Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Brian Macey-Morris a prisoner at HMP Exeter on 24 May 2016

A report by the Prisons and Probation Ombudsman Nigel Newcomen CBE

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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 Brian Macey-Morris died of lung cancer in hospital on 24 May 2016. Mr Macey-Morris was 76 years old. I offer my condolences to Mr Macey-Morris' family and friends.

Mr Macey-Morris had poor health throughout his time in prison and he had considerable interaction with healthcare staff. However, this care was not always equivalent to that he might have expected in the community. He suffered from lung disease but this was not monitored and, as his symptoms worsened, there were a number of missed opportunities to diagnose lung cancer. I also believe that the prison should have treated an application to release Mr Macey-Morris on compassionate grounds with greater priority.

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 **December 2016**

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Summary

Events

1. Mr Brian Macey-Morris was sentenced to seven years imprisonment in July 2012 for sexual offences. He was admitted into HMP Exeter, on 10 April 2013, after suffering a stroke which caused left sided weakness. Healthcare staff provided help with his daily activities. Mr Macey-Morris suffered from chronic obstructive pulmonary disease (COPD – the name for a collection of lung diseases including chronic bronchitis and emphysema), but although he got medications for this, the prison did not monitor the condition.

2. In July 2015, Mr Macey-Morris went to hospital as an emergency and doctors diagnosed a chest infection. A chest x-ray taken at the time showed abnormalities, but prison doctors did not investigate these further.

3. Over Mr Macey-Morris' time in prison, several blood tests were done in response to various infections and general illnesses, which showed slightly abnormal results. Prison doctors did not investigate the cause of these results. In early 2016, Mr Macey-Morris displayed other symptoms including mucus from his rectum and weight loss. Further abnormal blood test results were not appropriately considered. Prison doctors never satisfactorily considered these symptoms together. Mr Macey-Morris' health deteriorated and he was sent to hospital on 3 May.

4. On 7 May, hospital doctors told Mr Macey-Morris and his family that he had terminal lung cancer, which had spread to his liver and spine. They gave him a prognosis of three months to live. Mr Macey-Morris died ten days later, on 24 May.

Findings

5. The clinical care that Mr Macey-Morris received was not equivalent to that he could have expected to receive in the community. Healthcare staff missed opportunities to diagnosis his lung cancer earlier because they did not consider his symptoms together, which may have indicated a more serious illness.

6. Once hospital doctors gave Mr Macey-Morris a terminal prognosis, the prison did not begin an application for early release on compassionate grounds for six days and did not send it for consideration until the day he died.

7. We are pleased that, from July 2015, managers appropriately considered Mr Macey-Morris' risk and decided that officers should not restrain him during visits to hospital.

Recommendations

- The Head of Healthcare should ensure that clinicians follow established national guidance for the treatment of COPD, including annual reviews and the follow up of x-rays.

- The Head of Healthcare should ensure that healthcare staff use prisoners' clinical records effectively to investigate and identify patterns of symptoms and follow relevant national guidance in relation to referral and treatment.
- The Governor should ensure that appropriate priority is given to dealing with applications for compassionate release for terminally ill prisoners and that they are submitted without delay.

The Investigation Process

8. The investigator issued notices to staff and prisoners at HMP Exeter 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 Macey-Morris' prison and medical records.

10. NHS England commissioned a clinical reviewer to review Mr Macey-Morris' clinical care at the prison.

11. We informed HM Coroner for Exeter and Greater Devon 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. One of the Ombudsman's family liaison officers contacted Mr Macey-Morris' wife to explain the investigation and to ask if she had any matters they wanted the investigation to consider. Mr Macey-Morris' wife was unhappy with the level of social care in prison and submitted complaints to the prison about this. She was concerned that Mr Macey-Morris missed his parole hearing in January 2016, and that as a result he was kept unnecessarily in prison. She also said that she only found out Mr Macey-Morris was in hospital after she went to visit him in prison when staff told her that he was in hospital. After this, Mr Macey-Morris' wife felt that the family liaison officers and the escort officers were helpful.

13. The investigation has assessed the main issues involved in Mr Macey-Morris' 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.

14. Mr Macey-Morris' wife received a copy of the initial report. She raised a number of issues that do not impact on the factual accuracy of this report and have been addressed through separate correspondence.

15. The initial report was shared with the Prison Service. The Prison Service pointed out some factual inaccuracies and this report has been amended accordingly.

Background Information

HMP Exeter

16. HMP Exeter is a local prison holding 565 men. Dorset Healthcare University NHS Foundation Trust provides health services. There are 10 cells on F Wing for prisoners who need social care and one cell for end of life palliative care. The wing has facilities for visiting relatives. Healthcare is available 24 hours a day.

HM Inspectorate of Prisons

17. The most recent inspection of Exeter was in August 2013. Inspectors reported that care for prisoners on F Wing with complex social care needs and disabilities was impressive. There were 24-hour health services and a wide range of clinics, including for chronic diseases. Two nurses led the care of older prisoners. Palliative care was supported through an excellent new suite, which had been created for the care of terminally ill prisoners.

