Prisons & Probation
Ombudsman
Independent Investigations

Independent investigation into the death of Mr David Thorpe, a prisoner at HMP Winchester, on 5 February 2021

A report by the Prisons and Probation Ombudsman

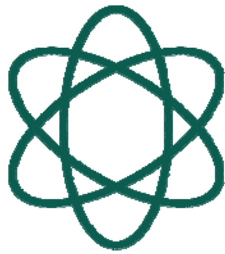
Third Floor, 10 South Colonnade
Canary Wharf, London E14 4PU

Email: mail@ppo.gov.uk
Web: www.ppo.gov.uk

T I 020 7633 4100

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

OGL

© Crown copyright, 2022

This report is licensed under the terms of the Open Government Licence v3.0. To view this licence, visit nationalarchives.gov.uk/doc/open-government-licence/version/3

Where we have identified any third-party copyright information you will need to obtain permission from the copyright holders concerned.

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 David Thorpe died in hospital from heart failure on 5 February 2021, while a prisoner at HMP Winchester. He had tested positive for COVID-19 in January, and while the post-mortem concluded that COVID-19 had not caused Mr Thorpe's death, it was listed as a contributory factor. He was 83 years old. I offer my condolences to Mr Thorpe's family and friends.

4. Mr Thorpe's age and medical conditions put him at risk of becoming seriously ill if he contracted COVID-19. From the end of March 2020, prison and healthcare staff repeatedly advised Mr Thorpe to shield but he refused to do so.

5. On 12 January 2021, Mr Thorpe was given a new cellmate, who had arrived at Winchester a few weeks before. His cellmate had been in the reverse cohorting unit (RCU – new arrivals are kept here for at least 14 days to limit the spread of COVID-19) and had had two negative COVID tests before being moved in with Mr Thorpe. However, he showed symptoms of COVID-19 the day after he moved in and subsequently tested positive. It is likely that Mr Thorpe caught COVID-19 from his cellmate.

6. The clinical reviewer concluded that the care Mr Thorpe received at Winchester was not equivalent to that he could have expected to receive in the community. She noted that if he had been in the community, he would have been offered a COVID-19 vaccination which would have offered him some protection, whereas Winchester did not receive the vaccine until 8 February 2021. However, this was in line with the roll out of the vaccine across the prison estate and there was no delay on Winchester's part. The clinical reviewer also noted that staff did not always take clinical observations when they should have done or make full and accurate records.

7. The prison provided the escort risk assessment for Mr Thorpe's final trip to hospital on 30 January but was unable to provide the risk assessments for his trips to hospital earlier that month. While the risk assessment provided shows that Mr Thorpe was not restrained, we are concerned that the healthcare section of the form was blank.

Recommendations

- The Head of Healthcare should remind staff of the need to document fully that the patient has capacity to make decisions about their healthcare and the reasons for not accepting the advice given.

- The Head of Healthcare should ensure that staff:

  - make full and accurate entries in the prisoner's medical record, including full details of the clinical observations taken; and
  - consistently use the National Early Warning Score (NEWS2) tool, to ensure the appropriate and timely escalation of unwell patients.

- The Governor and Head of Healthcare should ensure that healthcare staff complete the healthcare section of the escort risk assessment fully and accurately.
- The Governor should ensure that records are stored safely and can be readily retrieved when requested as part of a PPO investigation.

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

8. NHS England commissioned an independent clinical reviewer, to review Mr Thorpe's clinical care at the prison. The clinical reviewer's report is attached as Annex 1.

9. The PPO's investigator investigated non-clinical issues, including the prison response to COVID-19 and shielding prisoners, the security arrangements for Mr Thorpe's hospital escorts, liaison with his next of kin and whether compassionate release was considered.

10. The Ombudsman's family liaison officer contacted Mr Thorpe's daughter to explain the investigation and to ask if she had any matters she wanted the investigation to consider. She asked why her father had been placed in a double cell with a young man when he was vulnerable to contracting COVID-19.

11. The initial report was shared with Mr Thorpe's daughter. She did not make any comments.

12. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS found no factual inaccuracies. Their action plan is annexed to this final report.

Background Information

HMP Winchester

13. HMP Winchester is a local prison that holds up to 690 men. Practice Plus Group Health and Rehabilitation Services Limited have provided health services at the prison since July 2020.

Previous deaths at HMP Winchester

14. Mr Thorpe was the 11th prisoner at Winchester to die since February 2019. Of the previous deaths, eight were from natural causes and two were self-inflicted. Mr Thorpe was the second prisoner at Winchester to die after a COVID-19 infection, though in the previous case the prisoner caught COVID-19 in hospital. There has been one further COVID-19 related death since.

