



Oifig An Chigire Príosún
Office of the Inspector of Prisons

Death in Custody Investigation Report

Mr. H 2021
on
16 November 2021

**In the Midlands Regional Hospital
While in the custody
of the
Midlands Prison**

[SUBMISSION DATE to Minister: 23 February 2024]

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GLOSSARY

Act	Prison Act 2007
CNO	Chief Nurse Officer
CT	Computed Tomography
CTR	Compassionate Temporary Release
ED	Emergency Department
IPS HQ	Irish Prison Service Headquarters
IPS	Irish Prison Service
MDT	Multi-Disciplinary Team
MRH	Midlands Regional Hospital
MRI	Magnetic Resonance Imaging
NOK	Next of Kin
OIP	Office of the Inspector of Prisons
PHMS	Prisoner Health Management System
SMO	Senior Medical Officer

INTRODUCTION

1. Preface

- 1.1 The Office of the Inspector of Prisons (OIP) was established under the Prisons Act 2007 (the Act). Since 2012, the Chief Inspector of Prisons has been obliged to investigate all deaths in prison custody. This includes the death of any person which occurs within one month of their temporary release from prison custody. The OIP also carries out regular inspections of prisons. The Office is independent of the Irish Prison Service (IPS). The Chief Inspector of Prisons and the staff of the OIP are independent of the Department of Justice in the performance of their statutory functions.
- 1.2 The OIP can make recommendations for improvement where appropriate. Our investigation reports are published by the Minister for Justice, subject to the provisions of the Act, in order that investigation findings and recommendations can be disseminated in the interest of public transparency, to promote best practice in the care of prisoners.

2. Objectives

- 2.1 The objectives for investigations of deaths in custody are to:
 - Establish the circumstances and events surrounding the death, including the care provided by the Irish Prison Service (IPS);
 - Examine whether any changes in IPS operational methods, policy, practice or management arrangements could help prevent a similar death in the future;
 - Ensure that the prisoner's family have an opportunity to raise any concerns they may have, and take these into account in the investigation; and
 - Assist the Coroner's investigation and help to fulfil the obligations of the State under Article 2 of the European Convention on Human Rights, by ensuring as far as possible that the full facts are brought to light and any relevant failing is exposed, any commendable practice is identified, and any lessons from the death are learned.

3. Methodology

- 3.1 Our standard investigation methodology aims to thoroughly explore and analyse all aspects of each case. It comprises interviews with staff, prisoners, next of kin (NoK); analysis of prison records in relation to the deceased's life while in custody; and examination of evidence, such as CCTV footage and phone calls.
- 3.2 This report is structured paying particular focus to the care that was afforded to Mr. H during his time in prison.

4. Administration of Investigation

- 4.1 On 16 November 2021 the OIP was notified that Mr. H had passed away at Midlands Regional Hospital (MHR), Portlaoise. Mr. H had been an in-patient at that hospital since 15 November 2021.
- 4.2 Prison Management provided the OIP with all relevant information in accordance with the standardised check list of information required. The investigation team attended the prison and met with prison management, who provided an overview of Mr. H's time in prison. Inspectors also met with other persons who had contact with Mr. H during his time in prison.
- 4.3 The cause of death is a matter for the Coroner.

5. Family Liaison

- 5.1 Liaison with the deceased's family is a very important aspect of the Inspector of Prisons role when investigating a death in custody.
- 5.2 The OIP contacted Mr. H's NoK, his brother, on 2 February 2022 by letter. The OIP met with the NOK on 23 February 2022. The role of the OIP in relation to the death of Mr. H was explained.
- 5.3 Mr. H's brother extended his thanks to the chaplain and the priest whom he had found supportive and helpful following his brother's passing.
- 5.4 Mr. H's brother had three questions, which are outlined in section 7.
- 5.5 Although this report is for the Minister for Justice, it may inform several interested parties. It is written primarily with Mr. H's family in mind.

INVESTIGATION

6. Midlands Prison

- 6.1 Midlands Prison is a closed, medium security prison for adult males. It is the committal prison for Counties Carlow, Kildare, Kilkenny, Laois, Offaly and Westmeath. It has an occupational capacity of 845.
- 6.2 Mr. H was the second death of a prisoner in the custody of Midlands Prison in 2021 and the eighth death in IPS custody that year which met the criteria for investigation by the OIP.

