

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Robert Kavanagh, a prisoner at HMP Stoke Heath, on 6 January 2021

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. 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.
3. Mr Robert Kavanagh, who was 46 years old, died in hospital of COVID-19 pneumonia on 6 January 2021, while a prisoner at HMP Stoke Heath. I offer my condolences to Mr Kavanagh's family and friends.
4. The clinical reviewer concluded that the clinical care Mr Kavanagh received at Stoke Heath was, overall, equivalent to that which he could have expected to receive in the community.
5. We are concerned that when Mr Kavanagh was taken to hospital, he was double cuffed (his wrists were cuffed together and he was attached to an officer using an escort chain). As a category C prisoner, Mr Kavanagh should not have been double cuffed unless there were exceptional reasons to do so.
6. In addition, we are concerned that healthcare staff did not complete their part of the risk assessment and the duty manager authorised restraints without any input from healthcare staff. The decision to double cuff Mr Kavanagh was not based on an assessment of his current health and risk of escape at the time. We consider that the restraints used on Mr Kavanagh were not proportionate to the risk he posed.

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 staff do not double cuff category C prisoners unless the individual risk assessment indicates that double cuffing is required and proportionate.
- The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position on the use of restraints and that, in all cases:
 - healthcare staff complete the medical information section of the escort risk assessment to say whether the prisoner's current medical condition affects their mobility and risk of escape; and
 - authorising managers show that they have taken this information into account when assessing a prisoner's current level of risk.

The Investigation Process

7. NHS England commissioned an independent clinical reviewer, to review Mr Kavanagh's clinical care at the prison. The clinical reviewer's report is attached as Annex 1.
8. The PPO investigator investigated non-clinical issues, including the prison's response to COVID-19 and shielding prisoners, the security arrangements for his hospital escorts, liaison with Mr Kavanagh's next of kin and whether compassionate release was considered.
9. We informed HM Coroner for Shropshire of the investigation. We have sent the Coroner a copy of this report.
10. The Ombudsman's family liaison officer wrote to Mr Kavanagh's next of kin, his sister, to explain the investigation and to ask if she had any matters she wanted the investigation to consider. She did not respond.
11. The initial report was shared with HM Prison and Probation Service (HMPPS). Based on when Mr Kavanagh tested positive for COVID-19, they did not accept that Mr Kavanagh caught the virus at the prison and asked for the report to be amended to say that he caught the virus in hospital. The clinical reviewer maintains the view that, based on the evidence available, it was likely that Mr Kavanagh contracted COVID in the prison before he was taken to hospital. We have not amended this aspect of our report, but we have added details of when the tests were taken and when Mr Kavanagh tested positive. HMPPS provided an action plan which is annexed to this report.

Background Information

HMP Stoke Heath

12. HMP Stoke Heath is a medium secure prison in Shropshire that holds up to 766 adults and young adult men on eight residential wings. Healthcare is provided by Shropshire Community Health NHS Trust. The Forward Trust provides services and support for prisoners with substance misuse issues.

Previous deaths at HMP Stoke Heath

13. Mr Kavanagh was the second prisoner to die at Stoke Heath since January 2019. The previous death was from natural causes. Mr Kavanagh's death was the first from COVID-19.

COVID-19 (coronavirus)

14. COVID-19 is an infectious disease that affects the lungs and airways. It is mainly spread through droplets when an infected person coughs, or sneezes. The first reported case of COVID-19 in the UK was in February 2020. On 11 March, the World Health Organisation (WHO) declared COVID-19 as a worldwide pandemic.
15. COVID-19 can make anyone seriously ill, but the risk is higher for some people. There are two levels of higher risk: high-risk (clinically extremely vulnerable); and moderate risk (clinically vulnerable). People at high risk include those who have had an organ transplant; have a severe lung condition; or are having certain types of treatment for cancer; or have a condition with a very high risk of getting infections. Those at moderate risk include people over 70; people with a lung condition; or a chronic medical condition, such as diabetes, heart, liver, lung, or chronic kidney disease; or those who are very obese (this list is not exhaustive).
16. To reduce the spread of the virus, the Government introduced voluntary and mandatory actions, such as 'social distancing' and 'lockdown' (on 16 and 23 March, respectively). Public Health England (PHE), HM Prison & Probation Service (HMPPS) and NHS England worked together to devise measures to contain the outbreak, achieve social distancing, reduce the risk to the most vulnerable in prisons in England and protect the NHS (by reducing the number of people requiring specialist care in community-based hospitals).

