Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Tony Brooks, a prisoner at HMP Leeds, on 28 February 2021

A report by the Prisons and Probation Ombudsman

Third Floor, 10 South Colonnade
Canary Wharf, London E14 4PU
Email: mail@ppo.gov.uk
Web: www.ppo.gov.uk
T I 020 7633 4100
F I 020 7633 4141

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 Tony Brooks died in hospital on 28 February 2021, while a prisoner at HMP Leeds. He was 80 years old. The cause of Mr Brooks' death was respiratory failure arising from COVID-19 pneumonitis. I offer my condolences to his family and friends.

4. Although Leeds implemented appropriate protective steps to contain the spread of COVID-19, Mr Brooks appears to have contracted the infection at the prison.

5. Full details of the clinical reviewer's findings are in the clinical review report. She concluded that Mr Brooks received a good standard of clinical care at Leeds, equivalent to that he could have expected to receive in the community. However, she found that there was no care plan in place for his heart condition and we reflect her recommendation on this issue.

6. We are concerned that there was a delay in notifying Mr Brooks' next of kin that he had contracted COVID-19 and was seriously ill.

Recommendations

- The Head of Healthcare should ensure that care plans are in place for patients with chronic health conditions.
- The Governor should ensure that if a prisoner is suspected to be, or confirmed as COVID-19 positive, he is given the opportunity for someone to be notified.
- The Governor should ensure, in line with Prison Rule 22, that a prisoner's next of kin is informed without delay if he becomes seriously ill.

The Investigation Process

7. NHS England commissioned an independent clinical reviewer to review Mr Brooks' clinical care at HMP Leeds.

8. The PPO investigator investigated the non-clinical issues, including aspects of the prison's response to COVID-19 and shielding prisoners; Mr Brooks' location; the security arrangements for his journey and admission to hospital; liaison with his family; and whether early release was considered.

9. The Ombudsman's family liaison officer wrote to Mr Brooks' next of kin, his wife, to explain the investigation. She did not receive a reply.

10. 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 Leeds

11. Mr Brooks was the 22nd prisoner at Leeds to die since February 2019. Twelve of the previous deaths were from natural causes (one related to COVID-19), eight were self-inflicted and one was drug-related. There have since been 13 deaths, ten natural causes (of which two were due to COVID-19), two self-inflicted and one awaiting classification. We have previously raised the issue of clinical care plans and made a recent recommendation on notifying next of kin that a prisoner is seriously ill.

COVID-19 (coronavirus)

12. 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.

13. 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.)

14. 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

15. Mr Tony Brooks was convicted of sexual offences on 23 September 2015 and remanded to HMP Leeds. He was later sentenced to 17 years imprisonment.

16. Mr Brooks had several longstanding chronic medical conditions including type 2 diabetes, asthma, high blood pressure and atrial fibrillation. In 2020, he was diagnosed with heart failure and a pacemaker was fitted. Care management plans were in place and he was reviewed by the long-term conditions nurse. Due to reduced mobility, Mr Brooks used walking aids and a wheelchair.

17. After confirmation of the COVID-19 pandemic in March 2020, Leeds immediately went into lockdown, implementing a restricted regime and activities. On 1 April, during a discussion with his prison key worker about COVID-19, Mr Brooks confirmed that he understood the regime and the recommended infection control procedures.

18. Entries in Mr Brooks' medical records on 4 and 1 May, noted he had been informed that he was at high risk of complications from COVID-19. Mr Brooks agreed to shield.

19. Mr Brooks applied for compassionate release on temporary licence (ROTL) under the scheme for those medically vulnerable to COVID-19, but it was not approved. On 2 June, he discussed the decision with a member of the offender management unit, who explained that the ROTL board considered that he was too close to the start of his sentence and that his health needs could be adequately met by the prison as he was able to shield.

20. Mr Brooks stopped shielding on 11 June and declined shielding advice from healthcare staff on 20 July.

21. Leeds became a COVID-19 outbreak site in October 2020. In October and December, Mr Brooks spent two 14-day periods in protective isolation after exposure to prisoners with COVID-19 symptoms.

22. Further shielding letters were sent to Mr Brooks on 12 November and 8 January 2021, reiterating his risk and the advice to shield. It was recorded in his personal records that he resumed shielding on 15 January.

23. On 1 February 2021, Mr Brooks received a COVID-19 vaccination.

Admission to hospital and diagnosis of COVID-19

24. At around 8.00am on 27 February 2021, Mr Brooks' cellmate pressed the cell call bell as Mr Brooks had fallen out of his bed. Although he said he had not hurt himself, the officer who answered the call noticed that Mr Brooks was breathing heavily. He checked with the cellmate, who said Mr Brooks had multiple health issues and this was normal for him. The officer therefore decided not to call a code blue medical emergency, but immediately contacted healthcare. (A code blue indicates that a prisoner has difficulty breathing or is unresponsive.)

