Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Matloob Hussain, a prisoner at HMP Oakwood, on 27 February 2021

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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 Matloob Hussain died in hospital on 27 February 2021, while a prisoner at HMP Oakwood. He was 67 years old. The cause of his death was COVID-19 pneumonia. I offer my condolences to Mr Hussain's family and friends.

4. The clinical reviewer concluded that Mr Hussain's clinical care at Oakwood was equivalent to that he could have expected to receive in the community. However, she found that planned clinical observations for Mr Hussain were not completed the day after a previous exposure to COVID-19 and a postponed hospital appointment had not been followed up in a timely manner. We endorse the clinical findings, which are covered in detail in the clinical review report and we make similar recommendations.

5. Important details about Mr Hussain's medical condition and disability were omitted from the security risk assessment for his admission to hospital. Additionally, the medical opinion that he was physically able to escape if he was not handcuffed was inconsistent with the annotation on the form that he had poor mobility. We therefore believe that the decision to authorise the use of restraints was unsound and also make a recommendation on this issue.

Recommendations

- The Head of Healthcare should ensure that repeat clinical observations are arranged and actioned without delay.

- The Head of Healthcare should ensure that there is a robust and auditable process to follow-up outstanding hospital appointments.

- The Director and Head of Healthcare should ensure that:

    - healthcare staff fully and accurately reflect the current health and mobility of a prisoner when they complete an escort risk assessment;

    - all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, 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

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

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

8. The Ombudsman's family liaison officer wrote to Mr Hussain's next of kin, his brother, to explain the investigation. He listed 81 issues he wanted to be considered during the investigation, including:

    - What measures were in place to keep Mr Hussain safe and protect him from COVID-19?
    - Was he advised to shield?
    - Did he share a cell?
    - Did staff have PPE?
    - Was Mr Hussain informed that he had contracted COVID-19 and isolated?
    - Did a learning disability impact on communication with him?
    - Why was he not considered for early release?

9. The questions were received after the completion of the clinical review. However, the issues germane to Mr Hussain's clinical care and cause of death had been addressed by the clinical reviewer. The non-clinical issues within remit have either been covered in this report or dealt with in correspondence.

10. We shared our initial report with HM Prison and Probation Service. They found no factual inaccuracies and provided an action plan, which is annexed to this report.

11. We sent a copy of the initial report to the solicitor acting for Mr Hussain's family. The solicitor identified a factual inaccuracy in the clinical review report, which has been amended.

Previous deaths at HMP Oakwood

12. Mr Hussain was the 14th prisoner to die at Oakwood since February 2019. Eleven deaths were from natural causes, one was drug-related and one resulted from burns. COVID-19 caused or contributed to three of the previous deaths. There have since been two further deaths from natural causes, including one due to COVID-19. There are no similarities between our findings in this investigation and those of previous deaths at Oakwood.

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).

Key Events

16. Mr Matloob Hussain was a life-sentenced prisoner, who had been convicted of murder in 1980. After his release into the community on licence in 1986, he was recalled to prison on 22 June 1992, charged with murder. Mr Hussain was later convicted and given a further life sentence, with a minimum period to serve of 20 years.

17. After time at several prisons, Mr Hussain transferred to HMP Oakwood on 27 March 2018.

18. Mr Hussain's medical history included peripheral vascular disease which had caused severe blockages of the arteries in his legs and his left leg had been amputated in 2008. He used a wheelchair and it was noted throughout his medical record that he was unable to stand. Mr Hussain also had a stroke in 2008 and had been diagnosed with cataracts in 2019. He had declined learning disability screening during his reception health screen.

19. Mr Hussain was managed under the Multiple Professional Complex Case Clinic arrangement, with an assigned health and wellbeing nurse as his keyworker. He lived in a single cell which had been adapted for wheelchair use on a normal residential wing. A social care package was in place and two carers attended three times a week to help him with personal care.

2020

20. On 26 March 2020, Oakwood went into lockdown due to the COVID-19 pandemic and implemented a special regime. A member of the safer custody team conducted a welfare check that day and explained the details to Mr Hussain, as well as reminding him to use his cell bell in the event of an emergency. Mr Hussain raised no issues. He was not eligible for early release as he did not meet the criteria.

21. Healthcare staff identified Mr Hussain as being at high risk of complications if he contracted COVID-19. On 7 April, a nurse explained the risks and advised him to shield, but he declined and signed a disclaimer. Letters were sent to Mr Hussain repeating this advice in August, October, November 2020 and January 2021. Mr Hussain declined to shield each time and confirmed he understood the risks.