7. Family Concerns

- 7.1 Mr. H's brother asked the following three questions:
- i. When was my brother diagnosed?
 - ii. Did my brother receive all his treatment?
 - iii. Did my brother attend all of his hospital appointments?

Details of Mr. H's engagement with the medical service, including his diagnosis, prognosis, treatment and hospital attendance is provided in section 8 and 9 of this report.

8. Background

- 8.1 Mr. H was 56 years of age when he passed away at the Midlands Regional Hospital Portlaoise (MRH) while in the custody of the Midlands Prison. He is survived by his mother and siblings.
- 8.2 Mr. H was committed to Cork Prison on 8 December 2010 to serve a life sentence and was transferred to the Midlands Prison on 15 December 2010.
- 8.3 Records examined by the OIP showed that in the fourteen months prior to the passing of Mr. H he was experiencing health issues and he had received a diagnosis of a terminal illness in July 2021.
- 8.4 Mr. H was accommodated on D3 landing in Cell 3 prior to his departure to hospital on 15 November 2021. Mr. H was on the enhanced level of the Incentivised Regime¹.
- 8.5 Mr. H was admitted to the MRH Portlaoise on 15 November 2021, and passed away in hospital on 16 November 2021.
- 8.6 Mr. H had regular phone contact with his NoK in the months prior to his passing.

¹ There are three levels of regime – basic, standard and enhanced, with different privileges associated with each regime level. All prisoners enter the system at standard regime level and have the opportunity to become eligible for the enhanced regime status once they have met the required criteria for the preceding two months. [Incentivised regimes \(irishprisons.ie\)](https://www.irishprisons.ie/incentivised-regimes).

9. Medical Care

- 9.1 On 16 September 2020 the prison doctor, Doctor A examined Mr. H who “*queried back pain and generalised headaches*”. An X-ray was taken in October 2020.
- 9.2 An entry on the Prisoner Health Management System (PHMS) recorded that bloods were taken on 14 January 2021 and 28 January 2021 and forwarded to the laboratory for testing. The Chief Nurse Officer (CNO) confirmed that the results of these blood tests showed the liver reading to be slightly elevated.
- 9.3 On 28 February 2021 prison Doctor B examined Mr. H. The doctor noticed changes in the lung function since the X-ray taken in October 2020 and Doctor B recorded on the PHMS “*possible lung malignancy*”. Doctor B referred Mr. H to the Emergency Department (ED) at the MRH. Mr. H. attended the ED on 1 March 2021 and he was discharged on the same day.
- 9.4 Mr. H was examined by Doctor C on 21 April 2021 who recorded that the patient had “*pain in the right anterior side of the thorax wall*”². Doctor C referred Mr. H to the ED and recorded that Mr. H was awaiting a chest CT scan.
- 9.5 The PHMS records examined showed that from 22 April 2021 to 6 July 2021 doctors and nursing staff in the Midlands Prison continued to provide medical care to Mr. H. On 6 July 2021 Doctor B examined Mr. H and described him as “*appearing to be in respiratory distress*” and referred him to the ED at MRH. While in hospital Mr. H was diagnosed with multiple pulmonary embolisms and a liver lesion.
- 9.6 On 19 July 2021, Mr. H was discharged from MRH and on return to prison he was discovered to be asymptomatic³ for Covid-19 and was placed in isolation for a period of time.
- 9.7 On 3 August Doctor B examined Mr. H and referred him to the ED at MRH. On 3 August 2021 the Senior Medical Officer (SMO) in MRH notified the prison doctor that Mr. H had tested positive for Hepatitis C⁴. On 4 August 2021 a CT Thorax⁵ “*confirmed suspicion of progressing pulmonary embolism.*” On 9 August 2021 a MRH Doctor advised the Prison Healthcare team that Mr. H was not a “*candidate for curative resection*”⁶ and recommended a palliative care plan. The CNO met with Mr. H on 23 August 2021 and discussed his discharge from hospital back to the Midlands Prison.
- 9.8 Mr. H attended St Vincent’s University Hospital on 16 September 2021. The hospital reported that Mr. H had ‘*advanced hepatocellular carcinoma*’⁷ with a life expectancy of a couple of months.
- 9.9 Over the following two months Mr. H’s condition deteriorated. On 12 November 2021, Mr. H again contracted Covid-19 and was placed in isolation. On 15 November 2021 Nurse A examined Mr. H in his cell and found him to be ‘*disoriented, very lethargic and experiencing shortness of breath*’. Doctor B referred Mr. H to the MRH and he was admitted on 15 November 2021.

