Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Rogerio Da Silva, a prisoner at HMP Hewell, on 7 December 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 Rogerio Da Silva died of multiple organ failure caused by COVID-19 pneumonitis on 7 December 2021, while a prisoner at HMP Hewell. He was 56 years old. I offer my condolences to his family and friends.

4. The clinical reviewer concluded that the care Mr Da Silva received at HMP Hewell was of a reasonable standard and equivalent to that which he could have expected to receive in the community. She made a number of recommendations about aspects of Mr Da Silva's care in relation to care plans, COVID-19 welfare checks and a failure to take blood samples when asked. We have repeated some of her recommendations below.

5. We are concerned that prison staff used an escort chain when Mr Da Silva was taken to hospital on 1 November 2021. He was sufficiently ill to require an emergency ambulance and had tested positive for COVID-19. He was accompanied by two prison officers, which, given his poor physical condition, should have been deemed a sufficient level of security without the need for physical restraints.

Recommendations

- The Head of Healthcare should ensure that all prisoners with long term conditions have a care plan, in line with NICE guidelines.

- The Head of Healthcare should ensure that all prisoners who are symptomatic and who have tested positive for COVID-19 using a lateral flow or PCR test, have a COVID-19 care plan.

- The Head of Healthcare should ensure that healthcare staff complete daily welfare checks and use a NEWS2 tool for those prisoners who are a moderate to high risk and test positive on a lateral flow or PCR test, in line with the policy 'monitoring patients who test positive for COVID' (Version 6, November 2021).

- The Governor should ensure that all staff undertaking and reviewing risk assessments for prisoners admitted to hospital understand the legal position on the use of restraints.

The Investigation Process

6. NHS England commissioned an independent clinical reviewer to review Mr Da Silva's clinical care at HMP Hewell.

7. The PPO investigator has investigated non-clinical issues, including aspects of the prison's response to COVID-19 and shielding prisoners; Mr Da Silva's location, the security arrangements for his hospital escorts and liaison with his family.

8. We wrote to Mr Da Silva's next of kin, his partner, to explain the investigation and to ask if she had any matters she wanted the investigation to consider. She did not have any issues to raise but asked for a copy of our report.

9. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS did not find any factual inaccuracies and their action plan is annexed to this report.

COVID-19 (Coronavirus)

10. 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.

11. 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.)

12. 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 received or returning prisoners from the main population through 'reverse-cohorting'. Other measures include social distancing and the use of personal protective equipment (PPE).

Previous deaths at HMP Hewell

13. Mr Da Silva was the tenth prisoner to die at HMP Hewell since December 2019. Of the previous deaths, seven were from natural causes (one of which was from COVID-19) and two were self-inflicted.

14. There are no similarities between our findings in the investigation into Mr Da Silva's death and our investigation findings for the previous deaths.

Key Events

15. On 11 June 2021, Mr Rogerio Da Silva was remanded to HMP Hewell charged with sexual offences.

16. Mr Da Silva had a number of pre-existing conditions, including chronic kidney disease, high blood pressure, gout and diabetes.

17. Following his arrival at Hewell, Mr Da Silva self-isolated in his cell for 14 days. The following day, a nurse completed a secondary health screen and gave him a COVID-19 lateral flow test. The result was negative. Mr Da Silva said that he had received two COVID-19 vaccines in the community. This was confirmed in his community health records.

18. In June, the prison had a mass outbreak of COVID-19. The prison implemented a restricted regime and mass testing took place. Mr Da Silva had a COVID-19 test on 17 June and the result was negative.

19. On 27 June, a prison pharmacist made a request in Mr Da Silva's medical record for blood tests to be completed to review his prescribed medications. There is no evidence that these blood tests were completed.

20. On 1 July, a nurse told Mr Da Silva that he was at moderate risk of catching COVID-19 because of his age and underlying health conditions and that he should consider self-isolating. The prison has been unable to confirm whether Mr Da Silva accepted this advice.

21. On 27 October, Mr Da Silva tested positive for COVID-19. Healthcare staff told him that he needed to self-isolate in his cell until a senior member of staff advised him otherwise. Healthcare staff completed welfare checks on 28 and 31 October. Mr Da Silva said that he had no COVID-19 symptoms and was feeling fine but had lost his appetite. There is no evidence in Mr Da Silva's medical record that healthcare staff created a COVID-19 care plan to manage his care.

22. On 1 November, a healthcare assistant (HCA) saw Mr Da Silva because he was short of breath, had a crackling sound in his chest and had a severe headache. He told the HCA that he could not taste anything. She referred him to a prison paramedic for further review.

