

**Prisons &
Probation**

Ombudsman
Independent Investigations

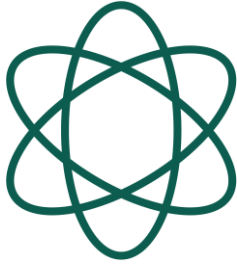
Independent investigation into the death of Mr Johnny Kock, a prisoner at HMP Berwyn, on 16 August 2021

A report by the Prisons and Probation Ombudsman



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

OGI

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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.

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.

Mr Johnny Kock died at HMP Berwyn, on 16 August 2021, from heart failure due to a diseased heart muscle. He was 75 years old. I offer my condolences to Mr Kock's family and friends.

The clinical reviewer concluded that Mr Kock's clinical care at Berwyn was of a good standard, equivalent to that he could have expected to receive in the community. However, he found that Mr Kock did not receive a second-stage health assessment and there was a significant waiting time for a GP appointment. Additionally, when he became ill, his clinical observations were not fully documented and there was a delay in taking a swab to be tested for COVID-19.

I am satisfied that the omissions identified did not affect the outcome for Mr Kock and that staff at Berwyn could not have prevented his sudden and unexpected death.

This version of my report, published on my website, has been amended to remove the names of staff and prisoners involved in my investigation.

Kimberley Bingham
Acting Prisons and Probation Ombudsman

November 2022

Contents

| | |
|--------------------------------|---|
| Summary | 1 |
| The Investigation Process..... | 3 |
| Background Information..... | 4 |
| Key Events..... | 6 |
| Findings | 9 |

Summary

Events

1. Mr Johnny Kock was remanded to prison in 2013. He was later convicted of a drug importation offence and sentenced to 25 years imprisonment. Mr Kock transferred to HMP Berwyn on 22 April 2021.
2. Mr Kock's medical conditions included heart and blood circulation disorders, as well as high blood pressure. He persistently refused to accept medical advice or take his prescribed medication but was considered to have the mental capacity to understand the risks and make decisions about his health.
3. Mr Kock was at high risk of complications if he contracted COVID-19. He declined COVID-19 vaccinations,
4. On 11 August, Mr Kock reported symptoms of COVID-19 and he was placed in protective isolation. A clinical assessment found that his vital signs were within normal range and he was advised to contact healthcare staff if he felt worse. A swab was taken to be tested.
5. On 16 August, the test result returned as positive for COVID-19. At around 11.10am the same day, a prison officer found Mr Kock unresponsive in his cell and radioed an emergency. Healthcare staff attended but did not attempt resuscitation as there were clear signs that he was dead. A prison GP certified Mr Kock's death.
6. A post-mortem examination found that Mr Kock had died from heart failure, as a result of a diseased heart muscle.

Findings

7. The clinical reviewer concluded that Mr Kock received a good standard of clinical care at Berwyn, equivalent to that he could have expected to receive in the community. He recommended some improvements in clinical practice, but the weaknesses identified did not affect the outcome for Mr Kock.
8. When Mr Kock transferred to Berwyn, he had an initial health screen but did not receive a second-stage health assessment.
9. On 21 July, a prison GP asked to see Mr Kock face-to-face, and this was booked for 30 September. Given the period between the request and the allocated date, there is a concern that there is insufficient provision for such appointments.
10. Although Mr Kock was assessed promptly when he became unwell on 11 August, his temperature and blood oxygen saturation levels were not recorded.
11. A swab to test for COVID-19 was not taken until the day after Mr Kock reported symptoms of the virus.
12. Mr Kock had been dead for some time before he was found. This delay was unfortunate but seemed to be largely due to the regime restrictions in place

because of COVID-19, when there was limited contact with staff and other prisoners.

Recommendations

- The Head of Healthcare should ensure that, in line with NICE Guideline (NG57), a second-stage health assessment is carried out within seven days of a prisoner's initial health screen.
- The Head of Healthcare should review the arrangements for face-to-face GP appointments, to ensure there is sufficient availability to meet demand and patients are seen within reasonable timescales.
- The Head of Healthcare should ensure that all the necessary clinical observations are completed and documented when assessing a prisoner with symptoms of COVID-19.
- The Head of Healthcare should ensure that tests are conducted without delay when a prisoner is suspected of contracting COVID-19.

