Prisons &
Probation
Ombudsman
Independent Investigations

Independent investigation into the death of Mr Kenneth Cunningham, a prisoner at HMP Liverpool, on 14 March 2022

A report by the Prisons and Probation Ombudsman

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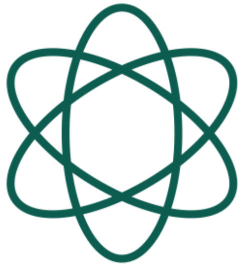
Our vision

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

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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 Kenneth Cunningham died in hospital from head and neck cancer, on 14 March 2022, while a prisoner at HMP Liverpool. He was 69 years old. I offer my condolences to Mr Cunningham's family and friends.

4. The clinical reviewer concluded that the clinical care Mr Cunningham received at HMP Liverpool was equivalent to that which he could have expected to receive in the community. She made a recommendation about revising the electronic template for the National Early Warning Score 2 clinical assessment tool, which we do not repeat in this report, but the Head of Healthcare will need to address. Full details of the clinical reviewer's findings and the recommendation are in the clinical review, which is annexed to this report.

5. The investigation found that the expected emergency procedures were not followed, as a code red medical emergency was not called immediately when Mr Cunningham was bleeding heavily. Although this did not adversely affect the outcome, a delay of even a few minutes can make a critical difference in a medical emergency.

Recommendation

- The Governor should ensure that staff are aware of the purpose and importance of medical emergency codes; and a code red is called immediately if a prisoner is bleeding severely.

The Investigation Process

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

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

8. The Ombudsman's family liaison officer wrote to Mr Cunningham's next of kin, his son, to explain the investigation. He had no specific issues for us to consider.

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

10. We sent a copy of our initial report to Mr Cunningham's son. He did not notify us of any factual inaccuracies.

Previous deaths at HMP Liverpool

11. Mr Kenneth Cunningham was the 11th prisoner at Liverpool to die since March 2020. Of the previous deaths, seven were from natural causes (three due to COVID-19), two were drug-related and one was self-inflicted. There have since been six further deaths. There are no similarities between our findings in this investigation and those of previous deaths.

Key Events

12. Mr Kenneth Cunningham was remanded to HMP Liverpool on 29 November 2013. He was later convicted of sexual offences and sentenced to 19 years imprisonment.

13. Mr Cunningham had several long-term health conditions, including chronic obstructive pulmonary disease, asthma, high blood pressure, anaemia, heart disease and peripheral vascular disease (a progressive circulation disorder).

14. In February 2015, Mr Cunningham reported persistent pain and swelling to his neck. A prison GP requested tests and referred him to an Ear, Nose and Throat (ENT) consultant at Aintree University Hospital.

15. On 18 March, an ultrasound scan revealed a tumour in Mr Cunningham's throat and he was re-referred under the NHS pathway for suspected cancer (which offers an appointment with a specialist within two weeks). On 7 April, the diagnosis was confirmed as a form of throat cancer. Mr Cunningham later received chemo-radiotherapy and was confirmed to be free of cancer in October 2015.

Recurrence of Mr Cunningham's cancer

16. During a GP review on 10 July 2019, Mr Cunningham mentioned that he had a sore throat and ear pain. He was prescribed antibiotics, but his pain persisted. The GP suspected a recurrence of cancer and requested an urgent referral to the ENT specialist on 31 July. Owing to hospital delays, Mr Cunningham did not receive an appointment until 10 September.

17. On 24 October, the ENT consultant confirmed the recurrence of throat cancer and Mr Cunningham later had surgery.

18. In March 2020, at the beginning of the COVID-19 pandemic, Mr Cunningham was informed that he was at high risk of serious illness if he caught the virus. Throughout the pandemic, he was frequently offered the opportunity to move to the shielding wing but he declined and signed disclaimers to confirm his decision. Mr Cunningham worked in a print workshop with one other prisoner (socially distanced) and was tested daily.