Key Events

17. In December 2007, Mr Robert Kavanagh was sentenced to life in prison for murder.
18. On 16 May 2019, Mr Kavanagh was moved to HMP Stoke Heath. Mr Kavanagh was a former drug user and was on a methadone programme.
19. Towards the end of 2019, after Mr Kavanagh had complained of breathlessness, a prison GP made a provisional diagnosis of chronic obstructive pulmonary disease (COPD – the term for a group of serious lung diseases) and referred Mr Kavanagh to a respiratory consultant at the hospital. (The hospital gave Mr Kavanagh appointments for May 2020 but they were cancelled due to COVID-19.)
20. On 27 March 2020, health care staff sent Mr Kavanagh a letter saying that due to his underlying health conditions, he was at high risk of becoming seriously ill if he contracted COVID-19 and that he was advised to shield.
21. The next day, a nurse saw Mr Kavanagh to discuss the letter with him. He said that he was not sure if he wanted to shield and would think about it. On 29 March, the nurse spoke to Mr Kavanagh again after he was seen mixing with prisoners on the wing and he agreed to self-isolate in his cell.
22. On 24 June, Mr Kavanagh said that he no longer wanted to self-isolate and signed a disclaimer to that effect.
23. On 7 December, Mr Kavanagh told a nurse that he did not feel well and was struggling to breathe. A nurse went to see Mr Kavanagh in his cell. She noted that he had a high temperature, low blood oxygen levels and was struggling to talk in sentences. She suspected that he had sepsis and COVID-19 and decided that he needed to go to hospital. Staff called an ambulance and escorted Mr Kavanagh to hospital. Mr Kavanagh was admitted to hospital, where he tested positive for COVID-19. (The original test taken on 7 December came back as 'not detected' but a subsequent test taken on 12 December came back positive.) On 14 December, Mr Kavanagh was discharged and sent back to prison. He was put in isolation in line with COVID-19 guidelines.
24. On 21 December, a prison GP saw Mr Kavanagh. He said that he did not feel very well and was short of breath. The prison GP thought this was because of COVID-19 and arranged for Mr Kavanagh to be monitored regularly. That evening, a nurse saw Mr Kavanagh. She noted that his blood oxygen levels were low, his chest was tight and he appeared grey in colour. The nurse gave Mr Kavanagh oxygen and arranged for an ambulance to be called. The paramedics arrived and said that Mr Kavanagh needed to go to hospital. He refused to go to hospital as he said he had caught COVID-19 there. As Mr Kavanagh would not go to hospital, the nurse said that he would be monitored every two hours.
25. In the early hours of 22 December, a nurse saw Mr Kavanagh, she noted that his health had deteriorated further and he was struggling to breathe. Mr Kavanagh

said that he would go to hospital, an ambulance was called and he was taken to hospital where he was admitted.

26. Mr Kavanagh's health continued to deteriorate and on 28 December, he was put on a ventilator and taken to the intensive care unit. Over the next week, his health deteriorated further and he died on 6 January 2021 at 10.10am.

Cause of death

27. The Coroner accepted the cause of death provided by a hospital doctor and no post-mortem examination was carried out. The doctor gave the cause of death as COVID-19 pneumonia, COPD and being an ex-intravenous drug user.

Findings

Clinical Findings

28. The clinical reviewer considered that the standard of care Mr Kavanagh received at Stoke Heath was equivalent to that which he could have expected to receive in the community. She found that the care Mr Kavanagh received for his COPD and COVID-19 infection was of a good standard.