The Investigation Process

13. Notices were issued to staff and prisoners at HMP Berwyn informing them of the investigation and asking anyone with relevant information to contact the investigator. One prisoner responded.
14. Health Inspectorate Wales commissioned a clinical reviewer to review Mr Kock's clinical care at HMP Berwyn.
15. The investigator obtained copies of relevant extracts from Mr Kock's prison and medical records.
16. We informed HM Coroner for North Wales of the investigation. The coroner gave us the results of the post-mortem examination and we have sent the coroner a copy of this report.
17. The Ombudsman's family liaison officer wrote to Mr Kock's partner and son, to explain the investigation. Mr Kock's brother later contacted the family liaison officer. His family was concerned that details of the circumstances of Mr Kock's death might be concealed, they did not believe he had COVID-19 and felt he should not have been placed in isolation. They asked for the following specific questions to be considered:
 - Did Mr Kock have a negative COVID-19 test on 13 August? If so, why was he kept in isolation and did this limit the opportunity for medical attention?
 - Why were they not informed that Mr Kock was ill?
 - Why was Mr Kock not taken to hospital?
 - Why was there a delay in transferring Mr Kock's body to the mortuary?
18. Mr Kock's brother and son both received a copy of our initial report. They raised a number of additional concerns and questions that do not impact on the factual accuracy of the report and have been addressed in correspondence.
19. We shared the initial report with HMPPS. They found no factual inaccuracies and accepted the recommendations.

Background Information

HMP Berwyn

20. HMP Berwyn is a category C prison, near Wrexham. It opened in 2017 and was designed to hold around 2100 men. Berwyn has three houseblocks (Alwen, Bala and Ceiriog) each divided into eight communities. Healthcare services are provided by Betsi Cadwaladr University Health Board.

HM Inspectorate of Prisons

21. The most recent inspection of HMP Berwyn was in March 2019. Inspectors found that the quality and governance of the healthcare service was very good overall. They considered that the service was well managed; and there was good access to a wide range of primary care services, with reasonable waiting times. Prisoners could book appointments directly on in-cell laptops.

Independent Monitoring Board

22. Each prison has an Independent Monitoring Board (IMB) of unpaid volunteers from the local community who help to ensure that prisoners are treated fairly and decently. In its latest annual report, for the year to February 2021, the IMB noted that due to the COVID-19 pandemic, there had been limited observation by board members and greater reliance on information from staff and prisoners. The Board considered that healthcare provision at the prison was at least as good as that in the community. However, there had been a 163% increase in applications to the Board as the restrictions in regime due to the pandemic had heightened prisoners' concerns.

Previous deaths at HMP Berwyn

23. Mr Kock was the eighth prisoner at Berwyn to die since August 2019. Five of the previous deaths were due to natural causes, one was self-inflicted, and one was related to substance misuse. There has since been a further death from natural causes. We have previously raised with Berwyn concerns about delays in arranging GP appointments.

COVID-19 (coronavirus)

24. 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.
25. 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.)

26. 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

27. Mr Johnny Kock, a Dutch citizen, was remanded to prison on 30 September 2013. He was later convicted of offences linked to the importation of class A drugs and the proceeds of crime and sentenced to 25 years and 8 years imprisonment, respectively. Mr Kock transferred from HMP Whitemoor to HMP Berwyn on 22 April 2021.
28. A nurse conducted an initial health screen, but there was no evidence of a secondary health assessment. Mr Kock's medical conditions included atrial fibrillation, high blood pressure and peripheral vascular disease, but he had stopped taking his prescribed medication in November 2020.
29. During the COVID-19 pandemic, prisons were required to shield prisoners who were at very high risk of complications from COVID-19. Due to his age and health conditions, Mr Kock fell within this category, but he had repeatedly refused to shield, or receive COVID-19 vaccinations at Whitemoor. While there is no record of his views about shielding after he moved to Berwyn, Mr Kock benefitted from a form of shielding, as he lived on a dedicated unit for older and clinically vulnerable men, with a very restricted regime.
30. On 28 April, a prison GP discussed with Mr Kock his refusal to take essential medication and gave him the result of recent blood tests. Mr Kock said he did not trust doctors and as the results were normal, he did not need medicines. The GP explained that the tests were to assess risk and did not necessarily mean he should not take medication and atrial fibrillation could lead to a stroke. Mr Kock's response was that there was nothing wrong with his heart. The GP was satisfied that Mr Kock had the mental capacity to understand the consequences of his decision and that he accepted the risks.
31. On 6 July, while discussing a podiatry referral with a nurse, Mr Kock mentioned problems with swelling and cramp in his right leg and that he had been previously diagnosed with a blood clot. She arranged an appointment for a Doppler study to check his blood flow and suitability for compression socks.
32. At the appointment on 14 July, with a nurse, Mr Kock said he would not wear compression hosiery for the same reason he refused to take the medication for atrial fibrillation. In view of this, she noted that the test would not be beneficial.
33. During a telephone consultation on 21 July, Mr Kock told a prison GP that his previous doctor could not prove that he had atrial fibrillation and he would prefer a face-to-face appointment. The GP thought this might improve his compliance with medical advice and the appointment was booked for 30 September.

