Prisons & Probation
Ombudsman
Independent Investigations

Independent investigation into the death of Mr Eric Ndayisaba, a prisoner at HMP Coldingley, on 28 October 2019

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*

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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 Eric Ndayisaba was found dead in his cell at HMP Coldingley on 28 October 2019. He was 41 years old. I offer my condolences to Mr Ndayisaba's family and friends.

Mr Ndayisaba died as a result of inhaling the contents of his stomach. A vape pipe was found next to him that contained traces of psychoactive substances (PS). Although toxicology tests found no trace of any illicit drugs in Mr Ndayisaba's body, the report noted that due to difficulties in detecting PS, the use of PS prior to death could not be ruled out. Given the nature of Mr Ndayisaba's death, it would appear likely that PS played a part.

The investigation found that Mr Ndayisaba received appropriate support for his substance misuse issues. However, healthcare staff were not always told of incidents when Mr Ndayisaba was found under the influence of drugs, and substance misuse staff did not record information about Mr Ndayisaba's drug use in his medical record.

Mr Ndayisaba received some good support from the mental health team. However, we found that his psychological therapy sessions ended abruptly in August 2019. The reasons for this were not recorded at the time and did not appear to have been communicated to Mr Ndayisaba.

Both HM Inspectorate of Prisons and the Independent Monitoring Board have expressed concern at the availability of drugs at Coldingley. The prison has a comprehensive drug strategy which aims to reduce the supply and demand for illicit drugs. The prison needs to ensure the strategy is implemented fully, to reduce the serious harm caused by drug use.

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

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

Contents

Summary 1

The Investigation Process 3

Background Information 4

Key Events 6

Findings 12

Summary

Events

1. On 4 December 2009, Mr Eric Ndayisaba was given an Imprisonment for Public Protection (IPP) sentence, with a minimum tariff of 78 months, for grievous bodily harm against his partner. He was moved to HMP Coldingley on 26 September 2016.

2. Mr Ndayisaba was frequently found under the influence of psychoactive substances (PS – also known as ‘Spice’). In April 2017, staff suspected he was being used by other prisoners to test the effects of PS. They moved Mr Ndayisaba to the segregation unit for his own safety and then to an enhanced prisoners’ wing, and his drug use appeared to stop.

3. However, Mr Ndayisaba began to use illicit drugs sporadically from May 2018. His engagement with the substance misuse service was poor. Staff held multidisciplinary meetings to discuss his substance misuse and mental health needs. However, while there were some periods of improvement, he continued to misuse drugs.

4. Between 16 July and 20 August 2019, Mr Ndayisaba attended six psychological therapy sessions to help him with coping strategies. At the last session on 20 August, the psychologist said they would meet again in three weeks’ time, but this never happened.

5. On 28 October, at around 5.30am, an officer saw Mr Ndayisaba collapsed on the bathroom floor in his cell. She called two other colleagues to assist her and they went into the cell. The officers found Mr Ndayisaba lying face down on the floor. His body was stiff and they could not find a pulse so they called a medical emergency code. A prison manager arrived and told staff that they should not attempt cardiopulmonary resuscitation (CPR) as Mr Ndayisaba had rigor mortis which indicated that he had been dead for some time. Paramedics arrived and, at 6.49am, confirmed Mr Ndayisaba’s death. Police later found a vape pipe containing torn pieces of paper next to Mr Ndayisaba’s body, which tested positive for PS.

6. Toxicology tests found no trace of illicit drugs in Mr Ndayisaba’s body but noted that PS use prior to death could not be ruled out. The post-mortem report concluded that Mr Ndayisaba died after inhaling the contents of his stomach. The pathologist said that vomiting due to the toxic effect of an inhaled substance could not be excluded.

Findings

7. While Mr Ndayisaba’s death could not be directly linked to PS use, it would appear likely that PS played a part. Both HM Inspectorate of Prisons and the Independent Monitoring Board have expressed concerns about the availability of drugs at Coldingley. The prison has a comprehensive drug strategy which is regularly reviewed and updated, but it needs to ensure that this is fully implemented to reduce the serious harm caused by PS use.