15. In recent investigations at Winchester we have made recommendations about making full and accurate entries on medical records and about healthcare input into risk assessments.

COVID-19 (coronavirus)

16. 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.

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 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.)

18. In response to the initial pandemic outbreak, HM Prison and Probation Service (HMPPS) introduced several measures to try to 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, in a prison 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 prisoners from the main population. Other measures include social distancing and the use of personal protective equipment (PPE).

19. In collaboration with the NHS and HMPPS, prisons were asked to prepare to deliver a COVID-19 vaccination programme from the end of January 2021. The prioritisation for target groups for vaccination was to be the same as that determined by the Joint Committee on Vaccination and Immunisation (JCVI) for the general population. Winchester received their initial batch of vaccinations at the beginning of February.

Key Events

20. On 24 February 2020, Mr David Thorpe was remanded in prison custody, charged with sexual offences, and sent to HMP Winchester.

21. Mr Thorpe had several long-term health conditions including angina (chest pains caused by a reduced flow of blood to the heart), atrial fibrillation (which causes an irregular heartbeat) for which he was fitted with a pacemaker, chronic obstructive pulmonary disease (COPD – the name for a collection of lung diseases) and high blood pressure.

22. Because of his medical history and age, Mr Thorpe was in the clinically vulnerable category and was at high risk of becoming seriously ill if he contracted COVID-19. From the end of March, healthcare staff repeatedly advised him to shield, but he refused to do so.

23. On 18 June, Mr Thorpe was sent a letter reminding him that he was at very high risk of severe illness if he caught COVID-19 and advising him to shield. Staff explained the content of the letter to Mr Thorpe but he continued to refuse to shield.

24. Shielding was paused at the prison from 1 August, in line with Government advice.

25. On 13 October, Mr Thorpe was sentenced to eight years and one month in prison.

26. On 2 December, Mr Thorpe was sent another letter advising him to shield. Following further advice, he signed another disclaimer on 5 January 2021, saying that he was aware that in not following the advice, he was putting himself at high risk.

27. On 12 January 2021, Mr Thorpe was given a new cellmate. His cellmate had arrived at the prison on 22 December and had been in the reverse cohorting unit (RCU – a unit for new arrivals who are kept separate from the rest of the prison for 14 days to limit the spread of COVID-19). Mr Thorpe's cellmate tested negative for COVID-19 on 29 December and 5 January. However, he started showing symptoms of COVID-19 the day after he moved in with Mr Thorpe and subsequently tested positive for the virus on 21 January. Mr Thorpe and his cellmate were put into isolation in their cell.

28. Mr Thorpe had a fall in his cell on 25 January. He was taken to hospital to be checked and to rule out a possible bleed on his brain as he was taking blood thinning medication. The hospital found no problems and Mr Thorpe was returned to prison on the same day. On his return, staff noted he appeared short of breath and that his blood pressure was low.

29. On 26 January, Mr Thorpe collapsed in his cell and said that he was having difficulty breathing. A nurse found that his blood oxygen levels had dropped and sent him back to hospital.

30. On 27 January, it was confirmed that Mr Thorpe had COVID-19 (following a test taken on 25 January). He returned to prison that day and said that he was feeling better.

31. Over the next few days, Mr Thorpe's clinical observations fluctuated: at times his temperature was quite high and his blood oxygen levels were quite low. On the morning of 29 January, he said once again that he was feeling better, although his temperature was high at 38.7°C. In the afternoon, his temperature had gone down a little to 38.4°C, but his blood oxygen levels had also gone down to 94% (a normal range is 95-100%). By the evening, his oxygen levels had normalised again, but his temperature was not recorded as the device was faulty.

32. Mr Thorpe next had his clinical observations taken at midday on 30 January, and they were close to normal. However, that afternoon he deteriorated very abruptly. His temperature was normal but his blood oxygen levels dropped very low to 83%. Staff called for an ambulance at 5.33pm. It arrived a few minutes later and took him to hospital.

33. Mr Thorpe's health continued to deteriorate in hospital and he was put on a ventilator on 3 February. He died on 5 February at 8.05am.

Post-mortem report

34. A post-mortem examination showed that Mr Thorpe died from cardiac failure (heart failure) caused by ischaemic heart disease (a restriction in the blood supply to the heart), which was in turn caused by coronary artery atheroma and thrombosis (the build-up of fatty deposits in major blood vessels in the heart, leading to a blockage). COVID-19 and COPD were listed as contributory factors.

