Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr Anderson Barker, a prisoner at HMP Peterborough, on 21 October 2022

A report by the Prisons and Probation Ombudsman

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OUR VISION

To deliver high quality and timely independent investigations and work closely with partners to achieve tangible benefits for the safety and confidence of those in custody and under community supervision.

WHAT WE DO

WHAT WE VALUE

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. If my office is to best assist His Majesty's Prison and Probation Service (HMPPS) in ensuring the standard of care received by those within service remit is appropriate, our recommendations should be focused, evidenced and viable. This is especially the case if there is evidence of systemic failure.

3. Mr Anderson Barker died from prostate cancer, which had spread to other parts of the body, on 21 October 2022 at HMP Peterborough. He was 63 years old. We offer our condolences to Mr Barker's family and friends.

4. The clinical reviewer concluded that the clinical care Mr Barker received at HMP Peterborough for his physical health was equivalent to that which he could have expected to receive in the community. However, the clinical reviewer found that the mental health care provision was only partially equivalent. The clinical reviewer made four recommendations which were not relevant to Mr Barker's death but which the Head of Healthcare will need to address.

5. We are concerned that there were no medical objections from healthcare staff to Mr Barker being restrained. At the time, Mr Barker was reaching the end of his life and he relied upon either a Zimmer frame or wheelchair to move around. Additionally, there was no evidence to suggest that Mr Barker posed a risk of escape. Given this we found that the decision to restrain Mr Barker when he was taken to hospital on 8 October 2022, could not be justified.

6. We also concluded that Mr Barker's application for early release on compassionate grounds was not adequately progressed.

Recommendations

- The Head of Healthcare should ensure that all staff involved in risk assessments understand the legal position on the use of restraints and that their assessments fully consider the health of the prisoner and are based on the actual risk the prisoner presents at that time.

- The Director should ensure that the prison's process for progressing and monitoring ERCG applications is reviewed so that applications are progressed in a timely manner.

The Investigation Process

7. NHS England commissioned an independent clinical reviewer to review Mr Barker's clinical care at Peterborough.

8. The PPO investigators investigated the non-clinical issues relating to Mr Barker's care.

9. The investigators interviewed five members of staff between 22 December 2022 and 4 January 2023.

10. The PPO family liaison officer wrote to Mr Barker's partner to explain the investigation and to ask if she had any matters she wanted us to consider. She did not respond to our letter.

11. The initial report was shared with HM Prison and Probation Service (HMPPS). HMPPS did not find any factual inaccuracies.

Previous deaths at HMP Peterborough

12. Mr Barker was the eleventh prisoner to die at Peterborough since 21 October 2019. Of the previous deaths, seven were from natural causes, two were self-inflicted and there was one drug-related death. There are no similarities between the findings in our investigation into Mr Barker's death and the findings from our investigations into the previous deaths.

Key Events

13. On 28 June 2021, Mr Anderson Barker was sentenced to 16 years imprisonment for sex offences and he was sent to HMP Peterborough.

14. Mr Barker had a number of medical conditions, including high blood pressure, asthma and type 2 diabetes. In 2015, Mr Barker was diagnosed with prostate cancer. He had surgery to remove the prostate gland in December 2015.

15. On 24 September 2021, a food monitoring log was opened as Mr Barker had refused to eat his meals for the previous two days.

16. Later that day, during ward rounds, a nurse reviewed Mr Barker. He carried out clinical observations and Mr Barker's National Early Warning Score (NEWS2) was five. (NEWS2 is a tool to detect and respond to clinical deterioration). A score of five to six indicates the need for an urgent review by a ward-based doctor or nurse. An ambulance was called and Mr Barker was admitted to hospital for diabetic ketoacidosis (a lack of insulin which causes harmful substances called ketones to build up in the blood).

17. Mr Barker was reviewed in hospital by a mental health professional because he was eating and drinking less. The doctor concluded that Mr Barker did not have depression or a psychotic illness but more likely an adjustment reaction to his recent change of circumstances. He recorded that Mr Barker had capacity and was able to make decisions for himself.

18. Mr Barker returned to Peterborough on 13 October.

19. At approximately 7.10am on 22 October, officers called for help from healthcare staff as Mr Barker had been sitting on his toilet for some time and he was not responding. A nurse recorded that Mr Barker was moved to his bed and would be monitored throughout the day.

20. At 3.51pm, Mr Barker was reviewed in the healthcare unit. A nurse recorded that Mr Barker appeared dehydrated and officers had noticed that he had not eaten his meals that day. Mr Barker had a NEWS2 score of eight so an ambulance was called. A score of seven or more indicates the need for an emergency assessment by a critical care team.

21. Mr Barker was treated for an acute kidney injury and returned to Peterborough on 4 November, at which time he was moved to the healthcare wing.

22. Following a social care assessment on 25 October, Mr Barker was offered a wheelchair due to his risk of falling.

23. Between November 2021 and March 2022, Mr Barker was admitted to hospital on five further occasions, during which time he received treatment for an acute kidney injury which was linked to eating and drinking less.

24. At 10.30am on 21 August 2022, a nurse saw Mr Barker as he had reported feeling unwell and had a nosebleed. She conducted clinical observations and decided to carry out a further review later that day.

25. At 4.14pm, officers notified a nurse that Mr Barker was having another nosebleed. She carried out clinical observations and recorded a NEWS2 score of three. Given his presentation, which included appearing frail and pale, she sent Mr Barker to hospital.

26. During this hospital admission, the medical team discovered that Mr Barker's prostate cancer had returned. The hospital doctor completed an order not to resuscitate him if his heart or breathing stopped.

27. On 7 September, Mr Barker returned to Peterborough. The hospital discharge letter confirmed that his cancer had returned, it was widespread and there were no further treatments available.