8. We are satisfied that Mr Ndayisaba received appropriate advice and support to help address his substance misuse problems. However, healthcare staff were not always informed when Mr Ndayisaba was suspected of being under the influence of drugs.

9. The prison's substance misuse provider did not make entries in Mr Ndayisaba's medical record, meaning that there was no single comprehensive record of his clinical history.

10. Mr Ndayisaba had no psychological therapy sessions after August 2019, despite asking his key worker when he would be having more as he found them helpful. The psychologist made an entry in Mr Ndayisaba's record on the day of his death, saying that a decision had been made to delay further sessions until after Mr Ndayisaba's parole hearing scheduled for January 2020, but we could find no evidence that this was communicated to Mr Ndayisaba.

Recommendations

- The Governor and Head of Healthcare should ensure that there is a robust method of sharing information between prison and healthcare staff when a prisoner is found to be under the influence of illicit substances, particularly when this occurs out of hours.
- The Head of Healthcare should ensure that the prison's substance misuse provider records all interventions in a prisoner's electronic medical record so that there is a single comprehensive record of the prisoner's clinical history.
- The Governor should take action to ensure that staff understand:
  - the importance of calling a medical emergency code promptly; and
  - the need to enter a cell promptly at night, subject to a dynamic risk assessment, when there is a potential risk to life, in line with PSI 24/2011.
- The Governor should share this report with Officer A and Officer B and ensure that a senior manager discusses the Ombudsman's findings with them.
- The Head of Healthcare should ensure that:
  - prisoners, especially those who have started therapy, are kept informed of decisions around ongoing sessions and that delays in therapy are kept to a minimum; and
  - all healthcare staff make accurate notes in medical records at the time of their interaction with a prisoner or as soon as relevant information has been received about a prisoner, rather than retrospectively.

The Investigation Process

11. The investigator issued notices to staff and prisoners at HMP Coldingley informing them of the investigation and asking anyone with relevant information to contact her. No one responded.

12. The investigator obtained copies of relevant extracts from Mr Ndayisaba's prison and medical records.

13. NHS England commissioned an independent clinical reviewer to review Mr Ndayisaba's clinical care at the prison.

14. The investigator and clinical reviewer jointly interviewed four members of staff at Coldingley. The investigator separately interviewed four members of staff and one prisoner. The interviews took place between November 2019 and March 2020.

15. We informed HM Coroner for Surrey of the investigation. He gave us the results of the post-mortem examination and toxicology results. We have sent the coroner a copy of this report.

16. One of the Ombudsman's family liaison officers contacted Mr Ndayisaba's ex-partner to explain the investigation and to ask whether there were any matters she wanted the investigation to consider. Mr Ndayisaba's ex-partner appointed a solicitor who raised the following queries:

    - Who did Mr Ndayisaba speak to on the night before he died and what checks were made on him?
    - What did he look like when he was found? Did he have any injuries on his body?
    - Had he spoken to his offender manager about being released to a hostel?
    - What medication was he on and was it appropriately managed?
    - Why was Mr Ndayisaba not in an immigration removal centre and was his immigration status appropriately reviewed?

    These issues have been covered in the report.

17. We shared our initial report with HM Prison and Probation Service (HMPPS). They pointed out one factual inaccuracy which has been amended in this report. They provided an action plan which has been annexed to this report.

18. We provided Mr Ndayisaba's ex-partner with a copy of our initial report, via her solicitor. She found no factual inaccuracies.

Background Information

HMP Coldingley

19. HMP Coldingley is a Category C prison in Surrey, holding just over 500 adult male prisoners. Its primary purpose is to provide prisoners with the opportunity to experience a typical working day to prepare them for a purposeful life on release. Central and North-West London (CNWL) Foundation Trust provides primary and mental health care services which operate Monday to Friday, 7.30am to 6.30pm. Primary care services also operate on Saturday and Sunday between 8.30am and 5.30pm. Substance misuse services are provided through a contract with Forward Trust.

