Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Andrew Forber, a prisoner at HMP Liverpool, on 25 December 2020

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*

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 Andrew Forber died in hospital on 25 December 2020, while a prisoner at HMP Liverpool. He was 69 years old. Mr Forber died from COVID-19 pneumonia. He also had diabetes and asthma. I offer my condolences to Mr Forber's family and friends.

4. The clinical reviewer concluded that the clinical care Mr Forber received at Liverpool was equivalent to that he could have expected to receive in the community. She made no recommendations.

5. We found that Liverpool followed national guidance on COVID-19 risk management; implemented the procedures advised to help prevent the spread of the infection; and gave Mr Forber the opportunity to shield to increase his level of protection. However, given that he had not left the prison within the standard incubation period for COVID-19, it is probable that he contracted the infection at the prison.

6. We are not satisfied that the use of restraints was proportionate, given Mr Forber's reduced mobility, the medical assessment on the security risk assessment and low risk of escape. In particular, it seemed excessive and unnecessary to double cuff Mr Forber while he changed into a hospital gown and this also placed an escort officer at greater risk of infection from being in closer proximity to him.

Recommendation

- The Governor should ensure that all staff undertaking and reviewing risk assessments for prisoners admitted to hospital understand the legal position on the use of restraints, that assessments fully take into account the prisoner's health and are based on the actual risk he presents at the time.

The Investigation Process

7. NHS England commissioned an independent clinical reviewer to review Mr Forber's clinical care at HMP Liverpool.

8. The PPO investigator investigated the non-clinical issues, including aspects of the prison's response to COVID-19 and shielding prisoners; Mr Forber's location; the security arrangements for his journey and admission to hospital; liaison with his family; and whether early release was considered.

9. The PPO family liaison officer wrote to Mr Forber's next of kin, his son, to explain the investigation. He had no specific questions for us to consider.

10. We shared our initial report with HM Prison and Probation Service (HMPPS). They found no factual inaccuracies. They provided an action plan which is annexed to this report.

11. We sent a copy of our initial report to Mr Forber's son. He did not notify us of any factual inaccuracies.

Previous deaths at HMP Liverpool

12. Mr Forber was the 10th prisoner at Liverpool, to die since December 2018. Of the previous deaths, seven were from natural causes (one with COVID-19), one was self-inflicted and one was awaiting classification. There have since been five further deaths, two self-inflicted and three from natural causes, including one due to COVID-19. We have previously raised the issue of risk assessments and the use of restraints.

COVID-19 (coronavirus)

13. 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.

14. 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 are having 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.)

15. 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. (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.) 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 population. Other measures include social distancing and the use of personal protective equipment (PPE).

Key Events

16. Mr Andrew Forber was remanded to HMP Altcourse on 30 June 2020. He was later convicted of sexual offences and was awaiting sentencing at the time of his death. On 6 October, Mr Forber transferred to HMP Liverpool.

17. Mr Forber had been diagnosed with asthma, type 2 diabetes and high blood pressure, as well as several mental health conditions. He also had a hearing impairment, reduced mobility and used walking aids. On 15 October, a nurse reviewed Mr Forber's long-term conditions and care plans were created.

18. On 17 October, the same nurse informed Mr Forber that he had been identified as clinically vulnerable and at risk of serious illness from COVID-19 and explained the arrangements for shielding. Mr Forber signed a disclaimer to confirm that he did not wish to shield and the risks of not doing so had been explained to him.

19. During the afternoon of 20 December, Mr Forber said that he had fallen from his bed during the night but had been unable to reach his cell call bell. A nurse examined him for injuries and wing staff moved him to another cell. At around 11.30pm, healthcare checked him again after another fall.

20. On 21 December, the nurse manager examined Mr Forber and asked a prison GP to review him, due to his falls over the previous two days. Staff had also noticed that he seemed confused and had difficulty walking to the medication hatch, holding on to rails and door frames to steady himself. Mr Forber said he had a bad cough, dizzy spells, urinary incontinence, as well as difficulty washing and dressing. He was noted to have a high temperature.

21. The GP suspected Mr Forber had sepsis and noted that he needed intravenous antibiotics, a septic screen and to be assessed for COVID-19. An ambulance was requested and the paramedics arrived as the GP was finishing his assessment. He gave the paramedics a verbal handover and patient summary. Mr Forber was escorted to hospital by two prison officers wearing PPE, using an escort chain.