23. At 7.39pm, the prison paramedic saw Mr Da Silva. There was evidence of fluid in his left lung and his observations were abnormal. The prison paramedic radioed a code blue (indicating a prisoner is unconscious or is having breathing difficulties) and control room staff called an ambulance.

24. At 7.50pm, paramedics arrived at the prison and took Mr Da Silva to hospital by emergency ambulance. Two officers escorted him to hospital and restrained him using an escort chain (a length of chain with a handcuff at each end). They wore personal protective equipment.

25. Mr Da Silva was admitted to hospital as an inpatient and placed on oxygen therapy. He was also given a course of intravenous antibiotics. His restraints were removed soon after his admission to hospital.

26. On 3 November, Mr Da Silva was moved to the hospital's intensive care unit. He was sedated and placed on a ventilator to assist him to breathe.

27. At 2.20pm on 7 December, the hospital confirmed that Mr Da Silva had died.

Cause of death

28. The Coroner accepted the cause of death provided by a hospital doctor and no post-mortem examination was carried out. The doctor gave Mr Da Silva's cause of death as multiple organ failure caused by COVID-19 pneumonitis. He also had chronic kidney disease, diabetes mellitus and hypertension (high blood pressure) which did not cause but contributed to his death.

Clinical Findings

29. The clinical reviewer concluded that the healthcare Mr Da Silva received at Hewell was of a reasonable standard and equivalent to that which he could have expected to receive in the community.

Management of Mr Da Silva's risk of infection from COVID-19 and risk to others

30. The clinical reviewer found that the prison complied with HMPPS and Public Health England (PHE) guidance to mitigate Mr Da Silva's risk of contracting COVID-19. Staff advised him that he was at moderate risk of catching COVID-19 and that he should consider self-isolating. However, the prison was unable to say whether Mr Da Silva accepted this advice. We consider that it was likely Mr Da Silva contracted COVID-19 in prison. He did not leave the prison in the weeks leading up to his positive test result.

31. The prison had a mass outbreak of COVID-19 in June 2021. The Head of Healthcare said that in general, this did not impact on the delivery of primary healthcare during that time.

32. When Mr Da Silva tested positive for COVID-19 on 27 October, healthcare staff instructed him to isolate in his cell. However, healthcare staff failed to complete daily welfare checks in line with the policy, *'monitoring patients who test positive for COVID' (Version 5, January 2021)* which instructs that staff should complete daily welfare checks on COVID-19 positive prisoners.

33. Also, Mr Da Silva was assessed as being a moderate risk of developing complications from COVID-19 which meant he should have had daily NEWS2 observation checks when he tested positive. Healthcare staff only completed one NEWS2 check on the 1 November, which was completed by the prison paramedic.

34. There is also no evidence that healthcare staff created a COVID-19 care plan to manage his care. We recommend:

    The Head of Healthcare should ensure that all prisoners who are symptomatic and who have tested positive for COVID-19 on a lateral flow or PCR test have a COVID-19 care plan.

    The Head of Healthcare should ensure that healthcare staff complete daily welfare checks and use a NEWS2 tool for those prisoners who are a moderate to high risk, and test positive on a lateral flow or PCR test, in line with the policy 'monitoring patients who test positive for COVID' (Version 6, November 2021).

Management of long-term conditions

35. When he arrived at HMP Hewell, Mr Da Silva had an initial health screen and it was recorded that he had high blood pressure, gout and diabetes. There is no evidence in his medical records that care plans were created to manage his long-term conditions. We recommend:

The Head of Healthcare should ensure that all prisoners with long term conditions have a care plan, in line with NICE guidelines.

36. The Head of healthcare made further recommendations about clinical monitoring of blood and urine samples, and training for healthcare staff which we do not repeat in this report but which the Head of Healthcare will need to address.

Non-Clinical Findings

Restraints, security and escorts

37. 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.

38. 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.

39. We are concerned that when Da Silva was taken to hospital on 1 November, he was restrained using an escort chain. Mr Da Silva was recognised as cooperative with staff, with no intelligence information and no adjudication history. He was assessed as low risk to the public, hospital staff, hostage taking, escape potential and likelihood of outside assistance.

40. We recognise that many factors must be considered in determining the level of restraints. However, we question whether the use of the escort chain was proportionate when Mr Da Silva was taken and admitted to hospital, given that he was sufficiently ill to require an emergency ambulance and was COVID-19 positive. We question whether he had the ability to escape, particularly as he was accompanied by two prison officers and his condition was deteriorating. Consequently, we consider that the decision to use restraints was flawed. We recommend:

The Governor should ensure that all staff undertaking and reviewing risk assessments for prisoners admitted to hospital understand the legal position on the use of restraints.

Sue McAllister CB
Prisons and Probation Ombudsman **February 2023**

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