make no recommendation.

75. Shortly after his terminal diagnosis, on 26 February, Mr Boylan was recategorised to a Category D prisoner. He was not restrained thereafter.

76. On 4 May, Mr Boylan was granted release on temporary licence (ROTL). He was accompanied by a prison officer wearing civilian clothing for support purposes, rather than for security reasons. This continued when he was transferred to a hospice on 11 May.

Liaison with Mr Boylan's family

77. Two custodial managers were appointed as the prison's family liaison officers (FLO) on 11 March 2018. On 19 March, a FLO made contact with Mr Boylan's family to discuss his diagnosis and the support available.

78. On 11 April, a FLO met with Mr Boylan's sister. Both family liaison officers visited Mr Boylan in hospital on 6, 8 and 10 May, and met with his daughter there. On 11 May, the FLO travelled with Mr Boylan to the hospice and the second FLO met them there.

79. Mr Boylan's funeral was held on 29 June and the prison contributed to the cost in line with national policy.

Compassionate release

80. 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 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 the Her Majesty's Prisons and Probation Service (HMPPS).

81. On 19 March, an offender manager, sent an email to the FLO saying that compassionate release had been considered but it was felt that it was too soon. On 3 April, she reiterated that it was too soon and that efforts should instead be made to transfer Mr Boylan to Thorn Cross. She considered that Mr Boylan's risk of reoffending was high as he had committed offences when he had cancer previously.

82. On 13 April, the prison GP completed an application for early release on compassionate grounds. He stated that Mr Boylan had an inoperable tumour, was due to start palliative chemotherapy and in his view, was incapable of committing further criminal offences. On 16 April, the offender manger stated that she considered Mr Boylan posed a medium risk of harm to the public. On 4 May, the Governor stated that he considered Mr Boylan to be at medium risk of reoffending. The same day, 4 May, the offender manager sent the application to PPCS. The offender manager was told that a specialist consultant report was required. She contacted the Head of Healthcare, who advised her on 9 May to contact the consultant herself. She received the consultant's report on 11 May, which she sent to PPCS. The application was not considered before Mr Boylan died on 14 May. Mr Boylan's family told the investigator that they had been active in trying to obtain the consultant's report and had sent several emails to the hospital but had never got a response.

83. On 14 March, Mr Boylan was told his life expectancy was six months without treatment and up to 12 months with palliative chemotherapy. He was still awaiting a second opinion. We consider it reasonable that an application for early release was not made at that time. On 9 April, Mr Boylan became unwell with signs of infection. He had withdrawn his request for a second opinion and was about to start chemotherapy. The application for early release was started four days later on 13 April, which we consider reasonable. However, there was a delay of three weeks in sending it to PPCS and it was sent without a consultant's report, which delayed the application further. We consider that the application for early release could have been progressed more quickly.

We make the following recommendation:

The Governor and Head of Healthcare should ensure that applications for early release are progressed without delay.

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