² The Thorax wall consists of a bony framework that is held together by twelve vertebrae which give rise to the ribs.

³ Testing positive without showing noticeable symptoms.

⁴ Hepatitis C is a viral infection that infects the liver.

⁵ Computerised Tomography (CT) of the chest.

⁶ Curative Resection refers to the surgical removal of part or all of a tissue, structure or organ, with the goal of curing an illness or condition.

⁷ Hepatocellular carcinoma is the most common type of liver cancer.

- 9.10 Mr. H's condition deteriorated and he passed away on 16 November 2021.
- 9.11 The medical records documented 10 hospital appointments attended by Mr. H between 7 August 2020 and 15 November 2021.
- 9.12 During the course of Mr. H's hospitalisation his Nok had regular visits and contact with him.

10. Compassionate Temporary Release

- 10.1 Prison Doctor, Doctor D forwarded three letters to Governor A under Rule 105 of the Irish Prison Rules 2007-2020⁸, dated 30 August 2021, 28 September 2021 and 4 October 2021. Doctor D requested that Mr. H be released on medical grounds so that *"he could spend his remaining life in a dignified manner."*
- 10.2 Governor A on receipt of the letter dated 30 August 2021 forwarded it to the National Nurse Manager on 1 September 2021 and copied it to personnel in the Care and Rehabilitation Directorate, IPS HQ, requesting that consideration be given to seeking an appropriate care setting for Mr. H in the community. Further information was requested by personnel in Care and Rehabilitation in relation to Mr. H's clinical presentation and sentence history.
- 10.3 On 2 September 2021 National Nurse Manager provided the Director of Operations, IPS HQ, with an update on Mr. H's medical condition.
- 10.4 On 6 September 2021 a case conference was held in the Midlands Prison which was attended by Governor A, Governor B, Director of Operations, Assistant Director of Operations, National Nurse Manager, Doctor D, Senior Psychologist A, Chaplaincy Service representative and operational staff from the Midlands Prison. It was decided that when Mr. H returned to hospital the Midlands Prison would seek Compassionate Temporary Release (CTR)⁹ and that the Chief Officer would discuss with Mr. H the possibility of a transfer to Cork Prison in order to be closer to his family.
- 10.5 On 28 September 2021, Doctor D forwarded another letter to Governor A in which he stated that he had been in contact with Mr H's treatment consultant who had confirmed that Mr H was in advanced stages of liver cancer and again requested that Mr H be released on medical grounds. Governor B met with Mr H on 1 October 2021. It was recorded that Mr H informed Governor B that he would prefer not to transfer to Cork Prison at that point in time. Governor B also discussed the possibility of release to a nursing home or to Mr. H's own home, according to the records examined it was made clear to Mr. H that any such decision would have to be approved by the Department of Justice. The prison doctor, Doctor D, was asked to begin making

⁸ Rule 105 of the Irish Prison Rules 2007-2020 states that a prison doctor shall, after consulting with such other health care professionals as he or she considers necessary, inform the Governor in writing if he or she is of the opinion that:

- (a) the life of a prisoner will be endangered by continued imprisonment,
 - (b) a prisoner is unlikely to live until the expiration of the period of his or her sentence,
 - (c) a prisoner is unfit for continued imprisonment or for that particular prison's regime,
 - (d) the mental or physical state of any prisoner is being significantly impaired by his or her continued imprisonment or,
 - (e) a prisoner is unfit to travel outside the prison including attendance at any court,
- and shall make a record in writing of the prisoner's name, the information given to the Governor under this rule and the time at which he or she informed the Governor.

⁹ Compassionate Temporary Release is granted under the provisions of Section 1 of the Criminal Justice (Temporary Release of Prisoners) Act 2003 where there exists circumstances that, in the opinion of the Minister, justify a person's temporary release on the grounds of health or on other humanitarian grounds.

arrangements for local palliative care services in the community however this had not been processed by November 2021 and consequently no request for a decision on CTR had been submitted to the Department of Justice. The legal basis for a decision on CTR is Section 2 of the Criminal Justice Act 1960, as amended.

