Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Paul Bayliss, a prisoner at HMP Stocken, on 16 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 Paul Bayliss died on 16 February 2021, of COVID-19 pneumonia, while a prisoner at HMP Stocken. Mr Bayliss was 57 years old. I offer my condolences to Mr Bayliss' family and friends.

4. The clinical reviewer concluded that the clinical care that Mr Bayliss received at HMP Stocken was equivalent to that which he could have expected to receive in the community. She made some recommendations about the process for locating disabled prisoners in appropriate isolation cells, the consistent use of NEWS-2 scores and use of appropriate clinical tools for assessing falls and skin integrity. We repeat her recommendations about these issues below.

5. We are concerned that prison staff used handcuffs and an escort chain when Mr Bayliss was taken to hospital on 1 February, despite his breathing difficulties and limited mobility and that handcuffing him placed the escort officers at greater risk of infection.

Recommendations

- **The Governor and the Head of Healthcare should collectively review the process for locating disabled prisoners in isolation cells, in the event of future COVID-19 outbreaks, to ensure safety and accessibility.**

- **The Head of Healthcare should ensure that healthcare staff use appropriate clinical assessment tools for assessing falls and skin integrity, which should be embedded into clinical practice.**

- **The Head of Healthcare should review the current system in place to trigger the taking and recording of clinical observations, including NEWS-2 scores, to provide assurance that an effective system is in place to recall people for clinical observations.**

- **The Governor 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 Governor should ensure prison staff appropriately consider medical assessments completed for escorts and that prison staff should document in their risk assessment the over-ruling or ignoring of a medical assessment and/or the security circumstances which mean restraint is required.**

The Investigation Process

6. NHS England and NHS Improvement (NHSE&I) commissioned an independent clinical reviewer to review Mr Bayliss' clinical care at HMP Stocken.

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

8. Our family liaison officer wrote to Mr Bayliss' next of kin, his local vicar, to explain the investigation and to ask whether he had any matters he wanted the investigation to consider. He did not have any questions for us to consider but asked for a copy of our report.

9. Mr Bayliss' next of kin received a copy of the initial report. He did not raise any further issues with us and found no factual inaccuracies in the report.

10. The initial report was shared with the Prison Service. The Prison Service pointed out two factual inaccuracies and this report has been amended accordingly.

Previous deaths at HMP Stocken

11. Mr Bayliss was the fourth prisoner to die at HMP Stocken since February 2019. Of the previous deaths, two were from natural causes and one was self-inflicted.

12. There are no similarities between Mr Bayliss' death and the previous deaths at Stocken.

COVID-19 (coronavirus)

13. 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.

14. 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.)

15. 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).

16. On 17 September 2021, the Government advised that it was no longer necessary for the clinically vulnerable to shield. This was on the basis that vaccination had reduced the risk to them.

Key Events

17. On 15 October 2018, Mr Bayliss was remanded to HMP Woodhill, charged with assault. On 13 June 2019, he was sentenced to six years and four months imprisonment for wounding with intent.

18. On 11 September 2019, Mr Bayliss transferred to HMP Stocken.

19. Mr Bayliss had several pre-existing physical and mental health conditions, including, chronic obstructive pulmonary disease (COPD), hepatitis B, chronic leg ulcers, schizophrenia and depression. He also had a history of drug use in the community.

20. While at Stocken, Mr Bayliss received care for his physical health needs. He was referred to the substance misuse service and accepted methadone therapy. He was reviewed by the mental health team and his complex needs were discussed at multi-disciplinary meetings, which were attended by healthcare staff and prison staff.

21. In March 2020, restrictions began to be imposed in response to the COVID-19 pandemic. On 23 March, a national lockdown was imposed. Prison regimes were severely curtailed and face-to-face services were reduced or stopped.

22. On 27 March, Mr Bayliss was identified as being in the high-risk category (extremely clinically vulnerable) for risk of complications from COVID-19. That day, the healthcare team sent Mr Bayliss a shielding letter, but he declined to shield. Prison staff advised him that if he changed his mind, he should let them know.

23. On 16 April, prison staff offered Mr Bayliss the opportunity to apply for special purpose licence (SPL). He was invited to apply because of his identified vulnerability to COVID-19. A successful application would have meant that Mr Bayliss would have been released into the community on a temporary licence. Mr Bayliss declined to apply and said that it was pointless. He refused to sign any paperwork.

