

**Prisons &
Probation**

Ombudsman
Independent Investigations

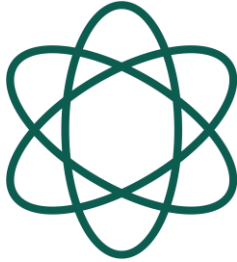
Independent investigation into the death of Mr Paul Cussans, a prisoner at HMP Lincoln, on 17 January 2021

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

OGL

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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 Paul Cussans died in hospital on 17 January 2021 from complications of COVID-19 pneumonia while a prisoner at HMP Lincoln. He was 36 years old. I offer my condolences to Mr Cussans' family and friends.
4. The clinical reviewer concluded that the care Mr Cussans received at Lincoln was generally of a good standard and equivalent to that which he could have expected to receive in the community. He did not make any recommendations.
5. We found two non-clinical issues of concern.
6. We are concerned that prison staff used an escort chain when Mr Cussans was taken to hospital on 8 December, despite his breathing difficulties, and that handcuffing him placed the escort officers at greater risk of infection. We are also concerned that the escorting staff locked Mr Cussans in a hospital room in the critical care ward.

Recommendations

- The Governor and Head of Healthcare should review the arrangements for the administration of controlled drugs to ensure that prisoners who are shielding or isolating do not have to attend the medication hatch to collect them.
- The Governor and Head of Healthcare should ensure that:
 - all staff undertaking and reviewing risk assessments for prisoners admitted to hospital understand the legal position on the use of restraints; and
 - healthcare staff always complete the medical information section of the escort risk assessment to say whether the prisoner's current medical condition affects their mobility and risk of escape.
- The Governor should share this report with the manager who authorised the restraints and discuss the Ombudsman's findings with them.
- The Governor should remind managers and escorting staff of the need to take proportionate actions when a prisoner is seriously or terminally ill in hospital.

The Investigation Process

7. NHS England commissioned an independent clinical reviewer to review Mr Cussans' clinical care at HMP Lincoln.
8. The PPO investigator investigated the non-clinical issues, including aspects of the prison's response to COVID-19 and shielding prisoners; Mr Cussans' location; the security arrangements for his journey and admission to hospital; liaison with his family; and whether early release was considered.
9. The PPO family liaison officer wrote to Mr Cussans' next of kin to explain the investigation. His family asked a number of questions about how Mr Cussans contracted COVID-19 and about the measures that were in place to protect him. These questions have been addressed in this report and in the clinical review.
10. Mr Cussans' family received a copy of the initial report. The solicitor representing them wrote to us raising a number of questions that do not impact on the factual accuracy of this report. We have provided clarification by way of separate correspondence to the solicitor.
11. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS did not find any factual inaccuracies.

Previous deaths at HMP Lincoln

12. Mr Cussans was the seventh prisoner to die at Lincoln since January 2019. Of the previous deaths, three were self-inflicted and three were from natural causes (including one COVID-19 related death in December 2020).

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. On 20 October 2017, Mr Paul Cussans was sentenced to four years imprisonment for robbery. He was later released to a hostel but was recalled to prison on 12 March 2020 when he breached his licence conditions. He was arrested on 15 April and sent to HMP Lincoln.
17. On arrival at Lincoln, a nurse reviewed Mr Cussans' long-term conditions. Mr Cussans had paranoid schizophrenia and long-standing substance misuse issues. He had no significant physical health concerns, apart from being clinically obese. A prison GP arranged for him to receive his medication for ongoing pain relief, anti-psychotic medication for schizophrenia, antidepressants and methadone (heroin substitute). Healthcare staff had daily contact with him as he attended the medication hatch to receive his prescribed medication. Staff from the mental health in-reach team visited Mr Cussans in his cell, completed a review and signposted ways for him to seek mental health assistance if needed.

Events in December 2020

18. On 7 December, there was a mass testing programme for COVID-19 at Lincoln because a large number of staff and prisoners had tested positive for COVID-19. Mr Cussans had a test which was positive, and he was placed in isolation in his cell.
19. Along with other prisoners, Mr Cussans was required to go to the medication hatch daily to collect his controlled medication from a nurse. (Controlled medications are drugs that are tightly controlled by the Government because they may be abused or cause addiction. They must be handled, stored and administered in controlled way in line with a strict protocol and prisoners are not allowed to keep them in their own possession.)
20. On 8 December, a member of the prison Safer Custody team saw Mr Cussans in his cell after his mother had raised concerns for his welfare. Mr Cussans said that he had not been able to contact his mother due to limited telephone credit. He said that, overall, he was fine and would contact his mother to alleviate her fears.
21. Later that evening at about 5.00pm, Mr Cussans attended the medication hatch and told a nurse he felt unwell. A prison paramedic checked his observations and noted that he had a very high temperature. Later that evening, a nurse checked Mr Cussans in his cell. She noted that he was shaking, shivering and sweating and had some difficulty breathing. His blood pressure was low, temperature was high, pulse was fast, and his oxygen saturation levels were low. Nurses gave Mr Cussans oxygen. They also noted that he was confused and lethargic. They arranged for an ambulance to take him to hospital.
22. At about 7.35pm, Mr Cussans was taken to Lincoln City Hospital. He was escorted by two prison officers wearing personal protection equipment (PPE). Mr Cussans was restrained using an escort chain (meaning one hand was handcuffed on a long chain to an officer). When he arrived at the hospital, he was admitted to the critical care ward. The bedwatch log says that there were two officers beside his bed and one of the officers was handcuffed to him.

