

**Prisons &  
Probation**

**Ombudsman**  
Independent Investigations

# Independent investigation into the death of Mr David Spence, a prisoner at HMP Northumberland, on 18 December 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 David Spence died in hospital on 18 December 2020, while a prisoner at HMP Northumberland. He was 64 years old. The cause of his death was a stroke, due to COVID-19 infection. I offer my condolences to Mr Spence's family and friends.
4. The clinical reviewer concluded that Mr Spence's clinical care at Northumberland was equivalent to that he could have expected to receive in the community and she made no recommendations. Full details of her findings are in the clinical review report.
5. We are satisfied that Northumberland took reasonable steps to protect prisoners during the pandemic and that there was a prompt response to Mr Spence's reports of COVID-19 symptoms and the deterioration in his condition. However, we are concerned that there was no medical opinion in the security risk assessment for Mr Spence's journey to hospital and that the use of restraints was not justified, given his weakened condition. We make one recommendation.

## Recommendation

- The Director and Head of Healthcare should ensure that all staff undertaking and reviewing risk assessments for prisoners admitted to hospital understand the legal position on the use of restraints, that assessments fully take into account the prisoner's health and are based on the actual risk he presents at the time.

## The Investigation Process

6. NHS England commissioned an independent clinical reviewer to review Mr Spence's clinical care at HMP Northumberland.
7. The PPO investigator investigated the non-clinical issues, including aspects of the prison's response to COVID-19 and shielding prisoners; Mr Spence's location; the security arrangements for his journey and admission to hospital; liaison with his family; and whether early release was considered.
8. The Ombudsman's family liaison officer wrote to Mr Spence's next of kin, his niece, to explain the investigation. She did not receive a reply.
9. We shared our initial report with HM Prison and Probation Service (HMPPS). They found no factual inaccuracies. They provided an action plan which is annexed to this report.

### Previous deaths at HMP Northumberland

10. Mr Spence was the sixth prisoner at Northumberland to die since December 2018. Three of the previous deaths were from natural causes (none related to COVID-19) and two were self-inflicted. There are no similarities between the circumstances of Mr Spence's death and those previously investigated.

### COVID-19 (coronavirus)

11. COVID-19 is an infectious disease that affects the lungs and airways. It is mainly spread through droplets when an infected person coughs, sneezes, speaks or breathes heavily. On 11 March 2020, the World Health Organisation (WHO) declared COVID-19 a worldwide pandemic.
12. 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 are having 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. (These lists are not exhaustive.)
13. 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. (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.) 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 population. Other measures include social distancing and the use of personal protective equipment (PPE).

## Key Events

14. Mr David Spence was a life-sentenced prisoner, who was convicted of murder in 1982, but had been released on licence. On 27 March 2019, he was recalled to prison and taken to HMP Durham.
15. At a reception health screen, a nurse noted that Mr Spence had a history of substance misuse and mental health problems. He had also been diagnosed with Asperger's Syndrome. He did not raise any physical health concerns, but an ECG taken a few days later revealed bradycardia (slow heart rate).
16. Mr Spence transferred to HMP Northumberland on 17 April. In June, he was admitted to hospital for surgery to insert stents in his arteries. Thereafter, he had limited contact with healthcare staff as he had no long-term medical conditions.
17. On 19 March 2020, Mr Spence decided that due to the risk of a COVID-19 outbreak, he would isolate in his cell.
18. In April, staff considered Mr Spence's eligibility for the COVID-19 compassionate release on temporary licence (ROTL) scheme, but he did not meet either the sentence or medical criteria.
19. On 10 April, it was noted in Mr Spence's personal record that he had been identified as clinically vulnerable and that he had agreed to move to the prison's shielding unit. On 27 April, a further entry noted that after a review of the COVID-19 guidance, Mr Spence no longer fell within the vulnerable group and a letter had been sent to explain this to him.
20. In May and October, Mr Spence had symptoms typical of COVID-19. He was isolated each time, but his test results were negative.
21. On 10 December, Mr Spence again reported COVID-19 symptoms. He was immediately placed in isolation and a swab was taken to be tested. The result, received the next day, was positive.
22. While dispensing methadone at lunchtime on 11 December, a nurse found that Mr Spence was short of breath, confused, shaking and unable to stand. A National Early Warning Score (NEWS) 2 (an assessment to identify critical illness and deterioration) was calculated as 12 – a very high clinical risk requiring an urgent emergency response; and a Glasgow Coma Score of 14 suggested a mild reduction in consciousness. Staff called a code blue emergency (which indicates difficulty breathing or unconsciousness) and an ambulance was requested. The paramedics found that Mr Spence's observations had stabilised and suspected a urinary infection. They were therefore content for him to remain at the prison.
23. At around 5.20pm, prisoners rang cell bells and banged on their doors to alert staff that Mr Spence had screamed. Another code blue was called, but the ambulance was stood down after healthcare staff examined him.
24. A third code blue was called and an ambulance was requested at 5.48pm. Paramedics arrived at 7.30pm and took Mr Spence to Northumbria Specialist Emergency Care Hospital just after 8.00pm. Two prison officers escorted Mr

Spence, who was double handcuffed with a standard handcuff and an escort chain. The escorts were briefed about wearing PPE and safe ways of working.