24. The next day, Mr Bayliss signed a shielding disclaimer. This meant that he declined the shielding offer made by the prison. Prison staff told Mr Bayliss that they would check with him every week to confirm whether he wanted to shield or not. Prison records show that prison staff asked him weekly from April until the end of September and that Mr Bayliss consistently declined to shield and signed disclaimers to that effect.

25. Throughout 2020, Mr Bayliss failed to attend a significant number of healthcare appointments and did not consistently comply with the wound treatment care plan for his leg ulcers. Healthcare staff reminded him frequently about the appointments, either in writing or talking to him. They told him about the consequences and risks of not complying with his care plan.

26. The healthcare department raised concerns about Mr Bayliss' mental capacity. The mental health team assessed him and found that he had the capacity to make decisions.

27. On 22 September, a member of prison staff saw Mr Bayliss to explain the changes to the shielding reviews. The prison was stopping weekly shielding reviews for prisoners who had declined to shield. Instead, prisoners would need to contact staff if they wished to shield. Mr Bayliss, who still did not want to shield, signed a disclaimer to confirm that he had received the letter.

2021

28. On 27 January 2021, Mr Bayliss tested positive for COVID-19. Healthcare staff started a COVID-19 care plan for him, which included a daily National Early Warning Score (NEWS-2 - a tool to measure clinical deterioration and an important tool to improve patient outcomes) assessment to monitor his health. Mr Bayliss was moved into an isolation cell on I wing. There was not a disabled access cell on I wing.

29. Mr Bayliss was the first prisoner at Stocken to test positive for COVID-19 in what would become an outbreak. Over the following days more prisoners tested positive for COVID-19. On 29 January, the prison and Public Health England (PHE) declared the prison a COVID-19 outbreak site and mass testing began.

30. On 28 January, a nurse assessed that the I wing cell was not suitable for Mr Bayliss given his mobility issues and his wound care needs. He was unable to use the toilet and had to use a bucket. The shower was assessed as hazardous, and Mr Bayliss was sleeping in his wheelchair. The nurse raised this with other healthcare staff. The next day, another nurse raised this as a safeguarding issue with an Operational Manager (OM). The OM reviewed healthcare staff's concerns against the risk of Mr Bayliss spreading COVID-19 to staff and other prisoners on K wing.

31. On 30 January, the OM reviewed Mr Bayliss' location and his condition. He agreed that I wing was not a suitable location and that Mr Bayliss should return to his cell on K wing. However, Mr Bayliss refused to move cell. He returned to his cell on K wing the following day.

32. At around 3.00pm on 1 February, two nurses attended Mr Bayliss' cell to dress his leg ulcers and complete a NEWS-2 assessment. The nurses found him semi-conscious. They called a code blue (a medical emergency code used when a prisoner is unconscious or having breathing difficulties). At 3.07pm, the prison called 999 and requested an emergency ambulance. Both nurses gave Mr Bayliss oxygen via a mask and salbutamol medication to aid his breathing.

33. At 3.32pm, the prison rang 999 again and were told that no ambulances were available. Both nurses continued to monitor Mr Bayliss. At 4.10pm, Mr Bayliss stopped breathing and they moved him from his wheelchair to the floor. At that point, Mr Bayliss began to breathe again.

34. At 4.26pm, the prison rang 999 for a third time. The ambulance arrived at the prison at 4.36pm. Paramedics assessed Mr Bayliss and took him to hospital. He was escorted by two escort officers and was restrained using single handcuffs and an escort chain.

35. At 11.40pm, the duty operational manager approved that the escort chain should be removed.

36. Mr Bayliss had no listed next of kin. On 2 February, the prison appointed a family liaison officer (FLO). The FLO asked the escort officers with Mr Bayliss at the hospital to ask him who he wanted them to contact. Mr Bayliss wanted his local vicar to be his next of kin. The FLO had no contact details for the vicar but, with support from the prison chaplaincy, the FLO contacted the vicar on 3 February.

37. On 15 February, the hospital told the prison that Mr Bayliss' health had deteriorated and that he needed palliative care. The hospital began to arrange to transfer Mr Bayliss to a hospice. Prison staff started an Early Release on Compassionate Grounds (ERCG) application.

38. At 6.43am, on 16 February, it was confirmed that Mr Bayliss had died in hospital.

Post-mortem report

39. The pathologist concluded in the post-mortem that Mr Bayliss died of COVID-19 pneumonia. He also had emphysema, chronic venous leg ulcers and a history of "chronic" drug misuse, which did not cause but contributed to his death.

