Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Lee Devereux, a prisoner at HMP Highpoint, on 28 September 2020

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. 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 Lee Devereux died of liver cancer in a hospice on 28 September 2020 while a prisoner at HMP Highpoint. Mr Devereux was 49 years old. I offer my condolences to his family and friends.

4. The clinical reviewer found that the clinical care that Mr Devereux received at Highpoint was responsive and equivalent to that which he could have expected to receive in the community. She made one recommendation about the need to use the National Early Warning Score (NEWS) assessment tool consistently to determine and address clinical deterioration, which the Head of Healthcare will need to address.

5. We are identified three non-clinical issues of concern about the use of restraints when Mr Devereux was taken to hospital for the final time, about the application for Mr Devereux's compassionate release before he died, and about record keeping.

Recommendations

- The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital fully take into account a prisoner's health at the time and that they record their decision making, including a completed medical section.

- The Governor and Head of Healthcare should ensure that compassionate release applications are submitted and kept under review without delay when a prisoner's condition deteriorates significantly.

The Investigation Process

6. NHS England commissioned an independent clinical reviewer to review Mr Devereux's clinical care at HMP Highpoint.

7. The PPO has investigated non-clinical issues, including Mr Devereux's location, the security arrangements for his hospital escorts, liaison with his family and whether compassionate release was considered.

8. Our family liaison officer contacted Mr Devereux's brother to explain the investigation and to ask if he had any matters that he wanted us to consider. He did not respond to our letter.

9. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS pointed out some factual inaccuracies and this report has been amended accordingly.

Previous deaths at HMP Highpoint

10. Mr Devereux's death was the second death at Highpoint since September 2018. The other was self-inflicted. Since Mr Devereux died, there has been one more death at Highpoint, which was from natural causes. There are no similarities between our findings in the investigation of Mr Devereux's death and those of the previous death at Highpoint.

Key Events

11. In 2003, Mr Lee Devereux was sentenced to life in prison for robbery and possession of an imitation firearm with intent to commit an indictable offence. In 2018, he was released on temporary licence but was recalled to prison in November 2018 for breaching the terms of his licence. He was sent to HMP Highpoint.

12. Mr Devereux had several significant health conditions, including Type 2 diabetes, liver cirrhosis as a result of hepatitis C, mild depression and arthritis in both knees. He also misused alcohol.

13. In December 2019, Mr Devereux had a liver and spleen ultrasound scan as part of his routine hepatitis C tests.

14. In January 2020, the ultrasound results showed liver cirrhosis and a mass in Mr Devereux's liver. A further review was booked.

15. In March, Mr Devereux went to hospital for a liver biopsy and on 30 March, he was diagnosed with cancer of the bile duct (a small channel that connects the liver and the gall bladder), which had spread to the liver. The hospital decided that he was not fit enough for surgery or chemotherapy, so gave him radiofrequency ablative treatment instead, where an electrical current is used to destroy cancer cells.

16. The next day, a prison GP and a registered nurse reviewed Mr Devereux. They told him about the options available to him. Mr Devereux met shielding criteria for COVID-19. His care plan was updated which included weekly contact with healthcare staff. Mr Devereux remained on the caseload list for weekly discussion at the multidisciplinary complex care case meeting.

17. On 29 May, Mr Devereux underwent a radiofrequency ablative treatment.

18. In July, the hospital assessed that Mr Devereux's tumour had grown significantly and that they could no longer treat him. They referred him back to a prison GP for palliative care.

19. On 9 July, an application for early release on compassionate grounds was made, but the prison did not support his release because of a lack of suitable accommodation in the community and because his persistent and significant substance abuse was an ongoing risk factor. On 29 July, a prison GP contributed to the application. He said Mr Devereux was terminally ill and gave a definitive prognosis of around six months to live. On 12 August, Mr Devereux's community probation officer contributed to the application. She supported his release to his mother or brother's address if alternative accommodation was not possible. However, there were concerns about the suitability of both addresses and Mr Devereux died before a decision was made.

20. In August, an abdominal ultrasound scan showed further growth of the liver cancer, together with secondary deposits, a blood clot, mild ascites (an abnormal build-up of fluid in the abdomen) and a slightly enlarged spleen. That month, an order was put in place not to resuscitate Mr Devereux if his heart or breathing stopped.