HM Inspectorate of Prisons

20. HM Inspectorate of Prisons (HMIP) carried out an unannounced inspection of Coldingley in February and March 2017. Inspectors found a ready availability of illicit drugs but also found that the levels of violence were not high and vulnerable prisoners were supported by staff. Inspectors found Coldingley provided a good range of substance misuse psychosocial interventions, including a four-week programme, and active peer support. Clinical management of substance misuse problems was good with flexible prescribing and was well-coordinated with other areas of healthcare.

21. Inspectors noted that nearly 40% of the prison population were serving an indeterminate sentence and many found they could make good progress. The prison focused on prisoners who were over tariff and those with complex needs. Inspectors noted that, although the prison prepared parole paperwork on time, parole hearings were sometimes delayed by up to six months which prisoners found frustrating.

Independent Monitoring Board

22. 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 annual report for the period to 31 July 2019, the IMB was concerned about the availability of drugs in the prison. The IMB commented that ambulance callouts remained high, but it was difficult to differentiate between the number of callouts to the prison due to drug abuse or other health-related matters. They considered that photocopying of prisoners' mail had significantly reduced the number of drug-related ambulance callouts. The IMB also noted that there had been an improvement in the waiting time for mental health assessments.

Previous deaths at HMP Coldingley

23. Mr Ndayisaba was the fourth prisoner to die at Coldingley since October 2017. Of the previous deaths, one was self-inflicted, one was from natural causes and one was drug-related. Previous investigations have identified concerns with the availability of illicit drugs and with healthcare record keeping.

Psychoactive Substances (PS)

24. Psychoactive substances (formerly known as ‘new psychoactive substances’ or ‘legal highs’) are a serious problem across the prison estate. They are difficult to detect and can affect people in a number of ways including increasing heart rate, raising blood pressure, reducing blood supply to the heart and vomiting. Prisoners under the influence of PS can present with marked levels of disinhibition, heightened energy levels, a high tolerance of pain and a potential for violence. Besides emerging evidence of such dangers to physical health, there is potential for precipitating or exacerbating the deterioration of mental health with links to suicide or self-harm.

25. In July 2015, we published a Learning Lessons Bulletin about the use of PS (still at that time NPS) and its dangers, including its close association with debt, bullying and violence. The bulletin identified the need for better awareness among staff and prisoners of the dangers of PS; the need for more effective drug supply reduction strategies; better monitoring by drug treatment services; and effective violence reduction strategies.

Indeterminate sentence for public protection (IPP)

26. Sentences of Imprisonment for Public Protection (IPPs) were created by the Criminal Justice Act 2003 and started to be used in April 2005. They were designed to protect the public from serious offenders whose crimes did not merit a life sentence. Offenders sentenced to an IPP were set a minimum term (tariff) of imprisonment, after which they can apply to the Parole Board for release. The Parole Board will release an offender only if it is satisfied that they no longer pose a risk to the public. IPP sentences were abolished in December 2012. However, as at 31 March 2020, there were still 2,039 IPP prisoners and 94% of these were over tariff.

Key Events

27. On 4 December 2009, Mr Eric Ndayisaba, a Burundian national, was given an Imprisonment for Public Protection (IPP) sentence, with a minimum term of imprisonment (tariff) of 78 months, for grievous bodily harm with intent against his partner. He was sent to HMP Wandsworth.

28. Mr Ndayisaba had a history of drug misuse and used illicit drugs throughout his time at Wandsworth. He also had schizophrenia and post-traumatic stress disorder (PTSD).

29. During 2016, the Home Office made two attempts to deport Mr Ndayisaba to Burundi (after serving him with a deportation order in 2015). However, he was returned to Wandsworth on each occasion due to legal challenges and insufficient identification evidence.

30. In September 2016, Mr Ndayisaba was accepted onto a psychologically informed planned environment (PIPE) unit as part of his sentence plan. However, as he had been served with a deportation order, he no longer met the criteria to transfer to the unit. As an alternative, staff referred him for the Healthy Relationships programme at HMP Coldingley.