Deterioration in Mr Kock's health

34. Just after 8.30am on 11 August, Mr Kock rang the healthcare department and said that he was short of breath but had no other symptoms. The administrator arranged a telephone triage for suspected COVID-19 and advised him to call again if he felt any tightness in his chest, nausea, or dizziness.

35. At around 12.30pm, a nurse assessed Mr Kock, who said he had a cough and had been short of breath for four days. She gave him advice on managing his symptoms and told him to inform wing officers if he felt worse. She arranged for Mr Kock and his cellmate to be tested for COVID-19 (and a swab was taken the next day.)
36. Clinical observations taken around two hours later were within normal range, but no temperature or blood oxygen saturation levels were recorded. At that time, Mr Kock appeared in good spirits and there were no specific concerns about his condition. He was reminded to contact healthcare staff, if necessary.
37. Mr Kock was moved to the protective isolation unit and wing staff gave him several items, such as a television, kettle, and telephone. Meals were delivered to his cell, but staff noted that he ate very little.
38. At 10.50am on 16 August, the result of Mr Kock's COVID-19 test was entered in his medical record as positive.
39. At around 11.10am the same day, an officer went to Mr Kock's cell and found him on the toilet, apparently dead. He called a code blue (a medical emergency code to indicate that a prisoner is unresponsive or has breathing difficulties).
40. A nurse and a healthcare support worker attended and found that Mr Kock was cold, stiff, with very mottled skin and no pulse. As it was clear that rigor mortis had set in, they did not attempt to resuscitate him.
41. The nurse confirmed Mr Kock's death at 11.16am, and it was verified at 1.39pm by a prison GP. Mr Kock's body had to be held in the prison until the police completed their checks at 2.44pm. The undertaker arrived at 3.25pm and left the prison at 4.00pm.

Contact with Mr Kock's family

42. The prison's family liaison officer had difficulty contacting Mr Kock's partner, his next of kin. To avoid further delay, he notified Mr Kock's son. He explained that Mr Kock's body could not be moved from the cell to a mortuary until the police attended and apologised for the distress caused by this. The family liaison officer kept in touch and later spoke to Mr Kock's partner and other family members.
43. In line with national policy, the prison contributed to the costs of Mr Kock's funeral, which was held on 27 August.

Support for prisoners and staff

44. A prison manager debriefed staff who were involved in the emergency and offered support. The prison care team spoke to each staff member individually.
45. Arrangements were made for the chaplaincy team, Listeners and Samaritans to contact all residents on Mr Kock's wing. Those considered to be vulnerable to self-harm and suicide were reviewed. The prison later issued notices to inform staff and other prisoners of his death and to remind them of the support available.

46. The family liaison officer contacted Whitemoor, where Mr Kock had spent many years, so his friends could be offered support.

Post-mortem report

47. The post-mortem report concluded that the cause of Mr Kock's death was cardiac failure due to ischaemic dilated cardiomyopathy (heart failure caused by a diseased heart muscle). The pathologist noted that Mr Kock had tested positive for COVID-19 but did not list this as either a cause of, or contributory factor to his death.

Findings

Clinical care

48. The clinical reviewer concluded that Mr Kock received a good standard of clinical care at Berwyn, equivalent to that he could have expected to receive in the community. Notably, there were appropriate referrals and exploration of his non-compliance with his medication; and he was promptly isolated when he reported symptoms of COVID-19. However, the clinical reviewer made four recommendations, emphasising that the weaknesses identified did not affect the outcome for Mr Kock. We reflect the issues below.

