Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Kevin Kirby, a prisoner at HMP Whatton, on 3 March 2021

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 Kevin Kirby died from COVID-19 in hospital on 3 March 2021 whilst a prisoner at HMP Whatton. He was 58 years old. He also had Type 2 diabetes, heart disease and peripheral vascular disease (a blood circulation disorder) which contributed to but did not cause his death. We offer our condolences to his family and friends.

4. It appears that Mr Kirby caught COVID-19 at Whatton, as he had not left the prison for any reason during the established incubation period.

5. The clinical reviewer concluded that the clinical care that Mr Kirby received at Whatton was equivalent to that which he could have expected to receive in the community.

6. After Mr Kirby tested positive for COVID-19, nurses appropriately assessed him at least once a day. Healthcare staff tried to persuade him to go to hospital when his health deteriorated, but he refused to go until he was gravely ill. Whatton followed national guidance on managing COVID-19 risks.

7. The clinical reviewer made three recommendations which are not directly related to Mr Kirby's death but which the Head of Healthcare will need to address.

8. We make no non-clinical recommendations.

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

The Investigation Process

10. NHS England commissioned a clinical reviewer to review Mr Kirby's clinical care at the prison.

11. The PPO investigator has investigated the non-clinical issues in Mr Kirby's care, including his location, the security arrangements for his hospital escorts, liaison with his family and whether compassionate release was considered. The investigator and clinical reviewer jointly interviewed two members of staff by telephone on 3 June.

12. The Ombudsman's family liaison officer wrote to Mr Kirby's next of kin to explain our investigation. They had no specific questions.

13. We shared the initial report with the Prison Service. There were no factual inaccuracies.

14. We shared the initial report with Mr Kirby's next of kin. They did not respond.

Previous deaths at Whatton

15. There were fourteen deaths from natural causes at HMP Whatton in the two years before Mr Kirby's death, including four from COVID-19. There are no significant similarities between our findings in this investigation and those of the other deaths. Since Mr Kirby's death, a further prisoner has died at Whatton as a result of COVID-19.

Coronavirus (COVID-19)

16. COVID-19 is an infectious disease that affects the lungs and airways. On 11 March 2020, the World Health Organisation (WHO) declared COVID-19 a worldwide pandemic.

17. 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 have 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. (This list is not exhaustive.)

18. 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. 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 prison population.

19. The Ministry of Justice and Public Health England later issued joint guidance, *Preventing and controlling outbreaks of COVID-19 in prisons and places of detention*. It provides operational recommendations for custodial and healthcare

staff on preventing and managing outbreaks of COVID-19, including specific advice on population management, social distancing, actions to take if a prisoner, or staff member develops symptoms, and the use of personal protective equipment (PPE). (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.)

20. After a period of complete lockdown, the Ministry of Justice and HM Prison and Probation Service produced *COVID-19: National Framework for Prison Regimes and Services.* This outlines strategies for easing restrictions and modifying regimes, where severe constraints are disproportionate, or unsustainable. Prisons are expected to devise local policies within the parameters set in the framework.

Segregation

21. Segregation units, sometimes called Care and Separation Units (CSUs), are used to keep prisoners apart from other prisoners. This might be because they feel vulnerable or under threat from other prisoners or if they behave in a way that prison staff think would put people in danger or cause problems for the rest of the prison. They also hold prisoners serving punishments of cellular confinement after disciplinary hearings.

22. Segregation is authorised by an operational manager at the prison who has to be satisfied that the prisoner is fit for segregation after an assessment by a member of healthcare staff. Segregation unit regimes are usually restricted, and prisoners are permitted to leave their cells only to collect meals, wash, make phone calls and have a daily period in the open air.

Key Events

23. In 2011, Mr Kevin Kirby received an indeterminate sentence for public protection for assault, with a minimum tariff to serve of three years and six months. In January 2014, he was transferred to HMP Whatton. Mr Kirby had anxiety, depression and a personality disorder.

24. On 6 October 2015, Mr Kirby had a heart attack, and tests showed that he had developed Type 2 diabetes. Prison GPs prescribed him blood pressure and diabetes medication. They referred him to a cardiologist, but he refused to go to hospital.

25. On 22 August 2018, Mr Kirby told a prison GP that he would no longer take his heart and diabetes medication. On 14 May 2020, a nurse spoke to Mr Kirby about the risks of not taking his medication, but he continued not to do so.