Findings

Clinical Findings

35. The clinical reviewer concluded that the care Mr Thorpe received at Winchester was not equivalent to that he could have expected to receive in the community. She noted that if Mr Thorpe been in the community, he would have been offered a COVID-19 vaccination in December 2020 or January 2021, which would have offered him a degree of protection, whereas the prison did not receive the vaccine until 8 February, after Mr Thorpe's death. We note, however, that this was in line with the roll out of the vaccine across the prison estate and was a factor outside the control of the staff at Winchester.

36. We also note that the vaccine takes several days to provide protection from the virus and that a second vaccination is required to provide the most effective protection. In addition, not everyone in the community in Mr Thorpe's age group was offered a first vaccination before early February. For example, housebound patients in the community or those unable to travel to the nearest service would have also had to wait until February for their vaccine first dose.

37. The clinical reviewer also said that, given Mr Thorpe's underlying health conditions, he may have been subject to similar risk of contracting COVID-19 if he had refused to shield in the community. She concluded that Mr Thorpe's death was neither foreseeable nor preventable in the circumstances.

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

38. Mr Thorpe was tested for COVID-19 when he was taken to hospital on 25 January, and the test came back positive. Mr Thorpe had not left the prison in the weeks before, so it appears that he caught COVID-19 in prison. We have therefore looked at whether the prison took adequate steps to protect him.

39. Healthcare staff at Winchester identified that Mr Thorpe would be at risk of becoming seriously ill if he contracted COVID-19 because of his age and underlying medical conditions. Staff repeatedly advised Mr Thorpe to shield but he refused to do so. The clinical reviewer has noted that while healthcare staff considered that Mr Thorpe had mental capacity to make this decision, there was no documentation to support this. We recommend:

    The Head of Healthcare should remind staff of the need to document fully that the patient has capacity to make decisions about their healthcare and the reasons for not accepting the advice given.

40. Mr Thorpe was given a new cellmate on 12 January. As Mr Thorpe was not shielding, he was not in a single cell and he was given a non-shielding cellmate. Mr Thorpe's cellmate started showing symptoms of COVID-19 the day after he moved in with Mr Thorpe and he was confirmed COVID-19 positive on 21 January. Although we cannot be sure, it appears likely that Mr Thorpe caught COVID-19 from his cellmate.

41. However, the prison followed national prison policy. Mr Thorpe's cellmate had spent over 14 days in the reverse cohorting unit (RCU) and he had had two

negative tests for COVID-19, before being moved out of the RCU and into Mr Thorpe's cell. We consider that Winchester acted appropriately to minimise the cell sharing risk in the circumstances.

42. We are satisfied that the prison took appropriate steps to manage the risk of prisoners contracting COVID-19 and that Mr Thorpe would have been able to shield if he had wanted to do so.

Clinical assessment and record keeping

43. Practice Plus Group (the healthcare provider at Winchester) acknowledged in their internal review of Mr Thorpe's death, that although observations were taken daily for prisoners with a COVID-19 diagnosis, these readings were not always converted into a National Early Warning Score (NEWS2 – a tool used to assess clinical deterioration). In the case of Mr Thorpe, NEWS2 was not used consistently between 25 January 2021, when he first became ill, and 30 January, when he was taken to hospital for the last time, and follow-up observations were not always taken as directed by the NEWS2 score. Although Practice Plus Group have already identified learning points from this, we recommend:

The Head of Healthcare should ensure that staff:

- **make full and accurate entries in the prisoner's medical record, including full details of the clinical observations taken; and**
- **consistently use the National Early Warning Score (NEWS2) tool, to ensure the appropriate and timely escalation of unwell patients.**

Non-clinical Findings

Restraints, security and escorts

44. 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.

45. 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 suffering from 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.

46. Mr Thorpe was scheduled for several trips to court and hospital in 2020 and 2021. The only risk assessment for those trips that Winchester was able to provide, was for the journey to hospital on 30 January 2021. On that form, the section to be filled in by a member of the healthcare staff was left blank. The authorising manager wrote, "Mr Thorpe is a Cat C prisoner. Due to his age (83) and his current COVID conditions, Mr Thorpe is to be a two-officer escort without any cuffs." We accept

that this was an appropriate decision, but we are concerned that the healthcare section of the risk assessment was not completed.

47. We have previously commented on the need for healthcare staff at Winchester to fully and accurately complete the escort risk assessment. We have also commented previously on the appropriateness of restraints, but cannot to do so in this case as Winchester was unable to provide us with the assessments apart from the partially completed risk assessment for 30 January 2021. We recommend:

The Governor and the Head of Healthcare should ensure that healthcare staff complete the healthcare section of the escort risk assessment fully and accurately.

The Governor should ensure that records are stored safely and can be readily retrieved when requested as part of a PPO investigation.

Sue McAllister CB
Prisons and Probation Ombudsman **July 2021**

Prisons & Probation
Ombudsman
Independent Investigations

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