Independent Monitoring Board

18. 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 December 2015, the IMB reported that social care provided for chronically ill prisoners was good. Healthcare cover was stretched and agency nurses were relied on to cover gaps during sick or annual leave.

Previous deaths at HMP Exeter

19. Mr Macey-Morris was the tenth prisoner to die of natural cases since May 2015. We have not made similar recommendations in other investigations.

Findings

The diagnosis of Mr Macey-Morris' terminal illness and informing him of his condition

20. Mr Brian Macey-Morris was sentenced to seven years imprisonment on 13 July 2012, for sexual offences. He spent time in HMP Bristol and HMP Dartmoor before being transferred to HMP Exeter on 10 April 2013. He transferred to Exeter, which has 24-hour healthcare cover, because he had a stroke while in Dartmoor and needed closer monitoring and rehabilitation than was available in Dartmoor. In Exeter, he lived on a wing for prisoners in need of social care.

21. At his initial health screen, Mr Macey-Morris saw a nurse and a prison GP. As a result of the stroke, Mr Macey-Morris had difficulty with his bladder and using his left hand. He received mobility aids in his cell because he could not walk far without help. Fluid in his legs caused ulcers and he had short-term memory problems. Doctors prescribed laxatives and medication to treat water retention. They also prescribed inhalers to alleviate the effects of chronic obstructive pulmonary disease (COPD – the name for a collection of lung diseases including chronic bronchitis and emphysema), which Mr Macey-Morris had been diagnosed with in the community. However, no one in the prison recorded the fact that Mr Macey-Morris suffered from COPD until he was tested for it in prison in April 2015.

22. Mr Macey-Morris had poor mobility and required the help of carers to perform daily tasks. Nurses assessed him as being at risk of pressure sores and advised him how to keep moving so as to improve his mobilisation. Mr Macey-Morris did not always comply with the advice that healthcare staff gave him and preferred to sleep in his chair rather than in a specialist hospital bed provided in his cell. Social care staff helped Mr Macey-Morris in and out of his chair, using a hoist.

23. In the summer of 2013, prison GPs referred Mr Macey-Morris for suspected bowel cancer. Investigations showed he had harmless lumps (polyps) in his colon.

24. The next significant event recorded was on 31 July 2015, when Mr Macey-Morris went to hospital as an emergency. He appeared to be confused, and his legs were a dark red colour and cold. Hospital doctors diagnosed him with a chest infection, and he returned to prison the same day. On 3 August, the results of a chest x-ray, performed in hospital to investigate the chest infection, showed abnormalities in the left side of his diaphragm, and hospital doctors asked prison doctors to organise further tests. Theses were not organised, until 16 September when a prison GP referred him to the respiratory team in hospital for further investigation. This referral never happened, and the investigation could not find out why.

25. In September 2015, blood tests were completed as a result of the chest x-ray. Despite the fact they showed that inflammation was present, prison doctors took no action nor were the blood results looked at alongside the abnormal chest x-ray.

26. On 24 January, Mr Macey-Morris told a nurse that he had chest pain. On 29 January, his records showed mucus was coming from his rectum. A prison doctor took specimens for testing, but no results are shown in the records. This continued, and his stools became jelly like in early March, although he reported this to a prison GP on 30 March. The GP reviewed him and made a note to see him again in two weeks when he would likely need a prostate examination. A stool sample was taken on 2 April, but there is no evidence of the result of any tests.

27. A prostate examination on 5 April, showed no masses. The prison GP requested urgent blood tests and a repeat chest x-ray. A nurse noted on 10 April, that Mr Macey-Morris had lost 10.8kg in one month. She organised for a weekly weigh in and for staff to monitor his food and fluid intake.

28. The prison GP decided to wait for the results of the blood test and chest x-ray before taking the investigations further. The blood results were completed on 12 April, and the chest x-ray was booked for 16 May. Another GP reviewed the results without seeing Mr Macey-Morris on 14 April. They showed a very high protein level (148mg/L). He noted that this could be due to a pressure sore that had developed on Mr Macey-Morris' bottom, and prescribed antibiotics. He did not review the blood results in line with the other symptoms of weight loss or the abnormal chest x-ray.

29. Mr Macey-Morris developed sores in his mouth and the pressure sore on his bottom deteriorated. More blood tests on 2 May showed abnormalities, and a prison GP sent him to hospital as a non-emergency on 3 May, because of his deteriorating health and poor blood results.

30. After investigations, on 7 May, hospital doctors told Mr Macey-Morris and his family that he had possible lung cancer, which was most likely terminal. They gave him a prognosis of three months to live.

