Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Colin Worthington, a prisoner at HMP Whatton, on 27 February 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 Colin Worthington died in hospital on 27 February 2021 of COVID-19 pneumonia and heart failure while a prisoner at HMP Whatton. He was 75 years old. I offer my condolences to Mr Worthington's family and friends.

4. The clinical reviewer concluded that the clinical care Mr Worthington received at Whatton was of a good standard and was at least equivalent to that which he could have expected to receive in the community. She made two recommendations about record keeping and initial health screenings. (We have not repeated the latter in this report because the prison have already made the required change.)

5. We found two non-clinical issues of concern.

6. We found that there was too long a delay in telling Mr Worthington's family that he was in hospital and seriously unwell. We also consider that the use of restraints when Mr Worthington was taken to hospital on 18 and again on 20 February was disproportionate given his age, poor health and mobility issues and the fact that he was accompanied by two prison officers.

   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 Head of Healthcare should:
  - ensure that regular record keeping audits identify gaps or absences of information; and
  - consider ways in which SystmOne records can be updated contemporaneously when an intervention takes place on the wing.
- The Governor should ensure that staff notify a prisoner's next of kin as soon as possible when a prisoner becomes seriously ill.
- The Governor and Head of Healthcare should consider what factors led to the inappropriate decisions to use restraints on 18 and 21 February 2021.

- 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 assessments fully take into account the health of a prisoner and are based on the actual risk the prisoner presents at the time.

The Investigation Process

7. NHS England commissioned an independent clinical reviewer to review Mr Worthington's clinical care at HMP Whatton. Her report is attached as Annex 1.

8. A PPO investigator has investigated non-clinical issues, including aspects of the prison's response to COVID-19 and shielding prisoners; Mr Worthington's location, the security arrangements for his hospital escorts, liaison with his family and whether compassionate release was considered.

9. Our family liaison officer wrote to Mr Worthington's daughter to explain the investigation and to ask whether she had any matters she wanted to be considered during the investigation. She did not respond to our letter.

10. The initial report was shared with the Prison Service. The Prison Service did not find any factual inaccuracies and their action plan is annexed to this report.

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 received or returning prisoners from the main population through 'reverse-cohorting'. Other measures include social distancing and the use of personal protective equipment (PPE).

Previous deaths at HMP Whatton

14. Mr Worthington was the 15th prisoner to die at Whatton since February 2019. All 14 previous deaths were from natural causes, including four from COVID-19. There have been two COVID-19 related deaths since Mr Worthington's death, which are currently under investigation.

15. In a previous investigation into a death at Whatton in October 2020, we recommended that the Head of Healthcare review the then current practice of merging the first and secondary reception screenings. This recommendation was accepted and the prison confirmed that changes to screenings had been implemented in February 2021.

Key Events

16. In October 2018, Mr Worthington was remanded to prison charged with sexual offences. He was subsequently sentenced to 29 months imprisonment and he transferred to HMP Whatton in March 2019. He was released from prison on licence in February 2020. In September, he was recalled to prison for breaching the terms of his licence and committing a further offence and was sent to HMP Nottingham. (He was sentenced for the further offence in January 2021.)

17. Mr Worthington had high blood pressure, chronic kidney disease, heart failure and an irregular heartbeat. He also had reduced mobility.

18. When he arrived at Nottingham on 8 September 2020, Mr Worthington was put into COVID-19 isolation for 14 days as part of the 'reverse cohorting' of newly arrived prisoners. He was identified as at high risk of developing complications if he became infected with COVID-19 and and moved to the prison's Shielding Unit at the end of his isolation period.

19. On 7 October, Mr Worthington transferred to Whatton. When he arrived at the prison, Mr Worthington was again put into COVID-19 isolation for 14 days and then shielded. His shielding status was reviewed monthly and remained unchanged during his time at Whatton.

20. Later in October, Mr Worthington was taken to hospital after reporting shortness of breath. He was reviewed by the cardiology team and encouraged to take his medication regularly. He returned to Whatton the same day. He was tested for COVID-19 on his return and this was negative.