23. At 11.00pm, Mr Cussans was transferred to a side room in the hospital. The escort officers contacted the prison for permission to remove the handcuff because hospital staff had advised them that they should maintain their distance outside the side room. However, they were told that the Governor had said that Mr Cussans should remain handcuffed with two escort officers in the room. Permission to remove the cuffs would only be given if Mr Cussans was transferred to the Intensive Care Unit (ICU). The escort officers swapped places to be handcuffed to Mr Cussans every hour as advised by the hospital staff.
24. At 1.41am the next day, the ICU doctor reviewed Mr Cussans and told the escort officers that he could stay in the side room and that he would conduct another review in two hours. At 3.50am, a prison manager authorised the removal of the escort chain. The bedwatch officers moved outside Mr Cussans' room to avoid the risk of infection. Mr Cussans was placed on a CPAP machine to help him breathe more easily. The escort officers locked Mr Cussans' room door which was the only entry and exit to his room.
25. On 9 December at 11.40am, hospital staff transferred Mr Cussans to the ICU. The two escort officers remained outside the unit and obtained frequent updates from nursing staff. Hospital staff said that Mr Cussans was comfortable and had an oxygen mask.
26. A prison family liaison officer contacted Mr Cussans' next of kin, his mother, in the afternoon to inform her that Mr Cussans was seriously ill in hospital with COVID-19. The family liaison officer maintained contact with Mr Cussans' family to give them updates and to offer support as his condition deteriorated. On 12 December, hospital staff arranged a telephone call between Mr Cussans and his mother. Mr Cussans was then put on a ventilator as his condition was deteriorating. Hospital staff provided Mr Cussans' mother with daily updates.
27. Mr Cussans died in hospital at 9.11pm on 17 January 2021.

Post-mortem report

28. The post-mortem found that Mr Cussans' cause of death was complications of COVID-19 pneumonia.

Findings

Management of Mr Cussans' risk of infection from COVID-19

29. The clinical reviewer concluded that the care Mr Cussans received at Lincoln was generally of a good standard and equivalent to that which he could have expected to receive in the community.
30. The clinical reviewer noted that in line with HMPPS guidelines, Mr Cussans was required to isolate for 14 days when he first arrived at Lincoln and was checked daily during this period. There was no evidence that Mr Cussans was in the high risk group if he contracted COVID-19, and he was not therefore advised to shield. There were also no concerns about the use of Personal Protective Equipment (PPE) at the prison.
31. In spite of the measures to control the risk of infection and to protect prisoners, it appears that Mr Cussans contracted COVID-19 in prison, as he had not left the prison for some months previously. In early December 2020, when Mr Cussans became unwell, there was an outbreak of COVID-19 in the prison. Staff and prisoners were affected. As a result, a mass testing programme and restricted regime was put in place to limit the spread of the virus. Prisoners who tested positive were required to isolate in line with HMPPS guidelines.
32. We are concerned that Mr Cussans was still required to collect his medication from the medication hatch after he tested positive. This would seem to undermine the effectiveness of isolating positive individuals. We appreciate that controlled drugs have to be handled in line with protocols, but we are aware that other establishments have found better ways to manage their issue during the pandemic. We recommend:

The Governor and Head of Healthcare should review the arrangements for the administration of controlled drugs to ensure that prisoners who are shielding or isolating do not have to attend the medication hatch to collect them.

Security risk assessments and the use of restraints

33. 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.
34. 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.

35. In this case, the escort risk assessment form did not have a medical section for medical staff to complete to indicate if Mr Cussans' medical condition restricted his ability to escape unaided, or if there were any medical objections to the use of restraints, or to alert staff that Mr Cussans had tested positive for COVID-19.
36. The security assessment noted that a security manager had approved the escort. Restraints were to be used and they could not be removed for medical treatment without the duty governor's approval. A prison manager decided that for the journey and treatment/consultation, Mr Cussans should be accompanied by two escorting officers and handcuffed using an escort chain as he was suspected of having contracted COVID-19.
37. Mr Cussans remained handcuffed by an escort chain when he was taken to hospital on 8 December until 3.50am the next morning when medical staff told the escort officers that they should only be in contact with Mr Cussans for short periods, wearing PPE. After this, the escort officers locked the room and sat outside with Mr Cussans in their sight.
38. We recognise that many factors have to be taken into account in determining the level of restraints. We are very concerned that there was no healthcare input into the escort risk assessment process, despite healthcare staff having initiated the arrangements for his hospital transfer. We recognise that Mr Cussans was a relatively young man, who was normally physically fit. However, we question whether the use of the escort chain was proportionate when Mr Cussans was admitted to hospital, given that he was sufficiently ill to require an emergency ambulance and was struggling to breathe. We question whether he had the ability to escape, particularly as he was accompanied by two prison officers and his condition was deteriorating.
39. We are also concerned that cuffing en route to the hospital, prior and after his admission, placed all of the escort officers at greater risk of contracting COVID-19, especially as they were doing hourly swaps being handcuffed to Mr Cussans.
40. We recommend:

The Governor and Head of Healthcare should ensure that:

- **all staff undertaking and reviewing risk assessments for prisoners admitted to hospital understand the legal position on the use of restraints; and**
- **healthcare staff always complete the medical information section of the escort risk assessment to say whether the prisoner's current medical condition affects their mobility and risk of escape.**

The Governor should share this report with the manager who authorised the restraints and discuss the Ombudsman's findings with them.

41. HMP Lincoln issued a staff information notice (ref 227/17) on 27 November 2017 about seriously ill prisoners. It said that the decisions reached must be proportionate to the risks posed in individual circumstances. We consider that the decision to lock the hospital room was unsound, disproportionate to his level of risk and showed a lack of respect for Mr Cussans while he was seriously ill. We recommend:

The Governor should remind managers and escorting staff of the need to take proportionate actions when a prisoner is seriously or terminally ill in hospital.

**Sue McAllister CB
Prisons and Probation Ombudsman**

May 2022

**Prisons &
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