Prisons & Probation Ombudsman
Independent Investigations

Independent investigation into the death of Mr David Evans, a prisoner at HMP Fosse Way, on 26 July 2024

A report by the Prisons and Probation Ombudsman

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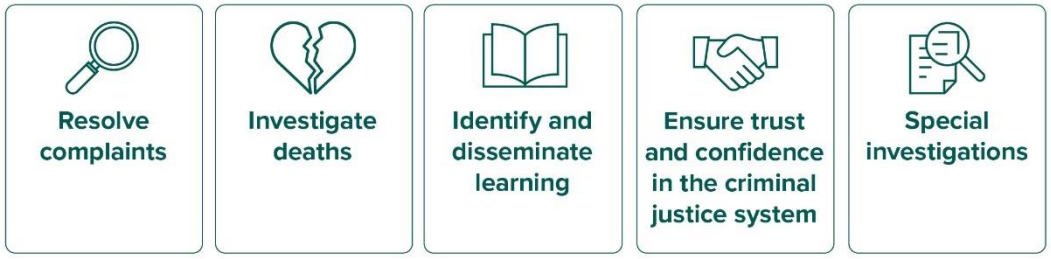
OUR VISION

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 David Evans died of metastatic adenocarcinoma of lung (lung cancer that has spread to other organs) on 26 July 2024, while a prisoner at HMP Fosse Way. He was 73 years old. We offer our condolences to his family and friends.

4. The clinical reviewer concluded that the clinical care Mr Evans received at Fosse Way was equivalent to that which he could have expected to receive in the community. However, the clinical reviewer found that advanced care planning should have been implemented at an earlier stage.

5. We found that Mr Evans was inappropriately restrained when he was admitted to the hospital in July 2024. His failing health and poor mobility were not properly considered.

Recommendations

- The Head of Healthcare should ensure that Advanced Care Planning is completed at an early stage for those patients diagnosed with terminal and incurable cancer.

- The Director should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position on the use of restraints, that authorising managers show on the risk assessment that they have taken this information into account when assessing a prisoner's current level of risk, and that risk assessments are regularly reviewed when a prisoner remains in hospital as an inpatient.

The Investigation Process

6. HMPPS notified us of Mr Evans' death on 26 July 2024.

7. NHS England commissioned an independent clinical reviewer to review Mr Evans' clinical care at HMP Fosse Way.

8. The PPO investigator investigated the non-clinical issues relating to Mr Evans' care.

9. We informed HM Coroner for Leicester City & South Leicestershire of the investigation. The cause of death was determined at the hospital without need for a post-mortem examination. We have sent the Coroner a copy of this report.

10. The Ombudsman's office wrote to Mr Evans' next of kin to explain the investigation and to ask if she had any matters she wanted us to consider. She asked one question, which we have addressed in separate correspondences.

11. The initial report was shared with HMP Prison and Probation Services (HMPPS), and they identified two factual inaccuracies in the clinical review, which has been amended.

Previous deaths at HMP Fosse Way

12. Mr Evans was the third prisoner to die at Fosse Way since the prison opened on 29 May 2023. Of the previous deaths, one was from natural causes and one was self-inflicted. To the end of November 2024, there has been one more self-inflicted death at Fosse Way, one homicide and one unascertained death. There are no significant similarities between the findings in our investigation into Mr Evans' death and the findings from our investigations into the previous deaths.

Key Events

13. On 3 February 2023, Mr David Evans was convicted of sexual offences and given a sentence of three years and six months.

14. On 6 September, Mr Evans was transferred to HMP Fosse Way.

15. At the time of his transfer, Mr Evans had been diagnosed with asthma and COPD (a lung condition that makes it hard to breathe due to blocked airflow).

16. On 1 April 2024, Mr Evans had an asthma and COPD care plan review. He had no recent flare ups and there is no record of any courses of oral steroids or hospital admissions in the two years before this.