25. Two nurses assessed Mr Brooks. They found that his blood oxygen saturation level was low at 69%, he had a raised temperature, was confused and unable to

speak in full sentences. They calculated a National Early Warning Score 2 (NEWS2) of 12. (NEWS2 identifies critical illness and deterioration. A score of 7 or above requires an emergency critical care assessment.) The nurses also used the Glasgow Coma Scale to measure his level of consciousness, scoring 14 (the best score is 15). They asked an officer to radio a code blue at 8.20am and gave Mr Brooks supplementary oxygen.

26. An ambulance arrived at 8.33am and the paramedics took Mr Brooks to hospital. He tested positive for COVID-19 shortly after he arrived. Due to his condition, reduced mobility and age, no restraints were used for the journey or in hospital.

27. Later that morning, the prison assigned a family liaison officer. A custodial manager told him that Mr Brooks had been diagnosed with COVID-19 and due to other health-related conditions, end of life care might be considered. Just before midday, the same manager said that although Mr Brooks was in a serious condition, he "may not be considered terminal at this time."

28. On 28 February, Mr Brooks asked for his breathing support machine (CPAP) to be removed. Hospital staff informed him of the consequences and that he was likely to die, but he was insistent. Mr Brooks was then placed on end of life care.

29. At 12.25pm that day, a prison manager told the family liaison officer that Mr Brooks might not survive the day and an hour later, the duty governor told him to inform Mr Brooks' next of kin. The family liaison officer was unable to get through on the landline and mobile numbers listed. At 2.05pm, he was told that Mr Brooks' death was imminent, so he asked the police for help and spoke to Mr Brooks' daughter at 3.30pm. Mr Brooks' wife and daughter visited the hospital in the late afternoon.

30. Mr Brooks died at 7.25pm. The family liaison officer informed his family shortly afterwards and kept in touch over the following weeks. In line with national policy, the prison paid for Mr Brooks' funeral, which was held on 8 April.

Inquest

31. An inquest, held on 29 March 2021, concluded that Mr Brooks' death was caused by respiratory failure arising from COVID-19 pneumonitis. He also had underlying type 2 diabetes, obesity, hypertension, atrial fibrillation, ischaemic heart disease and chronic kidney disease, which did not cause but contributed to his death.

Findings

Clinical findings

32. The clinical reviewer concluded that Mr Brooks' care was responsive, timely and of a good standard, equivalent to that he could have expected to receive in the community, and we agree. However, we share her concern that a care plan was not in place to manage Mr Brooks' heart failure. We recommend:

    The Head of Healthcare should ensure that care plans are in place for patients with chronic health conditions.

Management of Mr Brooks' risk of infection from COVID-19

33. In line with national HMPPS policy, Leeds implemented a range of measures to manage the risks associated with COVID-19, including a restricted regime, social distancing and shielding prisoners at high risk of complications from the virus. After it became an outbreak site in October 2020, the prison used 'track and trace' to identify infected staff and those at risk. Guidance and daily briefings were issued, reminding staff of the key requirements.

34. Mr Brooks was placed in a small cohort of vulnerable shielding prisoners who were unlocked together to access regime facilities. Given his reduced mobility, he was allocated to a cell close to the medication hatch on the lower landing of the wing and his meals were delivered.

35. We are satisfied that staff advised Mr Brooks of his risks and gave him the opportunity to shield. Although he opted out for several months, he shielded for at least six weeks before he was diagnosed with COVID-19. In spite of the protective measures, it seems that Mr Brooks caught the infection at Leeds, as he had not left the prison since attending a hospital appointment in November 2020.

Contacting Mr Brooks' next of kin

36. Prison Rule 22 states that prisons should inform the next of kin immediately if a prisoner becomes seriously ill.

37. In March 2020, this obligation was reinforced in national Prison Service guidance on family liaison and communicating with prisoners' families during the pandemic, which states that if a prisoner is suspected of contracting COVID-19 (a formal diagnosis is not required), they should be asked if they want to inform someone and the prison should facilitate this.

38. The security risk assessment was ticked to agree that Mr Brooks' next of kin should be notified that he had been taken to hospital but annotated, "…to be informed if his condition deteriorates." Although the prison assigned a family liaison officer the same day, there is no evidence that Mr Brooks was asked about contact, nor any attempt to notify his wife that day. After the prison was told that Mr Brooks was likely to die within hours, another hour elapsed before the family liaison officer tried to call.

39. Although the prison followed best practice by appointing a family liaison officer quickly, we consider that Mr Brooks' wife should have been notified as soon as he was admitted to hospital. Having failed to inform her, contact should have been attempted immediately when they learned his death was imminent. The lack of urgency is particularly concerning as Mr Brooks' wife is deaf and blind and might have needed support with contact or travel. We recommend:

The Governor should ensure that if a prisoner is suspected to be, or confirmed as COVID-19 positive, he is given the opportunity for someone to be notified.

The Governor should ensure, in line with Prison Rule 22, that a prisoner's next of kin is informed without delay if he becomes seriously ill.

Elizabeth Moody
Deputy Prisons and Probation Ombudsman February 2022

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Canary Wharf, London E14 4PU

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