HMP Coldingley

2016-17

31. Mr Ndayisaba was moved to Coldingley on 26 September 2016.

32. On 18 January 2017, Mr Ndayisaba's offender supervisor met with him. She told him that his expected parole date would be in October but could be delayed. She told him that he needed to complete the Healthy Relationships programme and the substance misuse programme, Stepping Stones. Mr Ndayisaba told his offender supervisor that he had previously used illicit drugs as he was in a bad place, but he was focusing on his faith and attending Friday prayers. She noted that Mr Ndayisaba was in a positive frame of mind and she encouraged him to keep up the good work in preparation for his next parole review.

33. Mr Ndayisaba was found to be under the influence of psychoactive substances (PS – also known as 'Spice') on nine occasions between 4 October 2016 and 23 March 2017. Staff suspected that other prisoners were using him to test PS and they moved him to the segregation unit for his own safety.

34. During March and April, staff supported Mr Ndayisaba under suicide and self-harm prevention procedures (known as ACCT) after he told them that he did not care if he lived or died and would be happy if he died after taking PS. Staff stopped ACCT monitoring on 23 April because Mr Ndayisaba was engaging with the substance misuse and mental health teams and said he was feeling better. By this time, he had been moved to E Wing, the enhanced prisoners' wing.

35. Mr Ndayisaba remained on E Wing and went through a very positive period for over a year where there were no reported incidences of him using illicit drugs. Staff regularly recorded positive entries in his prison record, he was engaging

with substance misuse and mental health services, and he began working in the kitchens.

36. Between April and June, Mr Ndayisaba obtained certificates of completion for three in-cell programmes on Substance Awareness, Relapse Prevention and Harm Reduction. On 19 May, he completed the Stepping Stones programme.

2018

37. On 2 May 2018, staff suspected that Mr Ndayisaba had taken illicit drugs. Healthcare staff saw him in his cell and noted that he was unsteady on his feet with slurred speech, but he said he had not taken anything.

38. On 7 May, Mr Ndayisaba was caught stealing food from the kitchen and was dismissed from his job. Staff placed him on the basic regime for stealing and for being under the influence of drugs and referred him to the substance misuse team.

39. On 13 May, Mr Ndayisaba told a substance misuse worker that he had not been using any substances and that staff often thought he was under the influence when he was reacting to side effects of his medication. He told the substance misuse worker that he was struggling with the fact that his son was in hospital and he was locked behind his door all the time. The substance misuse worker encouraged him to look for another job to keep himself occupied. She noted that Mr Ndayisaba declined any further input from the substance misuse service.

40. On 3 July, the Burundian authorities told the Home Office that the information they had provided was insufficient for them to verify Mr Ndayisaba's identity and allow him to return to Burundi.

41. On 9 July, a substance misuse worker met with Mr Ndayisaba. She noted that he was frustrated with his immigration situation and the length of time he had been in prison. She reminded him that he was an IPP prisoner and he needed to be aware of the consequences of his actions, including his use of illicit substances. Mr Ndayisaba said that his parole review was due to take place in October. He again said he did not want any further input from the substance misuse service.

42. On 11 September, Mr Ndayisaba met with his key worker for the first time. By this time, he had returned to working in the kitchens and was studying maths and English. Mr Ndayisaba told his key worker that he wanted to work towards his enhanced IEP status and to get a plumbing qualification so that he could find work on release.

43. Mr Ndayisaba's key worker held six further key worker sessions with Mr Ndayisaba between September and December 2018. He noted that Mr Ndayisaba remained focused on making positive progress and getting his enhanced IEP status.

2019

44. On 4 January 2019, a psychologist who was preparing a psychology report for the parole board, met with Mr Ndayisaba. She noted that Mr Ndayisaba engaged

well throughout the interview and answered the questions she asked. She told him she would return to speak to him once she had completed her assessment.

45. On 16 January, the psychologist met Mr Ndayisaba along with his offender supervisor to discuss the content of the report and to let him know what further work he needed to do in advance of his next parole hearing. She noted that Mr Ndayisaba had limited intellectual ability and required specialist adapted services to meet his needs. She noted that the type of services he needed would usually be found in therapeutic communities or specialist personality disorder units. However, she noted that he was not yet ready for these specialist services due to his mental health and PTSD. She concluded that the Healthy Relationships and other similar group programmes would be too complex for Mr Ndayisaba. She recommended psychosocial one-to-one sessions with visual aids or other relevant adaptions to meet his needs. She also recommended focused work to address his substance misuse, vulnerability and mental health issues.