26. On 18 October 2020, Public Health England (PHE) declared that Whatton was a COVID-19 outbreak site.

27. On 6 January 2021, the Assistant Practice Manager, who worked on a project with NHS Digital, noted that Mr Kirby was at high risk of developing complications from COVID-19. Mr Kirby was not offered shielding because he was not in the clinically vulnerable group.

28. On 20 January, the prison carried out a mass testing of prisoners in response to an outbreak of COVID-19 infections. Mr Kirby tested negative.

29. On 25 January, at a disciplinary hearing, the Head of the Offender Management Unit sent Mr Kirby to the CSU for fourteen days for racist behaviour. On 4 February, Mr Kirby told a nurse that he had breathing problems. She took a swab test and noted that his pulse rate was slightly raised but that he was alert and coping with his symptoms. She noted that Mr Kirby's National Early Warning Score (NEWS, a tool to detect and respond to clinical deterioration) was 2 which indicated a low clinical risk. On 6 February, Mr Kirby's test (and that of 15 other prisoners) was confirmed as positive for COVID-19.

30. On 4 February, the Head of Reducing Reoffending told Mr Kirby that he would have to self-isolate in the CSU for 10 days.

31. On 6 February, a nurse reviewed Mr Kirby. She noted that he had a fever, was breathless and had low blood oxygen saturation. She noted that his NEWS score was now 5 and told him that he needed to go to hospital. However, Mr Kirby refused to do so.

32. On 8 February, a nurse saw Mr Kirby. She noted that he had a persistent cough and very low blood oxygen saturation levels but was still alert. She noted that his NEWS score was 8 which indicated a high clinical risk. An officer radioed a medical emergency code blue (which indicates that a prisoner is unconscious or not breathing and triggers the control room to call an ambulance immediately). The nurse gave him oxygen. Ambulance paramedics arrived and tried to persuade him to go to hospital, but he refused.

33. Later that day, a prison GP saw Mr Kirby. She identified signs of infection in both his lungs and that he was unable to speak in full sentences as he was short of breath. He refused to go to hospital. The GP found that Mr Kirby had capacity to make decisions about his treatment.

34. On 9 February, a nurse saw Mr Kirby who was lying on his bed, struggling to breathe. She noted that his blood oxygen saturation remained very low and that his NEWS score was 9. She gave him oxygen. At 11.25am, an officer radioed a medical emergency code blue. At 12.06pm, ambulance paramedics were at Mr Kirby's side. They told Mr Kirby that his health would deteriorate further if he stayed at the prison. He agreed to go to hospital.

35. On 3 March, Mr Kirby died in hospital. A consultant anaesthetist established that Mr Kirby died from COVID-19. He also had Type 2 diabetes, heart disease and peripheral vascular disease (a blood circulation disorder) which contributed to but did not cause his death.

36. On 27 April, PHE declared that Whatton was no longer an outbreak site.

Findings

Clinical findings

37. The clinical reviewer found that the clinical care that Mr Kirby received at Whatton was equivalent to that which he could have expected to receive in the community.

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

38. HM Inspectorate of Prisons conducted a scrutiny visit of HMP Whatton in August 2020. They found that the prison was following the national directives issued by HMPPS on how to contain and prevent the spread of the virus, and that cohort arrangements for prisoners were in place.

39. Inspectors reported that the need for social distancing was re-enforced but remained problematic in practice as some corridors and office spaces made this virtually impossible at all times. There had been attempts to supervise distancing in areas such as meal service and domestic visits but in other settings, prisoners and staff worked in close proximity.

40. After the scrutiny visit, prison managers undertook measures to enforce social distancing which included one-way systems, increased cleaning regimes and health and safety risk assessments. The Governor posted a series of notices to staff and prisoners explaining the steps that were being taken to ensure the safety of staff and prisoners.

41. We are satisfied that when Mr Kirby tested positive for COVID-19, a prison manager appropriately decided that he should self-isolate in the segregation unit, where he was living at that time, to reduce potential contact with other prisoners and members of staff.

42. The clinical reviewer found that after Mr Kirby tested positive for COVID-19, nurses appropriately assessed him at least once a day. Healthcare staff tried to persuade Mr Kirby to go to hospital when his health deteriorated. The clinical reviewer found that there was nothing more that healthcare staff could have done to safeguard his health because of his persistent refusal to accept medical advice.

43. Our investigation found that the prison had followed the national guidance on managing the risks associated with COVID-19.

Elizabeth Moody
Deputy Prisons and Probation Ombudsman **October 2021**

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