22. Due to changes in the government guidance and the assessment criteria, Mr Hussain's risk of complications from COVID-19 was later changed to moderate.

23. Mr Hussain had been referred to a vascular specialist in January 2020 due to lower leg pain, but the hospital had suspended appointments for several months during the pandemic. He received a hospital appointment for 15 October, but the taxi company sent a vehicle that was not wheelchair accessible and they were unable to replace it with a suitable one. Mr Hussain therefore missed the appointment and was added to a waiting list.

24. Mr Hussain came into contact with someone with COVID-19 on 26 October. A nurse checked his clinical observations and he was placed in isolation in his cell for

14 days. Planned clinical observations did not take place on 27 October. He did not display any symptoms of COVID-19.

2021

25. On 6 January 2021, a prison GP was concerned that the blood supply to Mr Hussain's leg might be restricted and asked healthcare staff to urgently follow up his outstanding vascular appointment. An administrator telephoned the hospital on 7 January and an appointment was offered for the same day, but the prison was unable to arrange escort staff at short notice. As hospital clinics were again suspended from the following week, Mr Hussain remained on the waiting list.

26. On 28 January, Mr Hussain attended a hospital appointment to be assessed for a new wheelchair.

Events of 9 February

27. At around 2.30pm on 9 February, wing staff asked a nurse to assess Mr Hussain as he had lost his sense of taste and smell (symptoms of COVID-19). The nurse noted that Mr Hussain's skin looked grey and his blood oxygen saturation level was very low at 62% (the normal range in a healthy person is 95-100%) so she gave him oxygen. She used the National Early Warning Score (NEWS) 2 tool, which calculated a score of 8. (NEWS2 identifies clinical deterioration. A total score of 7 or over suggests high risk and requires emergency assessment by a critical care team.) The nurse called a code blue, a medical emergency code which indicates that a person has breathing difficulties or is unconscious.

28. An ambulance was called immediately at 2.49pm and the paramedics arrived at 2.59pm. They took Mr Hussain to hospital, escorted by two prison officers who used single handcuffs and an escort chain. He was assessed and admitted to a ward during the evening.

29. Healthcare staff obtained regular updates from the hospital and escort officers. On 10 February, Mr Hussain was diagnosed with COVID-19 and pneumonia.

30. The same day, the prison's family liaison officer informed Mr Hussain's brother, his next of kin, that he was in hospital and gave permission for his brother to contact the hospital direct for information.

31. Mr Hussain's condition initially improved. Plans to discharge him began on 19 February, but he deteriorated over the next few days, so the arrangements were suspended. On 25 February, Mr Hussain moved to the Intensive Care Unit and the restraints were removed. The prison informed Mr Hussain's brother that his condition had deteriorated and the hospital consulted him about not attempting resuscitation if Mr Hussain's heart or breathing stopped.

32. On 27 February, the prison approved a compassionate visit for members of Mr Hussain's family as he was not responding to treatment, and they visited that afternoon. Mr Hussain died at 6.50pm. The family liaison officer contacted his brother and offered support and information.

33. Notices were issued to staff and prisoners informing them of Mr Hussain's death and reminding them of the avenues of support.

34. Mr Hussain's funeral was held on 9 March. In line with national policy, the prison contributed to the funeral expenses.

Cause of death

35. No post-mortem examination was held as the coroner accepted the cause of death certified by the hospital as COVID-19 pneumonia. The certification also noted that Mr Hussain had peripheral vascular disease (with left lower limb amputation), ischaemic heart disease, deep vein thrombosis and pulmonary embolism, which did not cause but contributed to his death.

Findings

Clinical Findings

36. The clinical reviewer concluded that Mr Hussain's care at Oakwood, was equivalent to that he could have expected to receive in the community.

37. However, we share her concerns that clinical observations were missed after he was exposed to COVID-19 in October 2020, and that an important outstanding hospital appointment was not followed up, and our report reflects her recommendations.

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

38. At the beginning of the pandemic, prisons were expected to identify prisoners at risk of serious illness if they contracted COVID-19 and provide the opportunity to shield. As a clinically extremely vulnerable person, Mr Hussain was advised of the risks at the outset and throughout the pandemic but chose not to shield.

39. We have considered whether Mr Hussain had the mental capacity and language skills to understand the risks of deciding not to shield.