25. At 7.00am on 12 December, the escort officers were informed that Mr Spence had had a stroke and was uncommunicative. A prison manager reviewed the security risk assessment and authorised removal of the restraints at 9.45am.
26. Mr Spence's prison records listed the names and addresses of his next of kin and emergency contacts, but no telephone numbers. However, with the help of the police, the appointed family liaison officer was able to notify Mr Spence's niece relatively quickly. He passed her details to the hospital and made contact at key stages.
27. Mr Spence's condition deteriorated and doctors decided not to resuscitate him if his heart or breathing stopped. On 16 December, he transferred to Wansbeck Hospital, for palliative care and his next of kin visited.
28. Mr Spence died at 2.35pm on 18 December. The prison's family liaison officer informed his niece a few minutes later.
29. Mr Spence's funeral was held on 8 January 2021. The prison arranged and paid for the funeral, taking account of the family's wishes.

#### **Cause of death**

30. No post-mortem examination was held as the Coroner accepted the hospital's clinical certification that Mr Spence had died from an ischaemic stroke, due to COVID-19 infection. (An ischaemic stroke is caused by a blockage in an artery that supplies blood to the brain.)

# Findings

## Clinical Findings

31. The clinical reviewer concluded that Mr Spence's care at Northumberland was equivalent to that he could have expected to receive in the community. She made no recommendations.

### *Management of Mr Spence's risk of infection from COVID-19*

32. HM Inspectorate of Prisons carried out a scrutiny visit of Northumberland in September 2020. Inspectors found that there had been a timely response to the pandemic, with good communication on precautions to help prevent the spread of the infection. Given the architecture of the prison, Public Health England had advised that isolating prisoners be kept on their existing houseblock to minimise the risk of cross-infection. Inspectors found that social distancing was managed for queues, such as those for meals and medication, but this was not as well maintained in informal situations and some residential areas. Staff had access to appropriate personal protective equipment (PPE).
33. Mr Spence was not considered to be vulnerable to serious illness if he contracted COVID-19 and was therefore not required to shield. He was tested immediately each time he displayed symptoms characteristic of the infection and healthcare staff referred him promptly to secondary care when his condition worsened. As he had not left Northumberland for any reason during the weeks leading to his COVID-19 diagnosis, we conclude that he contracted the virus during the outbreak at the prison.

### *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. The details of this judgment are included as guidance on Northumberland's security risk assessment form.
36. Prison Service Instruction (PSI) 33/2015 on external prisoner movements says that normal practice is for male Category B and Escape List prisoners to be double cuffed while on escort and that "all other prisoners will be single cuffed unless the individual risk assessment indicates that double cuffing is required and is proportionate".

37. The security risk assessment concluded that Mr Spence was a medium risk of escape and low risk on all the other individual factors, with no known escape motivation or access to resources. The medical section of the form was not completed and the justification for the level of restraints was not recorded.
38. During the investigation, the prison said that Mr Spence had been subject to standard handcuff arrangements for his security category; there was no medical input, as it was an emergency; there had been no adjudications since his recall to prison; and his 'medium escape potential' was due to his offence of murder, which he had been convicted of 38 years before.
39. Mr Spence was a Category C prisoner and therefore the standard handcuff arrangements for his security category was a single cuff, not double cuffs as the prison said.
40. In addition, Mr Spence was acutely unwell when he left the prison. The hospital's death certificate noted that he had been admitted with reduced consciousness and dense left-sided weakness. We believe that the security department should have given greater priority to seeking medical input to the risk assessment.
41. We are not satisfied that the assessment and decision to use restraints took proper account of Mr Spence's poor physical condition. We recommend:

**The Director and Head of Healthcare should ensure that all staff undertaking and reviewing risk assessments for prisoners admitted to hospital understand the legal position on the use of restraints, that assessments fully take into account the prisoner's health and are based on the actual risk he presents at the time.**

**Sue McAllister CB  
Prisons and Probation Ombudsman**

**July 2021**

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