

**Prisons &
Probation**

Ombudsman
Independent Investigations

Independent investigation into the death of Mr Daniel Berry, on 28 August 2022, following his release from HMP Lewes

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



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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. From 6 September 2021, the PPO is investigating post-release deaths that occur within 14 days of the prisoner's release.
3. If my office is to best assist HM 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.
4. Mr Daniel Berry died of morphine toxicity on 28 August 2022, following his release from HMP Lewes two days earlier. He was 39 years old. I offer my condolences to his family and friends.
5. We were not notified of Mr Berry's death until May 2023, which meant that our investigation was significantly delayed.
6. Mr Berry had a history of substance misuse and had completed a methadone detoxification programme at Lewes. Mr Berry was not offered naloxone (medication to reverse the effects of opiate overdose) on release. The Head of Healthcare has since reviewed the process for the issue of naloxone and implemented changes to ensure prisoners with a history of substance misuse are trained in the use of naloxone and released with a supply.

The Investigation Process

7. On 22 May 2023, the PPO was informed of Mr Berry's death.
8. The PPO investigator obtained copies of relevant extracts from Mr Berry's prison and probation records.
9. We informed HM Coroner for East Sussex of the investigation. He gave us the results of the post-mortem examination. We have sent the Coroner a copy of this report.
10. The Ombudsman's family liaison officer wrote to Mr Berry's brother to explain the investigation and to ask if he had any matters he wanted us to consider. Mr Berry's brother wanted to know how Mr Berry died and what happened to him between being released and his death.
11. We shared the initial report with HM Prison and Probation Service. There were no factual inaccuracies.
12. We shared the initial report with Mr Berry's brother. He did not respond.

Background Information

HMP Lewes

13. HMP Lewes is a local prison serving the courts of East and West Sussex. It holds about 600 men. Practice Plus Group provides primary care, mental health and substance misuse services.

HM Inspectorate of Prisons

14. The most recent inspection of HMP Lewes was in August 2022. Inspectors reported that primary healthcare lacked effective clinical leadership and was too dependent on agency staff, leading to gaps in patient care.
15. Despite staffing pressures, inspectors reported that work to progress prisoners in their sentence was reasonably good. Almost all eligible prisoners had an initial assessment of their risk and needs. Most sentence plans were relevant and of reasonable quality. The frequency, and quality, of contact between prison offender managers (POMs) and prisoners had improved since the last inspection and was some of the best they had seen recently. Only about 65% of sentenced prisoners left the establishment with accommodation to go to on their first night of release.
16. In February 2023, inspectors carried out an independent review of progress and found that the retention of prison officers and the ability to deploy those still in post had become critical problems. Aside from activity such as gym sessions or social visits at least half the prison population spent about 23 hours in their cells every day.
17. Inspectors reported that healthcare was more encouraging. Many of the failures they identified in their full inspection had been addressed, and despite the departure of some managers, staffing had improved.

Probation Service

18. The Probation Service work with all individuals subject to custodial and community sentences. During a person's imprisonment, they oversee their sentence plan to assist in rehabilitation, as well as prepare reports to advise the Parole Board and have links with local partnerships to whom, where appropriate, they refer people for resettlement services. Post-release, the Probation Service supervise people throughout their licence period and post-sentence supervision.

Key Events

19. On 25 January 2021, Mr Daniel Berry was remanded to HMP Lewes. On 4 June, Mr Berry was sentenced to one year and seven months in prison for driving offences. During his time at Lewes, Mr Berry completed a methadone detoxification programme (for opiate dependence).
20. On 10 June, Mr Berry was allocated a community offender manager (COM).
21. On 14 June, Mr Berry was transferred to HMP Rochester, and, on 10 November, he was released on licence.
22. On 14 March 2022, Mr Berry's licence was revoked, and he was recalled to Lewes.
23. A nurse carried out Mr Berry's initial health screen and noted that he had a history of heroin and crack cocaine use and engaged with the community drug team. She noted that Mr Berry was a heavy drinker evidenced by his score of 20 on the alcohol use disorders identification test (AUDIT), which indicated potential alcohol dependence.
24. A substance misuse nurse saw Mr Berry and noted that he had previous extensive interaction with their substance misuse team. She noted that Mr Berry said that he had relapsed into illicit drug use in the community three weeks before his recall and had sought help from Change Grow Live (CGL - substance misuse service) and STAR (the local community drug and alcohol recovery team) in Hastings. She noted that Mr Berry's daily drug use included smoking cocaine three times a day, daily consumption of amphetamines and cannabis and drinking a litre of brandy. A GP at Lewes prescribed Mr Berry diazepam and methadone (for opiate dependence).
25. Healthcare staff reviewed Mr Berry daily for symptoms of drug and alcohol withdrawal.
26. On 15 March, Mr Berry was allocated a prison offender manager (POM) and met Mr Berry to explain her role.
27. On 19 March, a substance misuse nurse reviewed Mr Berry, giving him harm reduction advice and explaining the risks of reduced tolerance on his release. She created a methadone reduction care plan. On 22 March, Mr Berry completed his methadone detoxification programme.
28. On 30 March, a nurse saw Mr Berry for a psychosocial session, during which Mr Berry told him about his history of drug misuse. He set Mr Berry recovery goals to help him build self-esteem, confidence and social skills.
29. On 1 April, the COM completed an offender assessment system report (OASys) of Mr Berry's risks and needs. She noted that Mr Berry had a pattern of driving under the influence of drugs and committing crime to finance his substance misuse. She noted that when Mr Berry was recalled to prison, he lost his room at Merrick House (supported living provider) and that his keyworker found Mr Berry's room strewn with drug paraphernalia. She noted that Mr Berry could be released homeless if they were not able to secure accommodation for him. She recorded that she would complete a duty to refer (DTR – the Homelessness Reduction Act 2017 requires