Secondary health assessment

49. National Institute for Health and Care Excellence (NICE) Guideline 57, *Physical Health of People in Prison*, states that every prisoner should have a second-stage health assessment within seven days of their initial health screen. There is no evidence that Mr Kock had, or was offered, a secondary health screen. We recommend:

The Head of Healthcare should ensure that, in line with NICE Guideline (NG57), a second-stage health assessment is carried out within seven days of a prisoner's initial health screen.

Access to GP appointments

50. On 21 July, a prison GP and Mr Kock agreed that an appointment in person might be beneficial and this was requested. We are concerned that there was more than a two-month wait, as the earliest date available was 30 September. We recommend:

The Head of Healthcare should review the arrangements for face-to-face GP appointments, to ensure there is sufficient availability to meet demand and patients are seen within reasonable timescales.

Monitoring Mr Kock after he reported symptoms of COVID-19

51. Healthcare staff assessed Mr Kock on the day he reported COVID-19 symptoms and completed clinical observations. However, his blood oxygen saturation levels and temperature were not recorded, so it is unclear whether they were taken. In addition, over 24 hours elapsed before a swab was taken for testing. We recommend:

The Head of Healthcare should ensure that all the necessary clinical observations are completed and documented when assessing a prisoner with symptoms of COVID-19.

The Head of Healthcare should ensure that tests are conducted without delay when a prisoner is suspected of contracting COVID-19.

Unlocking cells and welfare checks

52. Prison Service Instruction (PSI) 75/2011, *Residential Services*, says:

“Reports from the Prisons and Probation Ombudsman on deaths in custody have identified cases in which a prisoner has died overnight ... but staff unlocking them have not noticed that the prisoner had died. This is not acceptable.

“The appropriate arrangements will depend on the local regime, but there need to be clearly understood systems in place for staff to assure themselves of the well-being of prisoners during or shortly after unlock ... Where prisoners are not necessarily expected to leave their cell, staff will need to check on their well-being, for example by obtaining a response during the unlock process.”

53. Berwyn’s local policy on roll checks states that:

“... Staff must assure themselves of the well-being of prisoners during or shortly after unlock. ... Where prisoners are not necessarily expected to leave their cell, staff will need to check on their well-being, for example by obtaining a response during the unlock process.”

On weekdays, such checks are conducted five times a day, the first at 6.00am and the second at 12.15pm.

54. At Berwyn, breakfast packs for the next day are issued in advance with prisoners’ evening meals; all cells have showers and telephones; and healthcare checks for those on the protective isolation unit are conducted by telephone, unless there is a specific reason for a face-to-face visit. In view of this, it was not uncommon for prisoners (particularly those in isolation due to COVID-19) to have limited contact with staff for long periods.

55. The early morning unlock roll check on 16 August was completed and verified. Mr Kock died before the next check was due. We are satisfied that staff could not have predicted or prevented his death, which was sudden and unexpected.

Liaison with Mr Kock’s family

56. Mr Kock’s family asked why they were not informed of Mr Kock’s illness. They also questioned whether he had tested positive for COVID-19 and if it had been appropriate to place him in isolation.

57. National Prison Service guidance on family liaison and communicating with prisoners’ families during the pandemic states that if a prisoner is diagnosed with COVID-19, they should be asked if they want to inform anyone.

58. Mr Kock regularly contacted his family, who seemed to be aware of his longstanding health issues. We understand that he last spoke to one of his brothers on 12 August and had told him that prison staff suspected he had contracted COVID-19. They were sceptical and felt his illness was more likely to be due to a longstanding medical condition, or the stress of a pending repatriation to The Netherlands. The result of Mr Kock’s COVID-19 test was not known until the

morning of his death, and he had been rightly isolated beforehand, given his reported symptoms.

59. We are conscious that it is worrying for families when a prisoner is unwell, particularly at a time when contact is limited. However, as Mr Kock's family knew he was ill and in isolation, with a provisional diagnosis of COVID-19, we do not believe there is any other information that the prison could have usefully provided at the time.

Inquest conclusion

60. The inquest, heard on 25 May 2023, concluded that Mr Kock died from natural causes.

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