

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr John Penfold, a prisoner at HMP Elmley, on 29 November 2020

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. 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 John Penfold died of pneumonia as a result of the spread of cancer on 29 November 2020 while a prisoner at HMP Elmley. He was 89 years old. We offer our condolences to his family and friends.
4. The clinical reviewer concluded that the clinical care that Mr Penfold received at Elmley was of a reasonable standard and was equivalent to that which he could have expected to receive in the community. The clinical reviewer has made three recommendations which, although not directly related to Mr Penfold's death, the Head of Healthcare will need to address.
5. Although prison staff completed an application for compassionate release, Elmley had no record of when it was sent to the Public Protection Casework Section (PPCS) of Her Majesty's Prisons and Probation Service (HMPPS) for a decision. PPCS did not receive it until sixteen days after Mr Penfold's death. It was sent by post rather than by email which is the standard process.
6. 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 Governor should ensure that applications for early release on compassionate grounds for prisoners with terminal illnesses are prioritised and completed without delay, including emailing them to the Public Protection Casework Section promptly and keeping a record of action taken.**

Investigation Process

7. NHS England commissioned a clinical reviewer to review Mr Penfold's clinical care at HMP Elmley.
8. The PPO investigator has investigated the non-clinical issues in Mr Penfold's care, including his location, the security arrangements for his hospital escorts, liaison with his family and whether compassionate release was considered.
9. The Ombudsman's family liaison officer wrote to Mr Penfold's daughter to explain our investigation. She had no specific questions.
10. We shared the initial report with Mr Penfold's next of kin. They did not respond.
11. We shared the initial report with the Prison Service. There were no factual inaccuracies.

Previous deaths at Elmley

12. There were four deaths from natural causes, one self-inflicted death and one drug related death at HMP Elmley in the two years before Mr Penfold's death. Five prisoners have died at Elmley since Mr Penfold's death: four from natural causes (two of which were as a result of COVID-19) and one self-inflicted death. There are no significant similarities between our findings in this investigation and those of the other deaths.

Key Events

13. On 6 November 2018, Mr John Penfold was remanded to HMP Elmley.
14. Mr Penfold had many long-term health conditions, was frail and used a Zimmer frame.
15. On 9 February 2019, Mr Penfold was convicted of attempted murder and on 22 March, he was sentenced to eight years and eight months in prison.
16. On 23 April, Mr Penfold went to hospital where he saw a consultant urologist, who found that he had a hard and enlarged prostate. The consultant prescribed him tamsulosin (for an enlarged prostate) and planned to review him in three months.
17. On 2 July, a prison GP reviewed Mr Penfold. His blood test results identified a raised level of prostate-specific antigen (PSA) (which can indicate prostate cancer) and he was incontinent of urine, so he referred Mr Penfold under the NHS pathway which requires patients with suspected cancer to be seen by a specialist within two weeks. On 12 July, Mr Penfold went to hospital and saw a consultant urologist. The consultant told Mr Penfold that he had prostate cancer.
18. On 4 April 2020, healthcare staff moved Mr Penfold to the prison inpatient unit because he had several falls and his health had worsened.
19. On 22 September, a prison GP completed the medical section of the application for Mr Penfold's compassionate release. He noted that Mr Penfold had a poor prognosis and should be considered for early release because he had multiple co-morbidities, was very frail and weak, needed full assistance and was fully dependent for daily activities like dressing and washing.
20. On 6 October, a probation officer noted in the compassionate release application that the probability of Mr Penfold committing an offence was low because the victim of his offence (his wife) had died. She noted that Mr Penfold would find it extremely difficult to live independently in the community and noted that supported accommodation would be appropriate.
21. On 5 November, a prison GP saw Mr Penfold, who said that he did not want anyone to resuscitate him if his heart or breathing stopped and signed an order to that effect.
22. On 10 November, the Deputy Governor noted that Mr Penfold should be released early because he presented no real risk to anyone and would die soon. She noted that Mr Penfold had supportive daughters. Although she signed the application for early compassionate release that day and the application was completed, there is no record of when the completed compassionate release application was sent to PPCS.
23. On 12 November, a prison GP sent Mr Penfold to hospital because he was unwell. On 26 November, a nurse telephoned hospital staff, who told her that Mr Penfold's cancer had spread to his colon. On 27 November, Mr Penfold went back to Elmley for end-of-life palliative care.
24. On 29 November, Mr Penfold died of pneumonia as a result of the spread of cancer.

25. On 15 December, a PPCS team leader opened a letter which contained Mr Penfold's compassionate release application, scanned the application and sent it to a caseworker to be processed. When the case worker contacted the prison, a prison officer confirmed that Mr Penfold had died.

Findings on non-clinical issues

Compassionate release

26. 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 PPCS.
27. The Deputy Governor said that she was unsure how long the application was waiting for her attention. She said that she did not get to it immediately, and that there was some passing back and forth but she was sure that it was with her for longer than she would have liked. She said that the prison was in the middle of a significant COVID-19 outbreak and was certain that the amount of work she had to do at that time contributed to some of the delay.
28. The Deputy Governor told the investigator that prison staff needed to track compassionate release applications better and planned to talk to healthcare staff and offender management unit staff who are responsible for the completion of compassionate release applications, to improve the timeliness of the process. She said that they now had a joint healthcare and safeguarding meeting where they discussed prisoners who were receiving end-of-life care. She said that this should improve the compassionate release process.
29. The Deputy Governor did not know how the application was posted to the PPCS but said that she was unable to find contact details, including an email address for them.
30. The PPCS team leader said that compassionate release applications should be emailed to them and that Mr Penfold's application was the only application they had received by post for a long time. He said that because of the COVID-19 pandemic, post received from prisons and delivered through the Royal Mail was sporadic. He said that mail could be received in two days and some mail took many months before it was received and opened.
31. We do not know when the compassionate release application was sent to the PPCS or when it was received by them. We do not understand why prison staff did not email the application to them although the Deputy Governor remembered being unable to find an email address for them. The application was started on 22 September, and not completed until 10 November, nineteen days before Mr Penfold died. The Deputy Governor accepted that the process for completing compassionate release applications at Elmley was not being completed in a timely manner. We make the following recommendation:

The Governor should ensure that applications for early release on compassionate grounds for prisoners with terminal illnesses are prioritised and completed without delay, including sending them to the Public Protection Casework Section promptly and keeping a record of action taken.

**Caroline Mills
Assistant Ombudsman**

September 2021

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