46. On 30 January, another psychologist met with Mr Ndayisaba to assess his suitability for psychosocial therapy. Mr Ndayisaba told him that he had seen psychologists before and talking about trauma from his past made him feel worse. The psychologist offered Mr Ndayisaba one-to-one therapy sessions, focusing on trauma stabilisation, and placed him on the waiting list.

47. Records show that Mr Ndayisaba made continued positive progress, with no further incidences of illicit substance misuse. He continued to work in the kitchens and received positive reports from staff.

48. On 13 March, an officer noted that Mr Ndayisaba was suspected of being under the influence of an illicit substance during the evening roll check. We found no evidence of this in Mr Ndayisaba’s medical record.

49. On 2 April, an officer noted that Mr Ndayisaba was suspected of being under the influence of an illicit substance during evening association. We found no evidence of this in Mr Ndayisaba’s medical record.

50. On 3 April, Mr Ndayisaba attended a meeting with prison staff to discuss his substance misuse. An officer noted in his prison record that staff were aware that his substance misuse needs were complex and that he would be re-referred to the substance misuse team. The officer said that Mr Ndayisaba agreed to engage with the substance misuse team and that he was being given another chance on E Wing.

51. On 4 April, a substance misuse worker met with Mr Ndayisaba and challenged him about his recent substance misuse. He told her that he was using PS to cope with frustration as his ex-partner had a new partner. He said that he knew he had made things worse by using PS. The substance misuse worker noted that she discussed other coping strategies and harm minimisation with him and advised him to maintain positive contacts with his ex-partner for the sake of his children.

52. On 1 May, Mr Ndayisaba’s mandatory drug test showed a positive result for PS. Staff placed him on a disciplinary charge and made another referral to the substance misuse team.

53. On 8 May, Mr Ndayisaba's key worker met with Mr Ndayisaba for a key worker session. Mr Ndayisaba told his key worker that he had relapsed into using illicit drugs for the first time in two years. He said it was due to personal issues outside prison. His key worker noted that Mr Ndayisaba was continuing to wait for psychotherapy and an update on his parole review.

54. On 13 May, a substance misuse worker met with Mr Ndayisaba to discuss his positive drug test and ongoing support. Mr Ndayisaba told her that he had used illicit drugs as he felt stressed about his ex-partner. The substance misuse worker spoke to him about the risk of overdose from illicit drugs and how he should be preparing for his upcoming parole review.

55. On 16 July, Mr Ndayisaba attended his first psychotherapy appointment with a psychologist, focusing on trauma stabilisation. Mr Ndayisaba told the psychologist that he had flashbacks about being involved in the war and witnessing the death of his parents and friends. He said he had nightmares about being chased through the jungle by soldiers. Mr Ndayisaba said that he sometimes felt as though he had no life, but he said he prayed when he had those feelings. He also said that his medication was helping him. The psychologist noted that he would see Mr Ndayisaba for a series of further trauma stabilisation sessions. Mr Ndayisaba had further appointments with the psychologist on 24 July, 31 July and 7 August.

56. On 9 August, an officer noted that Mr Ndayisaba was suspected of being under the influence of illicit drugs at the evening roll check. We found no evidence of this in Mr Ndayisaba's medical record but the officer made a referral to the substance misuse service on 11 August.

57. On 13 August, Mr Ndayisaba had his fifth trauma stabilisation therapy session with the psychologist.

58. On 14 August, Mr Ndayisaba failed to attend an appointment with the substance misuse team which had been arranged following the referral by an officer.

59. On 20 August, Mr Ndayisaba had his sixth trauma stabilisation session with the psychologist. He noted that Mr Ndayisaba seemed anxious and uncomfortable during the session, although he said that this was similar to how he had presented in previous weeks. The psychologist noted that they went over the work they had covered in previous sessions. He told Mr Ndayisaba that he would be away on annual leave for the next two weeks, but they would meet again in three weeks' time to discuss further therapy options. However, this did not happen.