17. On 10 June, Mr Evans presented with right sided facial droop and slurred speech. Nurses assessed him and found that he appeared to have recovered fully. A nurse booked Mr Evans for an urgent GP appointment the next day and advised officers on his wing to check him overnight.

18. On 11 June, a paramedic at Fosse Way reviewed Mr Evans. He reported that he had experienced a further 20-minute episode of slurred speech and right sided facial droop earlier that morning. There was no evidence of facial droop or slurred speech at the time of the paramedic's assessment and Mr Evans' clinical observations remained within the normal range. The paramedic found that there were no other neurological symptoms and added Mr Evans to the GP clinic that day.

19. Later that morning, a GP assessed Mr Evans and diagnosed a Transient Ischemic Attack (TIA causes symptoms like a stroke and is often referred to as a mini stroke). The GP referred Mr Evans to the local hospital TIA clinic and prescribed aspirin in the interim as advised.

20. On 12 June, Mr Evans attended the TIA clinic at Leicester Royal Infirmary. An MRI scan of his head was normal, and he was discharged.

21. On 16 June, Mr Evans reported pain in his lungs especially on lying down. A nurse found no urgent clinical cause but referred him to the GP for review. The GP reviewed Mr Evans' records the following day and requested an urgent chest X-ray.

22. On 17 June, Mr Evans reported feeling short of breath and having to use his blue inhaler (salbutamol) four times a day. The assessment indicated low clinical risk.

23. On 18 June, Mr Evans again reported feeling of short of breath. However, this time the assessment indicated high clinical risk and urgent medical transport to hospital was required. He returned to Fosse Way the same day having been diagnosed with suspected pleural effusion (fluid around the lung). Later that evening, his condition had improved.

24. On 19 June, healthcare staff assessed Mr Evans' condition in the morning and there was no clinical concern. However, by the evening he appeared to have deteriorated significantly. He was taken to Leicester Royal Infirmary.

25. On 20 June, Mr Evans discharged himself against medical advice.

26. On 21 June, Mr Evans attended his appointment at Glenfield Hospital for an X-ray and CT scan. The CT scan confirmed a diagnosis of lung cancer with extensive metastasis (spread). The scan also confirmed a pleural effusion which was contributing to his shortness of breath. While in hospital, Mr Evans had a chest drain inserted (to drain the fluid around his lung) and was treated with oxygen therapy. Mr Evans remained as an inpatient in Glenfield Hospital until 4 July, when he was deemed medically fit for discharge. He was discharged back to Fosse Way with a chest drain in place.

27. On return to Fosse Way, Mr Evans was noted to be frailer than previously and now used a Zimmer frame to aid his mobility. His prognosis was terminal and there was no further curative treatment available to him. He was referred to the integrated community specialist palliative care team.

28. On 5 July, healthcare staff called an ambulance after Mr Evans presented with right sided weakness and slurred speech. However, when the paramedics arrived he had no further signs of a stroke and therefore he decided to stay at Fosse Way.

29. On 10 July, Mr Evans' condition deteriorated and he was transported to hospital. Restraints (a single handcuff attaching him to an officer) were authorised for use. Prison staff recorded that Mr Evans was a low risk of escape and medium risk to the public. A nurse completed the medical assessment of the escort risk assessment and identified that Mr Evans used a wheelchair. She did not object to the use of restraints. Mr Evans returned to Fosse Way on 11 July.

30. On 12 July, healthcare staff sent Mr Evans to hospital again following concerns regarding a deterioration of his condition. This time, the medical assessment did not identify any mobility issues and again did not object to the use of restraints. As previously, single handcuffs were authorised. Mr Evans was discharged the following day with a course of oral antibiotics.

31. On 15 July, Mr Evans was admitted to Leicester Royal Infirmary due to a deterioration of his condition. He was diagnosed with a chest infection and treated with intravenous antibiotics, diuretics and was reviewed by the inpatient palliative care team. During this admission, he gradually deteriorated.