21. On 22 September, nurses noted that Mr Devereux had complained of worsening abdominal pain and swelling, and that he struggled to walk downstairs.

22. On 23 September, Mr Devereux was admitted to hospital with abdominal pain and breathlessness, he was restrained with a single cuff and an escort chain (a long chain with a handcuff at each end, one of which is attached to the prisoner and the other to an officer), and two prison officers escorted him. A chest X-ray showed likely lung metastases (secondary cancer) and pleural effusion (a build-up of fluid between the layers of the lung).

23. The following day, the Head of Violence Reduction reviewed Mr Devereux's risk assessment and decided to remove Mr Devereux's restraints due to his poor mobility and end of life care. Mr Devereux's restraints were removed at 5.30pm.

24. On 26 September, Mr Devereux was transferred from hospital to St Nicholas' Hospice for end-of-life care. He was not restrained.

25. On 28 September, Mr Devereux died at St Nicholas' Hospice. His mother and brother were with him when he died.

Post-mortem report

26. The post-mortem examination established that Mr Devereux died of moderately differentiated adenocarcinoma of the liver (cancer cells that tend to spread), caused by decompensated cirrhotic liver failure which in turn was caused by a hepatitis C viral infection (which had subsequently cleared). Mr Devereux also had Type 2 diabetes mellitus which did not cause but contributed to his death.

Findings

Clinical findings

27. The independent clinical reviewer concluded that the care that Mr Devereux received was both responsive and equivalent to the care which he could have expected to receive in the community.

Non-clinical findings

Restraints, security and escorts

28. 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 considers a prisoner's health and mobility.

29. 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 they have 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 reviewed as circumstances change. The judgment found that using handcuffs or other restraints on terminally or seriously ill prisoners was inhumane, unless justified by security considerations.

30. When Mr Devereux went to hospital for the final time on 23 September, he was restrained with single cuffs and an escort chain, following a risk assessment. Mr Devereux was a Category C prisoner, and he was considered to pose a low risk of escape and a medium risk to the public.

31. We recognise that Highpoint reviewed the restraints decision the following day, after Mr Devereux was admitted to hospital, and arranged for restraints to be removed. However, we are not satisfied that the original decision to restrain Mr Devereux was justified. Although the escort risk assessment appropriately considered security concerns, the medical section was left blank. Mr Devereux had terminal cancer, was in pain and struggled to walk. We are concerned that there is no evidence that his health and the actual risk he posed at the time in light of his poor health were taken into account when assessing his escort risk and whether to use restraints. We make the following recommendation:

    The Governor and Head of Healthcare should ensure that all staff undertaking risk assessments for prisoners taken to hospital fully take into account a prisoner's health at the time and that they record their decision making, including a completed medical section.

Compassionate release

32. Release on compassionate grounds is a means by which prisoners who are seriously ill, usually with a life expectancy of less than three months can be permanently released from custody before their sentence has expired. A clear medical opinion of life expectancy is required. The criteria for early release for determinate sentenced prisoners are set out in Prison Service Order 6000. Among the criteria is that the risk of re-offending is expected to be minimal, further imprisonment would reduce life expectancy, there are adequate arrangements for the prisoner's care and treatment outside prison, and release would benefit the prisoner and his family. An application for early release on compassionate grounds must be submitted to the Public Protection Casework Section (PPCS) of the HM Prison and Probation Service

33. Highpoint appropriately started Mr Devereux's compassionate release process in July, when his condition was no longer suitable for treatment. However, Highpoint did not provide us with evidence to show that Mr Devereux's application was submitted to PPCS, nor that it was reviewed or resubmitted when his health deteriorated significantly shortly before he died. We are concerned that there is no evidence of the decision-making process available and no records to confirm whether or not the initial application was submitted or later reviewed for resubmission. We make the following recommendation:

    The Governor and Head of Healthcare should ensure that compassionate release applications are submitted and kept under review without delay when a prisoner's condition deteriorates significantly.

Mark Judd
Acting Prisons and Probation Assistant Ombudsman September 2022

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