Mr Cunningham's terminal diagnosis

19. Mr Cunningham continued to be monitored by hospital specialists. On 17 March 2021, an oncology consultant told him it was likely that his cancer had returned and spread to his skin. The diagnosis was confirmed at the next appointment on 24 March. The consultant gave a poor prognosis, with an estimated life expectancy of around nine months. On his return to the prison, a nurse discussed the diagnosis with Mr Cunningham and a family liaison officer was assigned the same day.

20. Healthcare staff referred Mr Cunningham to the palliative care team and Macmillan Cancer Support. They conducted regular observations, welfare checks and care plan reviews and referred Mr Cunningham to hospital when his symptoms were severe.

21. Prison staff submitted an application for early release on compassionate grounds. On 5 May 2021, the Governor informed Mr Cunningham that it had not been approved as he had failed to complete rehabilitative work to address his offence and reduce his risk; concerns about his location had been raised by one of his victims; and the proposed accommodation arrangements were inadequate. However, it was noted that supervised admission to a hospice for end-of-life care would be an option at the appropriate time.

Final admission to hospital

22. Just after 4.00am on 28 February 2022, Mr Cunningham rang his cell bell and told a prison officer that his neck was bleeding. The officer went to the healthcare centre to get a nurse and they returned to the cell with the night orderly officer (the operational manager during night shifts).

23. The nurse noted a large amount of blood on the floor, bed and over parts of Mr Cunningham's body. When she removed a towel from his neck to examine the cause, blood spurted towards her. She immediately asked an officer to call a code red and an ambulance was requested. (Code red is a medical emergency code which indicates a severe loss of blood, suspected fracture, or severe burns.) While waiting, healthcare staff performed clinical observations and tried to stem the bleeding.

24. Paramedics took Mr Cunningham to hospital. He was escorted by two prison officers and no restraints were used. During the admission procedures, he tested positive for COVID-19 (he had tested negative on 24 and 25 February).

25. Mr Cunningham had immediate surgery and was then admitted to the critical care unit. He later decided that he did not want to be resuscitated if his heart or breathing stopped.

26. The prison quickly informed Mr Cunningham's son that he was in hospital and COVID-19 positive.

27. On 1 March, the prison GP began an application for early release, with a view to a considering a transfer to a hospice. The palliative care team liaised with the hospital to get an estimate of Mr Cunningham's life expectancy, but he died before the application was submitted.

28. Mr Cunningham died at 8.30am on 14 March. The prison's family liaison officer promptly informed his son.

Cause of death

29. An inquest held on 25 March 2022, concluded that Mr Cunningham died of squamous cell carcinoma (cancer) of the head and neck.

30. Mr Cunningham had tested positive for COVID-19 two weeks before his death, but this was not cited as a cause, or contributory factor.

Non-Clinical Findings

Emergency response

31. Prison Service Instruction (PSI) 03/2013 *Medical Emergency Response Codes* and HMP Liverpool's *Medical Emergency Protocol* sets out the actions staff should take in a medical emergency, including mandatory instructions on efficiently communicating the emergency, to ensure staff take the relevant equipment to the incident and that there are no delays in calling an ambulance. This includes calling a code red medical emergency in the event of severe blood loss. The policy indicates that it is not a requirement for healthcare staff, or an operational manager to attend before making such a call and provides for the ambulance to be stood down by healthcare if it is not required.

32. Understandably, it might be difficult for operational staff to assess whether bleeding is minor or life-threatening and hard to see the volume of blood in a dark cell during the early hours. However, entries in Mr Cunningham's medical and NOMIS (personal) records are clear that the officer who responded to his cell bell described the bleed as heavy and severe. We are therefore concerned that he decided to go to the healthcare centre, rather than calling a code red immediately.

33. As Mr Cunningham was at an advanced stage of terminal illness, this error of judgement was unlikely to have affected the outcome, but we know that a delay of even a few minutes can make a critical difference in a medical emergency. It is therefore vital that staff follow the prescribed emergency response procedures. We recommend:

The Governor should ensure that staff are aware of the purpose and importance of medical emergency codes; and a code red is called immediately if a prisoner is bleeding severely.

Louise Richards
Assistant Ombudsman **June 2023**

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