prisons and probation services to refer anyone who is homeless or at risk of becoming homeless within 56 days to a local housing authority), a Commissioned Rehabilitative Services referral (CRS – who support prisoners with accommodation) and a Community Accommodation Service referral (CAS3 – provides temporary accommodation for up to 84 nights for homeless prison leavers) before his release.

30. On 26 May, the COM had a telephone appointment with Mr Berry, who was angry because he had been recalled to prison. Mr Berry told her that he would be released homeless and that he had no intention of engaging with or accepting support from the Probation Service to secure release accommodation.
31. On 29 July, the COM completed Mr Berry's pre-discharge report. She noted that Mr Berry would be released on supervision on 26 August, and that he would be homeless because he was declining accommodation support. She noted that Mr Berry would be required as part of his licence conditions to attend CGL/STAR to address his drug use and for drug testing.
32. On 12 August, the COM interviewed Mr Berry by telephone. Mr Berry said that he was now happy for her to make accommodation referrals. Mr Berry declined to be referred to CGL/STAR because he said that he was clean from drugs and did not need their support.
33. Mr Berry also said that he had two offers of work and the COM noted that, in prison, Mr Berry had completed his construction skills certification scheme (CSCS) qualification, to enable him to work on construction sites.
34. On 18 August, in response to the DTR the COM completed, Mr Bailey told her that the rough sleeper's initiative would potentially support Mr Berry with accommodation.
35. That same day, a self-employment and small business support advisor told the COM that Mr Berry had two offers for work as a labourer and that she could send him vouchers to buy work clothing.
36. On 26 August, a nurse put Mr Berry's discharge medication (all of which were for minor ailments) in his property for his release. Healthcare staff did not offer Mr Berry naloxone (used to reverse the effects of opiate overdose) prior to his release.

Post-release

37. On 26 August, Mr Berry was released on post sentence supervision. Mr Berry arrived three hours late for his 12.00pm appointment at the Hastings probation office and said that this was due to train delays. The COM noted that Mr Berry had drunk three cans of beer before attending the meeting. Mr Berry said that he had left his belongings with a friend in Hastings. She completed the induction paperwork and Mr Berry signed that he understood the conditions of his supervision period.
38. Mr Berry did not have any release accommodation and was therefore released homeless. The COM told us that there was no CAS3 accommodation available in the area at the time and that his CRS referral was still open. However, at their first meeting, she told Mr Berry that his keyworker had offered to re-house Mr Berry in

Merrick House. Mr Berry said he would attend the premises after their meeting. She told Mr Berry that his next appointment was at 11.00am on 30 August.

Circumstances of Mr Berry's death

39. At 12.12am on 28 August, the occupants of a flat in in St Leonards on Sea, East Sussex found Mr Berry dead. His death was confirmed by ambulance paramedics. Police officers went to the address and found drug paraphernalia near to his body. The occupants of the address told the police officers that Mr Berry had been drinking and taking illicit drugs with them that evening. One of the occupants said that earlier in the evening Mr Berry had left the flat and when he came back said that he had taken heroin, cocaine and pregabalin (used to treat epilepsy and anxiety and also to treat nerve pain). A police officer found a wrap containing a brown substance in Mr Berry's sock, which when tested was found to be diamorphine.
40. The COM said that the address where Mr Berry died was CAS3 accommodation occupied by another prison leaver subject to licence conditions.

Post-mortem report

41. A post-mortem examination established that Mr Berry died from morphine (heroin) toxicity.
42. A consultant pathologist said that the level of morphine detected in Mr Berry's blood was consistent with severe toxicity and may be consistent with fatal toxicity particularly if the morphine detected was derived from heroin. Toxicology tests also detected cocaine in Mr Berry's blood consistent with that typically seen during recreational use, and pregabalin consistent with therapeutic levels.

Support for staff

43. After Mr Berry's death, the COM's manager reminded her of the available support services.

Contact with Mr Berry's family

44. Police officers told Mr Berry's brother that he had died.

Findings

Substance misuse services

45. Mr Berry had a history of substance misuse. At Lewes, Mr Berry engaged with the substance misuse service and completed a methadone detoxification programme. Mr Berry was not offered naloxone (medication to reverse the effects of opiate overdose) on release. The Head of Healthcare said that shortly after she started working at Lewes in January 2023, she identified some issues with the process for providing naloxone education and supply on release. She said that they have since implemented a more robust process and naloxone training is included in the induction of all prisoners with a substance misuse history. She said that medical record alerts now prompt healthcare staff to supply naloxone on release and the discharge template records when naloxone has been issued.

Inquest

46. The inquest into Mr Berry's death concluded on 26 August 2025, and concluded that his death was drug related.

Adrian Usher
Prisons and Probation Ombudsman

February 2024

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