60. The psychologist told the investigator and the clinical reviewer that he was not aware that Mr Ndayisaba had recently been suspected of illicit drug use. He said that, although this would be important information for assessing how Mr Ndayisaba was coping, he would not have pursued it with him during their therapy session. He also said that a decision had been made to delay any further therapy sessions until after Mr Ndayisaba's parole hearing, although this information was not noted in his medical record at the time.

61. On 18 September, Mr Ndayisaba failed to attend a further appointment with the substance misuse service. The substance misuse worker noted in his record that kitchen staff told her that Mr Ndayisaba said he did not want to attend. Mr Ndayisaba did not have any further contact with the substance misuse service

62. On 9 October, Mr Ndayisaba told his key worker that he had not had a psychotherapy appointment for a while and did not know when they would start again. He asked his key worker again on 16 October, saying that he had found the sessions helpful.

63. Mr Ndayisaba's key worker told the investigator and the clinical reviewer that he made a phone call to the mental health team to chase up the psychotherapy appointments on Mr Ndayisaba's behalf. He said they told him that the sessions would be restarting soon but he was not aware of the reason for the delay. He did not see Mr Ndayisaba again after 16 October so he did not update him about his contact with the mental health team.

64. Records show that staff had no further concerns about Mr Ndayisaba. There were no further incidents of illicit drug use and he continued to receive comments from staff about his good standard of work and positive behaviour.

Events of 27/28 October

65. At around 4.45pm on 27 October, an officer saw Mr Ndayisaba returning from work. She told the investigator that she vaguely recalled saying hello to him and she did not have any concerns about him. She last saw him in his cell when she did a roll check at around 5.30pm.

66. At around 8.00pm, Officer A carried out the evening roll check. She told the investigator that she could not initially see Mr Ndayisaba but, by looking into the mirror in his room, she could see him standing facing the wall by his desk. She said he was wearing his kitchen uniform and he was playing music. Officer A said that there was no reason for her to speak to him, but she was satisfied that he was alive and well in his cell when she saw him that evening.

67. At 5.30am on 28 October, Officer A started the morning roll check. When she looked into Mr Ndayisaba's cell, she noticed a light was on but she could not immediately see him. She used the mirror in his room and saw that he was lying on the floor in the bathroom, still wearing his kitchen uniform. Officer A went to call her colleague, Officer B, and they both went back to Mr Ndayisaba's cell. Officer A said that they needed three officers present to go into the cell so she used her radio to call another officer.

68. When the third officer arrived, staff opened the door and went into the cell. Officer A said Mr Ndayisaba was lying face down on the floor. She said that he felt cold and stiff and staff could not find a pulse, so they called a code blue (an emergency code which tells the control room that a prisoner is unresponsive or not breathing and that an ambulance needs to be called immediately). A custodial manager arrived shortly afterwards and considered that Mr Ndayisaba had been dead for some time, as rigor mortis was present, so he instructed staff to leave the cell. Staff did not attempt cardiopulmonary resuscitation (CPR). Paramedics arrived and confirmed Mr Ndayisaba's death at 6.49am.

Information obtained after Mr Ndayisaba's death

69. Police found a vape pipe containing torn pieces of paper next to Mr Ndayisaba's body. The police subsequently tested the contents of the vape pipe and found that it contained PS.

70. The psychologist made an entry in Mr Ndayisaba's medical record after he had died. He noted that Mr Ndayisaba's parole hearing was delayed until January 2020 and that consideration of further psychological therapy would take place after the parole hearing.

Contact with Mr Ndayisaba's next of kin

71. Mr Ndayisaba's ex-partner was listed as his next of kin. The prison's family liaison officer (FLO) and a prison manager went to her home on the afternoon of 28 October to tell her that Mr Ndayisaba had died. The prison contributed to the cost of Mr Ndayisaba's funeral in line with national guidance.