21. Following an initial falls risk assessment, occupational therapy staff and the Older Persons Nurse reviewed Mr Worthington in November and December 2020 and January 2021. His reduced mobility and fear of falling were factors in his care requirements and were reflected in his care plan. He was also assessed by mental health services and provided with techniques to manage his anxiety.

22. On 9 February 2021, Mr Worthington had his first dose of the AstraZeneca COVID-19 vaccine. On 15 February, in advance of a hospital outpatient appointment, he had a COVID-19 test and it was negative.

23. On 18 February, Mr Worthington attended a cardiology outpatient appointment escorted by prison officers using an escort chain (a set of handcuffs with a long chain with one end attached to the prisoner and another to a prison officer).

24. On the morning of 21 February, Mr Worthington told prison staff he felt generally unwell. They reported this to a nurse who advised them to contact healthcare again if Mr Worthington continued to feel ill. In the evening (after healthcare staff had gone home), Mr Worthington complained of chest pains and breathlessness. At 7.59pm, prison staff called a code blue (a medical emergency code used when a prisoner is unconscious or having breathing difficulties). An emergency ambulance was called immediately. The ambulance arrived at Whatton at 8.35pm. Paramedics assessed Mr Worthington and took him to hospital. He was escorted by two prison officers using an escort chain.

25. On arrival at hospital, Mr Worthington was tested for COVID-19. The result came back positive on 22 February.

26. At 1.20am on 22 February, the duty Operational Manager authorised that the escort chain be removed. On the same day, the prison granted Mr Worthington Release on Temporary Licence (ROTL) for medical treatment. Mr Worthington's ROTL stated that one prison officer would remain with him at the hospital.

27. On 24 February, the prison appointed a Family Liaison Officer (FLO) who contacted Mr Worthington's sister and daughter to tell them he was very ill and that hospital doctors assessed he was heading towards end of life care.

28. On 27 February at around 6.10am, Mr Worthington died in hospital. A prison FLO rang Mr Worthington's family that morning to tell them that Mr Worthington had died.

Cause of death

29. The Coroner accepted the cause of death provided by a hospital doctor and no post-mortem examination was carried out. The doctor gave Mr Worthington's cause of death as COVID-19 pneumonia and congestive cardiac failure (heart failure) caused by left ventricular systolic severe dysfunction (a stiffening of the left ventricle) and hypertension (high blood pressure). He also had chronic kidney disease which did not cause but contributed to his death.

Clinical Findings

Management of Mr Worthington's risk of infection from COVID-19 and risk to others

30. The clinical reviewer is satisfied that the healthcare Mr Worthington received was of a good standard and was at least equivalent to that which would have been received in the community.

31. The clinical reviewer found that HMP Nottingham and HMP Whatton identified that Mr Worthington was at high risk if he developed COVID-19 and took appropriate steps to manage and mitigate Mr Worthington's risk of infection. Mr Worthington transferred from Nottingham with COVID-19 shielded status and was put into this protected group at Whatton. He was shielded in accordance with Public Health England (PHE) advice to prisons at the time of transfer. His shielding status was reviewed regularly and remained unchanged during his time at Whatton.

32. Mr Worthington was tested for COVID-19 on a regular basis in line with PHE advice. He tested negative on all occasions. He was eligible for COVID-19 immunisation and received his first dose of the AstraZeneca vaccine on 9 February 2021, in line with national guidelines.

33. The clinical reviewer considers it is likely that Mr Worthington caught COVID-19 in or in transit to or from the hospital on 18 February. Within 72 hours of his return to prison, Mr Worthington told wing staff that he felt generally unwell. Eight hours later he had developed chest pain and was taken to hospital where he tested positive for COVID-19.