31. Before Mr Macey-Morris came to prison, he had a diagnosis of COPD but the prison did not monitor or recognise it until 2015, when he had been in Exeter for two years. COPD requires regular reviews, which include chest x-rays. As well as this, the prison missed a respiratory referral from the hospital in September 2015. If healthcare staff had carried out these reviews, Mr Macey-Morris' cancer may have been picked up sooner.

32. There were also several blood tests that showed abnormal results. Taken together, with his weight loss and an abnormal x-ray from July 2015, this could have indicated cancer and should have prompted an earlier referral for suspected cancer.

33. The clinical reviewer concluded that because of the lack of COPD monitoring, and the lack of continuity in reviewing Mr Macey-Morris' symptoms, there was a delay in diagnosing cancer. Therefore, the care he received was not equivalent to that he could have expected to receive in the community. It is not possible to say if this would have changed the outcome for Mr Macey-Morris, but opportunities to make an earlier diagnosis, which would have provided symptomatic treatment, were missed. We make the following recommendations:

The Head of Healthcare should ensure that clinicians follow established national guidance for the treatment of COPD, including annual reviews and the follow up of x-rays.

The Head of Healthcare should ensure that healthcare staff use prisoners' clinical records effectively to investigate and identify patterns of symptoms and follow relevant national guidance in relation to referral and treatment.

Mr Macey-Morris' clinical care

34. Hospital doctors told Mr Macey-Morris the cancer had spread to his liver and bones on 10 May. He was treated with antibiotics for a chest infection. His health deteriorated quickly, and doctors gave him continuous pain relief. He died on 24 May.

Mr Macey-Morris' location

35. Mr Macey-Morris had mobility aids and carers to help him with his daily activities in Exeter. Mr Macey-Morris was sent to hospital appropriately in May 2016. We consider his location to be have been appropriate.

Restraints, security and escorts

36. When prisoners have to travel outside of the prison to a hospital or hospice, a risk assessment is conducted to determine the nature and level of any security arrangements, including any restraints.

37. The Prison Service has a duty to protect the public but this has to be balanced with a responsibility to treat prisoners with humanity and maintain their dignity. The level of restraints used should be necessary in the circumstances and based on a risk assessment which considers the risk of escape, the risk to the public and which also takes account of factors such as the prisoner's health and mobility.

38. When Mr Macey-Morris went to hospital it is evident, at least from July 2015, that officers did not use restraints. Although healthcare professionals did not object to the use of restraints, prison managers authorised no restraints because of his very poor mobility. We are pleased they made this decision and judge it to be correct in the circumstances.

Liaison with Mr Macey-Morris' family

39. When a prison GP sent Mr Macey-Morris to hospital on 3 May, it was not as an emergency. Mr Macey-Morris' next of kin, his wife, visited the prison where she was told he was not available for a planned social visit, because he was in hospital. She then arranged to visit Mr Macey-Morris and went to the hospital with Mr Macey-Morris' son, on 6 May.

40. It is not clear when a family liaison officer had first contact with Mr Macey-Morris, but two officers were appointed as family liaison officers from 10 May. They contacted Mr Macey-Morris' wife by telephone, and one officer met Mr Macey-Morris' wife and son at the hospital on 20 May and offered ongoing support. Mr Macey-Morris' wife said she appreciated the support of the family liaison officers.

41. We do not make a recommendation about earlier liaison with the family, as Mr Macey-Morris was in hospital as a non-emergency and the prison were not initially aware he was terminally ill. Although it was not ideal that Mr Macey-Morris' wife was not informed by a family liaison officer that he was in hospital, and did not have immediate contact with a liaison officer from 7 May when doctors gave Mr Macey-Morris a terminal diagnosis, his family visited him and they had relevant support from the prison.

42. The funeral was held on 21 June 2016. The prison paid towards the cost of the funeral, in line with national policy.

Parole and Compassionate release

43. Mr Macey-Morris' parole hearing, scheduled for January 2016, did not go ahead because his offender supervisor was on long-term sick leave and there was a delay in appointing a replacement and providing documentation to the parole board. The paperwork was sent in mid-October 2015, which created a delay of three months. The parole board said, in November, that the hearing would be confirmed between February and June 2016. They confirmed it eventually, for 8 June. Unfortunately, Mr Macey-Morris had died before the hearing could take place.

44. 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 re-offending 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 National Offender Management Service (NOMS).

45. On 13 May 2016, Mr Macey-Morris' prison probation officer filled out their section of the compassionate release paperwork. A prison GP completed the medical part on 19 May, and the Governor completed his section on 23 May. The prison sent it to be considered on 24 May. Unfortunately, Mr Macey-Morris died before the application could be authorised.

46. Hospital doctors gave Mr Macey-Morris a terminal diagnosis on 7 May, but it took the prison over two weeks to complete the application. Although his health deteriorated more quickly then expected, the prison should have treated the application with greater urgency, especially as his parole hearing had been delayed by prison and parole processes. We make the following recommendation:

The Governor should ensure that appropriate priority is given to dealing with applications for compassionate release for terminally ill prisoners and that they are submitted without delay.

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