Support for prisoners and staff

72. The Governor held a debrief for staff involved in the emergency response to ensure they had the opportunity to discuss any issues arising, and for managers to offer support. The staff care team also offered support.

73. The prison posted notices informing staff and prisoners of Mr Ndayisaba's death, and offering support. Staff reviewed all prisoners assessed as being at risk of suicide or self-harm in case they had been adversely affected by Mr Ndayisaba's death.

Post-mortem report

74. The post-mortem report concluded that there were no injuries of significance and that Mr Ndayisaba's cause of death was respiratory arrest due to aspiration pneumonitis (damage to the lungs caused by inhalation of material (vomit) from the stomach). The pathologist was unable to establish why the aspiration had occurred. The toxicology results found no traces of illicit drugs or alcohol but the report noted that, due to the variable nature of synthetic cannabinoid products and difficulties identifying them, the use of PS prior to death could not be ruled out. The pathologist concluded that in view of the toxicologist's comments, vomiting due to the toxic effect of an inhaled substance could not be excluded.

Findings

Availability of drugs at Coldingley

75. A vape pen containing psychoactive substances (PS) was found next to Mr Ndayisaba when he was discovered dead in his cell. Although toxicology tests did not detect PS in his body, the report noted that due to difficulties in detection of PS, their use prior to death could not be ruled out. While the cause of Mr Ndayisaba's death is not entirely clear, it would appear likely that it was connected to his PS use.

76. We are concerned that Mr Ndayisaba was able to obtain and use illicit drugs with apparent ease at Coldingley. Both HM Inspectorate of Prisons and the Independent Monitoring Board have previously expressed concern about the ready availability of drugs at Coldingley.

77. Coldingley has a comprehensive strategy to address both the supply of and demand for PS and illicit drugs. It includes numerous measures to reduce the supply of drugs into the prison and movement of drugs around the prison. Examples of this include photocopying mail to prevent paper soaked in PS entering the prison, and providing additional staff resources to carry out mandatory drug tests and cell searches. There are also measures to educate prisoners about the dangers of PS and support those known to use the drugs, plus additional disciplinary measures to deter drug use.

78. We note that Coldingley's drug strategy addresses the reduction in supply and demand for PS. This needs to be implemented fully, to ensure that the prison minimises the harms caused by PS use.

Substance misuse

79. We found evidence that Mr Ndayisaba may have had a low level of intellectual functioning, indicating that he appeared vulnerable and may have been easily influenced by other prisoners. During his first six months at Coldingley, Mr Ndayisaba was found to be under the influence of PS so frequently that staff suspected he was being used "as a guinea pig" by other prisoners to test the drug. We consider that staff took appropriate measures to safeguard Mr Ndayisaba by moving him to the segregation unit for a short period and then onto the enhanced prisoners' wing where he made positive progress. We are satisfied that Mr Ndayisaba received appropriate advice and support to help address his substance misuse problems, although it is unfortunate that he did not always engage as fully as he should have.

80. However, we are concerned that healthcare staff were not always made aware when Mr Ndayisaba was found to be under the influence. Healthcare staff are not available 24-hours a day at Coldingley. We heard from staff that any incidents of suspected drug use should be reported to healthcare staff and, if the incident occurred out of hours, healthcare staff should be informed the following morning. While we found evidence that staff reported these incidents to the substance misuse team, in line with Coldingley's drug strategy, there were times when there was nothing noted in Mr Ndayisaba's medical record. We found that the substance misuse service kept separate records and did not include their

contacts with Mr Ndayisaba on his electronic medical record. We made a recommendation about this following a previous death at Coldingley and, during interviews, we heard that the substance misuse service had started making entries on the electronic medical records. Nevertheless, we make the following recommendations:

The Governor and Head of Healthcare should ensure that there is a robust method of sharing information between prison and healthcare staff when a prisoner is found to be under the influence of illicit substances, particularly when this occurs out of hours.

The Head of Healthcare should ensure that the prison's substance misuse provider records all interventions in a prisoner's electronic medical record so that there is a single comprehensive record of the prisoner's clinical history.