34. The clinical reviewer did, however, have a concern about record keeping. She noted that on the morning of 21 February, prison officers reported to a nurse who was visiting the wing that Mr Worthington felt generally unwell and needed to be transferred to hospital. The nurse advised the officers to contact healthcare staff if Mr Worthington continued to feel unwell or if he reported breathlessness or pain. There is no record of this interaction in the SystmOne record (the electronic medical record) as the nurse was away from healthcare at the time and was not able to make a record. However, the clinical reviewer considered that all interventions should be recorded on SystmOne to facilitate continuity of care both in and out of hours. We make the following recommendation:

    The Head of Healthcare should:

    - **ensure that regular record keeping audits identify gaps or absence of information; and**
    - **consider ways in which SystmOne records can be updated contemporaneously when an intervention takes place on the wing.**

Non-clinical Findings

Liaison with Mr Worthington's family

35. Prison Rule 22 says that prisons should inform the next of kin immediately if a prisoner becomes seriously ill. Prison Service Instruction 64/2011 says that if a prisoner suffers an unpredicted or rapid deterioration in their physical health, an appropriate member of prison staff should engage with their next of kin to provide information and support.

36. We accept that it was unclear how serious Mr Worthington's condition was when he was taken to hospital on 21 February, and that there was no information to indicate he was seriously unwell. However, we consider that when Mr Worthington tested positive for COVID-19 on 22 February, particularly given his clinical vulnerability, the prison should have then appointed a FLO and contacted his family. We are concerned that they did not do so until 24 February following a request from the hospital, by which time it had become apparent that Mr Worthington was unlikely to survive. We make the following recommendation:

    The Governor should ensure that staff notify a prisoner's next of kin as soon as possible when a prisoner becomes seriously ill.

Use of restraints

37. We are concerned that Mr Worthington was restrained unnecessarily when he was taken to hospital.

38. 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.

39. 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.

40. This is reinforced in the *National Security Framework – External Escorts*. Sections 5.7 and 5.8 sets out the circumstances when restraints would not be appropriate. They say:

    > "Handcuffs will not normally be used … if the prisoner's medical condition or advanced age or physical impairment renders restraints inappropriate. Restraints will not normally be necessary for example, when the prisoner's mobility is severely limited, e.g. due to advanced age or disability unless there are grounds for believing that an escape attempt may be made with external assistance."

41. An escort chain was used both times when Mr Worthington was taken to hospital in February 2021.

42. In the Escorting Risk Assessment for 18 February, the record noted no relevant security information, a low risk of escape and a low risk of being assisted to escape. The medical section of the form indicated that Mr Worthington used a stick, and a wheelchair for long distances, although the medical assessment was that his medical condition did not affect his ability to escape. This assessment is at odds with his mobility care plan. In the countersigning section the Operational Manager noted Mr Worthington's limited mobility, but then authorised the use of an escort chain.

43. In the Escorting Risk Assessment for 21 February, the medical assessment section is blank because the ambulance was called after healthcare staff had gone off duty. The risk assessment recorded no relevant security information and Mr Worthington was again assessed as a low risk of escape and a low risk of being assisted to escape. Again, the use of an escort chain was authorised by the duty Operational Manager. The escorting chain was removed on 22 February around 1.20am the following day.

44. We recognise that many factors have to be taken into account in determining the level of restraints. However, Mr Worthington was a Category C prisoner and, given his age and mobility problems, we question whether the use of an escort chain was proportionate when Mr Worthington was escorted to hospital on 18 February, given that he was accompanied by two prison officers. We consider that the healthcare input into the risk assessment did not take Mr Worthington's mobility problems into account.

45. We also question whether the use of an escort chain was proportionate when Mr Worthington was taken to hospital and admitted on 21 February, given that he was sufficiently ill to require an emergency ambulance, had chest pains and was struggling to breathe. Again, we question whether this sick, elderly man with mobility problems, had the ability to escape while accompanied by two prison officers.

46. We note that the inappropriate use of restraints is not normally an issue at Whatton and we therefore suggest that the Governor considers what was different in this case. We make the following recommendations:

The Governor and Head of Healthcare should consider what factors led to the inappropriate decisions to use restraints on 18 and 21 February 2021.

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 assessments fully take into account the health of a prisoner and are based on the actual risk the prisoner presents at the time.

Sue McAllister CB
Prisons and Probation Ombudsman **January 2022**

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