22. Healthcare staff contacted the hospital daily for updates. At around 9.00pm on 22 December, Mr Forber was confirmed as COVID-19 positive and the escort staff were given permission to remove the restraints. On 23 December, doctors diagnosed COVID-19 pneumonia. On 25 December, the hospital began end of life care as Mr Forber was not responding to treatment.

23. Mr Forber was estranged from his family. A prison manager contacted Mr Forber's next of kin, his son, on 25 December, when it became clear that he was likely to die and his son visited him during the day. Mr Forber died at 11.00pm that night and the prison notified his son shortly afterwards. A family liaison officer was later appointed to provide support.

24. A prison manager debriefed the escort officers and other staff involved in Mr Forber's care and offered support. Notices were issued to other staff and prisoners, informing them of Mr Forber's death and reminding them of the avenues of support.

25. The prison arranged and paid for Mr Forber's funeral, which was held on 25 January 2021.

Cause of death

26. On 13 January 2021, an inquest concluded that Mr Forber's death was due to COVID-19 pneumonia. He also had type 2 diabetes and asthma, which did not cause, but contributed to his death.

Findings

Clinical Findings

27. The clinical reviewer concluded that Mr Forber received a reasonable standard of clinical care, equivalent to that he could have expected to receive in the community. She made no recommendations.

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

28. At both Altcourse and Liverpool, Mr Forber was appropriately placed in the reverse cohorting unit, in line with the requirements to separate all new arrivals from existing residents for the first 14 days.

29. As a clinically vulnerable person, healthcare staff advised Mr Forber to shield, but he declined.

30. We found that Liverpool complied with the national cohorting and compartmentalising policy by creating local plans covering all areas of the regime. Prison managers assigned dedicated reverse cohorting and shielding units; implemented social distancing; and staff used PPE, in line with national requirements. A restricted regime was in place on residential units at the time that Mr Forber became unwell. When he displayed possible symptoms of COVID-19, he was immediately sent to hospital for further assessment.

31. In spite of the measures to control the risk of infection and protect prisoners, it is likely that Mr Forber contracted COVID-19 within Liverpool, as he had last attended court on 9 November (well outside the accepted incubation period) and had not left the prison since then.

Security risk assessments and the use of restraints

32. 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.

33. 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.

34. This guidance is reinforced in *Prison Service Instruction 33/2015 External Escorts*, which states that handcuffs will not normally be necessary if a prisoner's mobility is severely limited, eg due to advanced age or disability, unless the prison has grounds to believe that an escape might be made with external assistance.

35. The medical section of the risk assessment for Mr Forber's last journey to hospital was ticked to indicate that he had impaired mobility and his medical or physical condition restricted his ability to escape unaided, but there were no medical objections to the use of restraints. The nurse annotated, "restricted mobility – high risk of falls." The security assessment noted that Mr Forber was a medium risk to the public, but no justification was given for this risk rating. He was assessed as low risk on all the other factors, including risk of escape and likelihood of outside assistance. A prison manager decided that, "due to age and health, escort chain is appropriate" and directed that it should be used at all times.

36. On the instruction of a custodial manager, Mr Forber was double handcuffed with standard handcuffs attached to one of the officers when he changed from his prison clothes to a hospital gown. The handcuff was then removed and the escort chain reapplied. The escort chain was also taken off briefly for treatment and finally removed over 24 hours after Mr Forber had arrived at hospital.

37. We recognise that many factors have to be taken into account in determining the level of restraint. However, we question whether the use of restraints was proportionate while Mr Forber was in hospital, given his reduced mobility, his struggle to even stand upright without falling because of his illness, the medical opinion on the risk assessment and that he had displayed no behavioural problems in prison or during several visits to court in the previous months. We certainly cannot see the justification for double cuffing (albeit briefly), which needlessly placed one of the escort officers at greater risk from being physically closer to someone with symptoms of COVID-19.

38. We raised the issue of use of restraints with the Governor and the Prison Group Director some time ago, in 2019. There seems to have been some improvement since and fair judgements in other recent cases but, as a result of the findings in this investigation, we consider that staff would benefit from a reminder of the policy and case law. We recommend:

The Governor should ensure that all staff undertaking and reviewing risk assessments for prisoners admitted to hospital understand the legal position on the use of restraints, that assessments fully take into account the prisoner's health and are based on the actual risk he presents at the time.

Sue McAllister CB
Prisons and Probation Ombudsman **July 2021**

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