Management of Mr Kavanagh's risk of catching COVID-19

29. On 13 March 2020, the National Health and Justice team issued an interim notice providing advice on preventing and controlling outbreaks of COVID-19 in prisons. HMPPS issued further instructions over the following weeks with guidance on the appropriate use of personal protective equipment (PPE), hygiene, cleaning schedules and stock checks. The guidance outlined the importance of effective preventative measures and that methodical cleaning would help prevent infection spread. On 24 March, HMPPS issued an instruction, in line with Government advice, to all prisons to introduce social distancing and to implement a restricted regime and support the enforcement of social distancing of two metres for staff and prisoners wherever possible. The most vulnerable prisoners were identified and put into protective isolation.
30. On 31 March, HMPPS, in consultation with Public Health England (PHE), issued an order to significantly reduce transfers between prisons and other measures were implemented. These measures were designed to be implemented at local level, depending on the needs of each individual establishment and known as 'compartmentalisation' which included:
- Protective Isolation Units (PIUs): to accommodate known or probable COVID-19 cases, ideally in single-cell accommodation.
 - Shielding Units (SUs): to protect the most vulnerable identified through collaboration with NHS England, with enhanced levels of bio-security including dedicated staff;
 - Reverse Cohorting Units (RCUs): to accommodate new receptions or transfers in for a period of 14 days to detect any emergent infectious cases before entering general population. These units could also accommodate anyone returning from hospital.
31. Healthcare staff identified that Mr Kavanagh was at high risk of becoming seriously ill if he contracted COVID-19 and on 27 March, sent him a letter advising him to shield. Staff followed this up with a face to face discussion the next day. Despite shielding initially, Mr Kavanagh changed his mind at the end of June and stopped shielding.
32. Mr Kavanagh did not leave Stoke Heath in the seven weeks before he was taken to hospital with COVID-19 symptoms on 7 December, so it appears he contracted the virus in prison. (Although he did not test positive until 12 December, the clinical reviewer considered it most likely that he had contracted COVID-19 in prison given that he was showing COVID symptoms before he was

taken to hospital and that it can take several days for there to be a positive test given the incubation period of the virus.)

33. The investigation found that the prison responded to the national guidance on COVID-19. Staff identified that Mr Kavanagh was at high risk of complications if he contracted COVID-19 and advised him to shield. However, Mr Kavanagh stopped doing so.

Security risk assessments and the use of restraints

34. 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.
35. 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.
36. When Mr Kavanagh was taken to hospital on 22 December, his escort risk assessment said he was "double cuffed COVID arrangements". Double cuffing is normally where two sets of handcuffs are used; one set is used to cuff the prisoner's wrists together and the other is used to attach one of the prisoner's wrists to an officer's wrist. During the COVID-19 pandemic, an escort chain can be used instead of handcuffs, to maintain social distancing. (An escort chain is a long chain with a cuff at each end; one cuff is attached to the prisoner's wrist and the other to an officer's wrist.) In Mr Kavanagh's case, his wrists were cuffed together and he was then attached to an officer using an escort chain (a form of double cuffing).
37. Prison Service Instruction (PSI) 33/2015 says:

"Normal practice is for male Category B and Escape-List prisoners to be double cuffed while on escort. All other prisoners will be single cuffed unless the individual risk assessment indicates that double cuffing is required and is proportionate."
38. Mr Kavanagh was a category C prisoner, and the usual cuffing arrangement would be single cuffing, where one set of handcuffs is used and one cuff is attached to the prisoner's wrist and one to an officer's wrist.
39. We accept that single cuffing does not comply with social distancing during COVID-19 restrictions. However, we do not understand why Mr Kavanagh was double cuffed. We consider that cuffing him to an officer using an escort chain would have sufficed.

40. We are also concerned that healthcare staff did not complete their part of the escort risk assessment and that the authorising manager, decided on the level of restraints without any input from healthcare staff.
41. The investigator sent an email to the authorising manager to ask him why Mr Kavanagh was double cuffed when he was a category C prisoner, and how he came to his decision on the use of restraints without healthcare staff input. In spite of being chased several times, the authorising manager did not respond to the email.
42. By the time Mr Kavanagh was taken to hospital on 22 December, he was struggling to breathe and was seriously unwell. We consider that there was no justification for double cuffing Mr Kavanagh and that this was not proportionate to the risk he posed. We make the following recommendations:

The Governor should ensure that staff do not double cuff category C prisoners unless the individual risk assessment indicates that double cuffing is required and proportionate.

The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position on the use of restraints and that, in all cases:

- **healthcare staff complete the medical information section of the escort risk assessment to say whether the prisoner's current medical condition affects their mobility and risk of escape; and**
- **authorising managers show that they have taken this information into account when assessing a prisoner's current level of risk.**

The Governor should share this report with the authorising manager and discuss the Ombudsman's findings with him.

**Sue McAllister CB
Prisons and Probation Ombudsman**

December 2021

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