40. During his 26 years in prison, Mr Hussain had extensive interaction with doctors and nurses. Although an interpreter was used for two mental health reviews where technical matters were discussed, none of the clinicians noted any problems and one noted, "In conversation [he] can follow quite complex conversations and has no problem presenting his own ideas." Mr Hussain's offender supervisor used an interpreter for a couple of sentence planning meetings and a legal visit to explain offence-related programmes. Although there are some entries in Mr Hussain's electronic prison record that suggest he sometimes struggled to understand English, particularly written English, there are numerous other entries recording detailed conversations in English.

41. Although Mr Hussain's brother said that Mr Hussain had a learning disability, his records show that he "attended a normal school in his native India" and that he could read and write Urdu, and that he attended classes to learn to read English.

42. On balance, therefore, we are satisfied that Mr Hussain was able to understand the risks of choosing not to shield and that he was quite capable of saying if he did not understand.

43. At the time of Mr Hussain's death, Oakwood was in lockdown with a restricted regime (there was an outbreak of COVID-19, but this was not on Mr Hussain's wing). Cohorts of eight men at a time were allowed out of their cells to collect meals and medication and for exercise. They were expected to wear PPE. Mr Hussain's carers wore full PPE when assisting him. From October 2020, all prisoners were required to wear face masks at all times when out of their cell.

44. When prison staff discovered that Mr Hussain had been exposed to a COVID-19 positive person in October 2020, they took immediate steps to check and isolate him. However, clinical observations planned for the day after he was exposed did

not take place. There was no adverse impact on Mr Hussain health, but we agree with the clinical reviewer that it would be prudent for the Head of Healthcare to review the process to ensure that there is no systemic problem with the arrangements for such checks. We recommend:

The Head of Healthcare should ensure that repeat clinical observations are arranged and actioned without delay.

45. We are satisfied that the prison implemented appropriate measures to help control the risk of infection and protect prisoners. Mr Hussain was managed in line with national requirements and staff were quick to respond to the rapid and significant deterioration in his health on 9 February.

46. We cannot be certain where or when Mr Hussain contracted COVID-19. The incubation period is thought to be up to 14 days and Mr Hussain had attended a hospital appointment within that period.

Following up hospital referrals and appointments

47. The circumstances leading to Mr Hussain's missed vascular appointment in October 2020 were beyond the prison's control and we note that the prison was unable to provide escort staff at very short notice to facilitate a same-day appointment during the pandemic in January 2021. However, we agree with the clinical reviewer that due to the potential risk to Mr Hussain's remaining leg, healthcare staff should have been more proactive about arranging another appointment in October. We recommend:

The Head of Healthcare should ensure that there is a robust and auditable process to follow-up outstanding hospital appointments.

Restraints, security and escorts

48. We are concerned that when Mr Hussain was taken to hospital on 9 February, he was restrained by an escort chain and that he remained restrained until he was moved to the Intensive Care Unit on 25 February.

49. 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.

50. 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. These requirements are reflected in Prison Service Instruction (PSI) 33/2015 on external prisoner movements.

51. Mr Hussain was an amputee, who was awaiting a hospital appointment for problems with his remaining leg. He was category C prisoner on the enhanced level of the incentives scheme, who was recognised as cooperative with staff, with no adjudications since 1996 and no problems during previous hospital visits. Mr Hussain was assessed as medium risk to the public and low risk on all the other factors, including risk of escape and likelihood of outside assistance.

52. There was an anomaly in the medical section of the risk assessment, which was annotated, "poor mobility, uses wheelchair", yet was ticked to state that there were no medical reasons to prevent normal handcuffing of Mr Hussain; no reason why he should not remain handcuffed during his hospital admission; and that he had the physical ability to escape if the handcuffs were removed. No information was recorded about his medical condition at the time and there was no reference to him being an amputee who was unable to stand.

53. We are concerned that the medical opinion did not adequately reflect Mr Hussain's significant disability, or his poor condition at the time and how this impacted on his risk. We also find it difficult to understand how Mr Hussain was assessed as a medium risk to the public, given his age, poor mobility and the fact that both his offences had been committed against family members more than 20 years earlier. Consequently, we consider that the authorising manager's decision to use restraints was flawed. We recommend:

The Director and Head of Healthcare should ensure that:

- **healthcare staff fully and accurately reflect the current health and mobility of a prisoner when they complete an escort risk assessment;**
- **all staff undertaking risk assessments for prisoners taken to hospital understand the legal position, 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.**

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Prisons and Probation Ombudsman **October 2021**

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