Emergency response

81. PSI 24/2011, Management and security of nights, says that in normal circumstances, the night orderly officer must give authority to unlock a cell during night state and no cell should be opened unless at least two/three members of staff are present (subject to local risk assessment procedures). However, the PSI also says that the preservation of life must take precedence over security, and that where there is, or appears to be, immediate danger to life, cells may be unlocked without the authority of the night orderly officer and an individual member of staff may go into the cell on their own, following an on-the-spot risk assessment.

82. When Officer A saw Mr Ndayisaba lying unresponsive on the floor of his cell, we consider that she should have called a code blue emergency code to tell the control room to call an ambulance immediately. She then went to call another officer and then used her radio to call a third because she said they had to have three officers present before they could enter a cell. The code blue was only called after the three officers had entered the cell and checked Mr Ndayisaba for a pulse.

83. These delays did not affect the outcome for Mr Ndayisaba as he had been dead for some time before he was found. However, a delay of even a few minutes may be crucial in a medical emergency.

84. We do not say that Officer A should necessarily have entered the cell on her own, but we are concerned that she and Officer B thought that they could never enter a cell without three officers present. We recommend:

The Governor should take action to ensure that staff understand:

- **the importance of calling a medical emergency code promptly; and**
- **the need to enter a cell promptly at night, subject to a dynamic risk assessment, when there is a potential risk to life, in line with PSI 24/2011.**

The Governor should share this report with Officer A and Officer B and ensure that a senior manager discusses the Ombudsman's findings with them.

Mental health

85. Mr Ndayisaba was well-known to the prison's mental health in-reach team. He received regular reviews and complied with prescribed medication for schizophrenia. He admitted to struggling with therapy to address PTSD and, at times, he declined therapy that was offered to him over the years. However, in the months before his death, he appeared motivated to address his past trauma and attended six trauma stabilisation sessions with a psychologist between 13 July and 20 August 2019.

86. We are concerned that no one from the mental health team contacted Mr Ndayisaba about ongoing therapy after 20 August. The psychologist made an entry in Mr Ndayisaba's medical notes on the day of his death, indicating that an earlier decision had been made to delay further therapy until after his parole hearing, scheduled for January 2020. The psychologist's retrospective entry also said that Mr Ndayisaba was aware of this decision, but we found no evidence to support this. In fact, in the weeks before his death, Mr Ndayisaba had been asking his key worker to find out when he could continue with therapy as he had found it helpful.

87. We found no evidence that anyone told Mr Ndayisaba that a decision on further therapy would take place after his parole hearing, and it is not clear why therapy would have needed to be delayed for this reason or why the decision was not recorded at the time. We make the following recommendation:

The Head of Healthcare should ensure that:

- **prisoners, especially those who have started therapy, are kept informed of decisions about ongoing sessions and that delays in therapy are kept to a minimum; and**
- **all healthcare staff make accurate notes in medical records at the time of their interaction with a prisoner or as soon as relevant information has been received about a prisoner, rather than retrospectively.**

Immigration status and IPP sentence

88. Mr Ndayisaba's family asked about Mr Ndayisaba's immigration status and why he was not moved to an immigration removal centre.

89. Mr Ndayisaba was serving an Imprisonment for Public Protection (IPP) sentence. Although the Home Office served Mr Ndayisaba with a deportation order after he was convicted and sentenced, he was always detained as an IPP prisoner, not because of his immigration status. IPP prisoners can only be released once they have served their minimum term (tariff) and the Parole Board have approved their release. The Parole Board never approved Mr Ndayisaba's release.

Therefore, he remained in prison custody and was not eligible to be moved to an immigration removal centre.

90. When Mr Ndayisaba was sentenced, he was given a minimum tariff of 78 months, until August 2015. He was therefore more than four years over tariff when he died.

91. We found that Mr Ndayisaba's immigration status affected some aspects of his sentence progression and, hence, his ability to satisfy the Parole Board that his risk had reduced. However, we acknowledge that other factors impacted on Mr Ndayisaba's ability to progress through his sentence, including availability of programmes and, at times, his own motivation to engage with appropriate support. We therefore make no recommendation.

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