32. A nurse completed the medical assessment of the escort risk assessment and noted that Mr Evans used a walking frame. They did not object to the use of restraints. The risk assessment concluded that single handcuffs should be applied.

33. Later on 15 July, the duty operational manager recorded that "due to Mr Evans requiring a wheelchair and significant lack of mobility, use of escort chain is authorised".

34. On 23 July, prison staff were notified that Mr Evans' prognosis was poor and he was nearing the end of his life. A security manager authorised the removal of restraints.

35. At 2.12 pm on 26 July, Mr Evans died.

Post-mortem report

36. The Coroner chose not to request a post-mortem examination and relied on the cause of death proposed by the hospital. This was recorded as metastatic adenocarcinoma of the lung (lung cancer which was spread to other organs).

Findings

Clinical findings

37. The clinical reviewer considered that the care Mr Evans received at Fosse Way was of a good standard and equivalent to that which he could have expected to receive in the community. He found that Mr Evans received good care for his terminal illness while in Fosse Way. The clinical reviewer noted that Mr Evans was diagnosed at a late stage and hence intervention and treatment were not possible. He received attentive care from the nursing and GP team in Fosse Way and was referred to hospital for further care appropriately.

38. The clinical reviewer did note that during the final month of Mr Evans' life he was admitted to hospital several times, on two occasions for only one night. This was clearly distressing for him and some of these admissions may have been avoided by earlier completion of an Advanced Care Plan and assessment by the community palliative team in Fosse Way. We make the following recommendation:

    The Head of Healthcare should ensure that Advanced Care Planning is completed at an early stage for those patients diagnosed with terminal and incurable cancer.

Restraints, security and escorts

39. 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. 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 suffering from 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.

40. Mr Evans was a 73-year-old man, who had a history of poor health including shortness of breath and COPD. Following his return from hospital in early July 2024, he was noted to be much frailer than previously and required mobility aids. He also had a short prognosis of around eight weeks to live.

41. In his hospital admissions later that month, healthcare staff did not identify Mr Evans' prognosis and diagnosis in the escort risk assessment, and did not always identify his mobility issues. Even when Mr Evans' poor mobility was recognised, operational staff continued to authorise some form of restraints. The escort chain was not removed until hospital staff identified that Mr Evans was very close to death.

42. Mr Evans' symptoms, mobility, age and prognosis, in line with the High Court judgement, meant that his risk could have been effectively managed on each of

these occasions by the officers accompanying him, without the use of restraints. The decision to restrain him was not proportionate to his risk.

43. We frequently raise concerns about how well healthcare staff understand, or feel empowered, to make a meaningful contribution to the risk assessment process, such as in this case. In March 2024, we recommended that NHS England develop national guidance for establishments to develop local standard operating procedures for healthcare input into restraints risk assessments. This recommendation was accepted, and NHS England told us that they are working with HMPPS to review the Prevention of Escapes – External Escorts Policy Framework, with particular focus on the escort risk assessment. We also welcome the work that the Operational Security Group Director has undertaken to review and amend the national risk assessment form, mandate its use and provide additional guidance to staff responsible for making decisions about the use of restraints.

44. We have not previously made any recommendations about the use of restraints at Fosse Way. Nevertheless, it is important that staff properly consider the prisoner's age, health and mobility when determining the appropriate use of restraints. While the work of HMPPS and NHS England is ongoing, we make the following recommendation:

The Director should ensure that all staff undertaking risk assessments for prisoners taken to hospital understand the legal position on the use of restraints, that authorising managers show on the risk assessment that they have taken this information into account when assessing a prisoner's current level of risk, and that risk assessments are regularly reviewed when a prisoner remains in hospital as an inpatient.

Inquest

45. The inquest into Mr Evans' death concluded on 25 November 2024 and returned a verdict of natural causes.

Adrian Usher
Prisons and Probation Ombudsman **July 2025**

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