28. On 8 September, a multidisciplinary team (MDT) meeting took place which included Mr Barker and representatives from healthcare and prison staff. Mr Barker confirmed that he was happy to remain at the prison when his health deteriorated and he wanted to apply for early release on compassionate grounds (ERCG).

29. On 10 September, the prison began the application for ERCG.

30. On 22 September, Mr Barker's Prison Offender Manager (POM) provided his report for the ERCG application. He stated that Mr Barker's partner was able to offer him the care he needed and he supported the application given the circumstances and prognosis.

31. On 24 September, an oncologist at the hospital submitted his medical report for the ERCG application. He advised that Mr Barker's life expectancy was around three months.

32. A Senior Operational Manager in Probation told the investigator that Mr Barker's ERCG was passed to the Offender Management Unit on 1 October and a Community Offender Manager (COM) was allocated on 5 October.

33. On 6 October, Mr Barker asked a nurse about his ERCG application. She told him that the healthcare report had been submitted and they were waiting to hear back from the operational manager.

34. On 8 October, Mr Barker attended hospital for a blood transfusion. Before he left the prison, staff completed an escort risk assessment. A nurse completed the medical section. She indicated that Mr Barker's mobility was impaired and that he used a wheelchair for long distances. She concluded that his physical condition did not restrict his ability to escape and there was no objection to the use of restraints.

35. A Prison Custody Officer (PCO) completed the security risk assessment and concluded that Mr Barker posed a medium risk to the public and a low risk for all other security considerations. He recommended that as Mr Barker was a category B prisoner, he should be escorted by two officers and restrained using a double cuff (where the prisoner's two hands are cuffed together in front of them).

36. An Operations Manager did not agree with this assessment and instead instructed officers to use an escort chain (a long chain with a handcuff at each end, one of which is attached to the prisoner and the other to an officer).

37. On 12 October, Mr Barker's COM contacted the Victim Liaison Officer, and she asked the police to check the address to which Mr Barker wanted to be released. No issues were identified, and she subsequently submitted her report for the ERCG application on 14 October.

38. On 13 October, there was an MDT meeting. Mr Barker said that if he was not successful with his ERCG application, he wanted to remain in the healthcare unit.

39. On 16 October, the Head of Male Residence submitted his report for the ERCG application.

40. On 18 October, the ERCG application was submitted to the Public Protection Casework Section (PPCS) of HMPPS.

41. On 19 October PPCS contacted Peterborough to ask for the oncologist's report, the MDT review report and clarification of the prison GP's details. The PPCS noted that the application had not been signed or dated.

42. At approximately 8.00pm on 20 October, an officer arrived for the night shift. He was told during the handover that Mr Barker was very unwell, he had an order in place not to be resuscitated if his heart or breathing stopped and he should check on him once every hour.

43. At 2.05am on 21 October, the officer checked on Mr Barker and found that he was not breathing. He reported this to the duty nurse.

44. A nurse attended and examined Mr Barker. She concluded that there was no sign of life. An ambulance was called and Mr Barker was confirmed dead by the paramedic at 2.46am.

Post-mortem report

45. The post-mortem report concluded that Mr Barker died of metastatic prostatic carcinoma (prostate cancer which had spread to other parts of the body).

Non-Clinical Findings

Restraints, security and escorts

46. 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.

47. 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. It said 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.

48. We are concerned about a nurse's decision not to object to the use of restraints when Mr Barker went to hospital on 8 October. At the time Mr Barker was receiving palliative care, was in poor health and relied on a Zimmer frame to walk short distances and a wheelchair for long distances. We therefore make the following recommendation:

    The Head of Healthcare should ensure that all staff involved in risk assessments understand the legal position on the use of restraints and that their assessments fully consider the health of the prisoner and are based on the actual risk the prisoner presents at that time.

Compassionate release

49. Release on compassionate grounds enables prisoners who are seriously ill, usually with a life expectancy of less than three months, to be permanently released from prison before their sentence has expired. A clear medical opinion of life expectancy is required. The criteria for early release are set out in the Early Release on Compassionate Grounds Policy Framework. Among the criteria is that the risk of reoffending is expected to be minimal, further imprisonment would reduce life expectancy, there are adequate arrangements for the prisoner's care and treatment outside prison, and release would benefit the prisoner and his family. An application for early release on compassionate grounds must be submitted to the Public Protection Casework Section (PPCS) of HMPPS.

50. On 10 September, the prison began the ERCG application process after Mr Barker was told that he had cancer which could not be treated. However, the prison did not submit the application until 18 October which was over five weeks later.

51. The investigator asked about the reason for the delay. Probation told the investigator that Mr Barker applied for ERCG on 1 October, and this was passed to the Head of OMU. They also said that the COM was appointed on 5 October and arranged for the necessary checks to be carried out on 12 October. The COM submitted her report to the prison on 14 October.

52. The prison did not explain why there were two different dates for the commencement of the application nor why there was a delay in appointing a COM. The prison explained to the investigator that they did not have a designated person who was responsible for overseeing ERCG applications. Instead, it could be the responsibility of any senior manager.

53. The prison advised that the manager who was responsible for overseeing Mr Barker's application no longer worked at the prison and they were therefore unable to provide any further information.

54. While there are no prescribed timescales for completing an application for ERCG, it is imperative, given the life expectancy of the prisoner, that applications are progressed as quickly as possible. We therefore make the following recommendation:

The Director should ensure that the prison's process for progressing and monitoring ERCG applications is reviewed so that applications are progressed in a timely manner.

Adrian Usher
Assistant Ombudsman **October 2023**

55. The inquest into Mr Barker's death was held on 9 May 2024 and a verdict of natural causes was recorded. The coroner concluded that Mr Barker's death was due to metastatic prostatic carcinoma.

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