Findings

Clinical Findings

40. The independent clinical reviewer concluded that the care Mr Bayliss received at HMP Stocken was equivalent to that which he could have expected to receive in the community.

41. She did, however, find some areas of concern with Mr Bayliss' care.

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

42. Despite the measures to control the risk of infection and to protect prisoners, it appears that Mr Bayliss contracted COVID-19 in prison, as he had not left the prison in the previous month. The clinical reviewer found no concerns about the protective measures put in place during the pandemic. Healthcare staff had PPE policies and supplies in place from the beginning of the pandemic with no reported shortages. Staff testing at HMP Stocken began in December 2020.

43. Mr Bayliss was the first prisoner to test positive for COVID-19 on K wing. A further four prisoners tested positive and 10 more were identified as close contacts. The wing was declared an 'outbreak' site and a meeting was arranged with PHE and mass testing began.

Managing disabled prisoners in isolation cells

44. When Mr Bayliss tested positive for COVID-19, he was moved to an isolation cell on another wing. This was done to separate COVID-19 positive prisoners from the rest of the prison population to mitigate the transmission of the virus. However, the move took place without the knowledge of, or input from, the healthcare team. As a result, Mr Bayliss was located in a cell which was not adapted for his needs.

45. Healthcare staff found that Mr Bayliss was unable to access the toilet and was using a bucket to urinate in, and the cell was unsuitable to deliver nursing care. They also noted that the shower was a hazard because it had a step. The shower flooded the room and there were no grab rails in the shower, creating several safety risks for Mr Bayliss.

46. We understand that the prison was managing a COVID-19 outbreak and making difficult decisions with limited options. However, in planning for any future outbreak, we consider that the prison should ensure that part of the prison designated to serve as the isolation unit should include cells that can meet the needs of disabled and mobility impaired prisoners. There should be a process for prison staff and healthcare staff to share information when considering locating a disabled prisoner in an isolation cell. We recommend:

    The Governor and the Head of Healthcare should collectively review the process for locating disabled prisoners in isolation cells, in the event of future COVID-19 outbreaks, to ensure safety and accessibility.

The Head of Healthcare should ensure that healthcare staff use appropriate clinical assessment tools for assessing falls and skin integrity, which should be embedded into clinical practice.

Consistent use of NEWS-2 scores

47. Healthcare staff started a COVID-19 care plan for Mr Bayliss consisting of a daily NEWS-2 assessment to monitor his health. The clinical reviewer found that on 30 January, no clinical observations were recorded. We recommend:

The Head of Healthcare should review the current system in place to trigger the taking and recording of clinical observations, including NEWS-2 scores in order to provide assurance that an effective system is in place to recall prisoners for clinical observations.

Non-Clinical Findings

Use of Restraints

48. 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.

49. 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.

50. When Mr Bayliss went out to hospital on 1 February, he was using a wheelchair to move around. He had chronic leg ulcers and was known to have COPD. During the medical emergency, he needed oxygen to breathe and, around 4.10pm, he had stopped breathing for a short period of time.

51. In the medical section of the prisoner escort record (PER), healthcare staff noted that Mr Bayliss had reduced mobility and breathing difficulties. In their assessment of his health, they circled 'yes' to the question 'any objection to the use of restraints'. This objection appears to have been ignored by prison staff.

52. In the authorising section of the PER, the prison manager made no reference to Mr Bayliss' health conditions other than his COVID-19 status, and no reference to the medical objection to the use of restraints. There was no information in the PER to indicate any heightened risk posed by Mr Bayliss.

53. Although the escort chain was removed around seven hours later, we consider that the decision to use restraints was not proportionate or appropriate and that the decision was unsound, particularly when this was also the view of the medical practitioner who contributed to the risk assessment.

54. We are also concerned that cuffing en route to the hospital, prior to and after his admission, placed all of the escort officers at greater risk of contracting COVID-19.

55. We make the following recommendations:

The Governor should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal and HMPS policy 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 Governor should ensure prison staff appropriately consider medical assessments completed for escorts and that prison staff should document in their risk assessment the over-ruling or ignoring of a medical assessment and/or the security circumstances which mean that restraints are required.

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Acting Prisons and Probation Ombudsman **July 2022**

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