- 10.6 On 4 October 2021, Doctor D furnished a further report to Governor A and again requested the release of Mr. H to facilitate him to continue palliative care chemotherapy.
- 10.7 On 4 October 2021 Doctor E, Executive Clinical Lead, Care and Rehabilitation Directorate, IPS HQ, again informed Governor A that Rule 105¹⁰ of the Prison Rules 2007 to 2020 applied in these circumstances, given Mr. H's deteriorating clinical condition and reduced life expectancy. This was the fourth occasion on which the Governor had been informed by a doctor of his opinion that Rule 105 applied (30 August 2021, 28 September 2021 and 4 October 2021 (twice)).
- 10.8 A further case conference was held in the Midlands Prison on 12 October 2021 which was attended by Governor A, Governor B, Director of Operations, Doctor E IPS Executive Clinical Lead, National Nurse Manager and Assistant Director, Operations Directorate. It was recommended that relevant providers be contacted with a view to providing palliative care. On 18 October 2021, Governor A recorded that Mr. H had been offered a transfer to Cork prison but he declined same.
- 10.9 Governor A stated that it would be preferable if Mr. H secured a bed in a community palliative care setting rather than palliative in-reach on a prison landing. On 18 October 2021, Governor A requested healthcare staff to begin the process of advising local services regarding the provision of palliative care in the community. On 18 October 2021, Doctor D wrote to the MRH, and sought information on "*any updated MTD*" *palliative care plan*. On 20 October 2021 the Doctor at MRH wrote to Doctor D advising that Mr. H was "*beyond the scope of any services provided in Portlaoise Hospital.*"
- 10.10 On 9 November 2021, Doctor B wrote to the National Liver Transplant Unit in St Vincent's Hospital and advised that she would be referring Mr. H to "*the local Palliative Care Team for review and further management.*"

¹⁰ The Doctor may inform the Governor in writing of the state of health of a prisoner. In accordance with Rule 105(a) and (b) the doctor may inform the Governor if 'a prisoner is unlikely to live until the expiration of the period of his or her sentence and if a 'prisoner is unfit for continued imprisonment ...'

11. Critical Incident Review Meeting

- 11.1 On 16 November 2021, a Critical Incident Review¹¹ meeting took place. It was attended by Governor A, Governor B, Chief Officer A, Doctor D, CNO, Psychologist B, Nurse A and Chaplain A.
- 11.2 Nurse A outlined Mr. H's removal to hospital. Doctor D confirmed that Mr. H was terminally ill and had contracted Covid-19. He further advised that Mr. H was looked after excellently in his final days. Governor A advised that Mr. H's family had the opportunity to visit Mr. H in hospital before his passing.

12. End of Life Ethical Framework

- 12.1 Since the passing of Mr. H the IPS has introduced an End of Life Ethical Framework. The OIP welcome the introduction of the Framework, which came into effect in February 2022. The Framework acknowledges that the *“End of Life Care can present a significant challenge in a prison environment. While many prisoners at the end of their life are eligible for compassionate temporary release, this may not be available in all circumstances and some prisoners may not wish to leave prison for a variety of reasons.”*
- 12.2 The Framework provides for multi-disciplinary¹² meetings and an individual plan tailored to suit the identified needs and wishes of the prisoner including routine care reviews involving the prisoner.
- 12.3 The Framework allows for the creation of a personalised continuum of care with its core focus on dignity, comprising clinical and operational governance.

13. Recommendations

- 13.1 The OIP has made one recommendation.

The OIP recommends that the IPS take all necessary steps to ensure that any future recommendations from prison doctors are more promptly processed including, if required, by being formally transmitted to the Department of Justice for a decision. In all circumstances in which a prison doctor advises a Governor in writing that Rule 105 (a) or (b) of the Prison Rules applies, expeditious efforts should be made by the Governor, the IPS and/or the Department of Justice to arrange for the compassionate release of the prisoner concerned.

¹¹ This meeting is between prison management and all prison staff who were involved in the incident of who may have relevant information. These are conducted to identify good practice, potential shortcomings and to address any welfare needs. In this case no issues of concern were raised or identified.

¹² A diverse group of professionals working together with the aim to deliver person-centred, coordinated care and support for the identified needs of the prisoner.

14. Support Organisations

- 14.1 Those who are affected by a death in custody can obtain assistance or advice from a number of charities and support groups. The Office of the Inspector of Prisons has an information pamphlet for relatives and friends of someone who dies in the custody of a prison. Further information can be found on the OIP website at www.oip.ie.