

The disclosure of information in relation to deaths in prison

A.27/99

Failure on the part of the Prison Service (PS) to release a report of an internal inquiry into a death in custody

Summary of case

The Ombudsman found fully justified the complaint by the family of Mr Kenneth Severin, who died while on remand in HM Prison Belmarsh, that PS had not made the internal investigation report available to them before the inquest into his death. In their response to the Ombudsman at the beginning of his investigation PS made no reference to the Code of Practice on Access to Government Information (the Code) until prompted by his staff. PS then cited Code Exemptions 2; 4(a), (b) and (c); 7(b); 8(a); 12 and 14 in support of their policy not to release internal investigation reports to anyone other than the Coroner. The Ombudsman found that none of the exemptions cited applied and invited PS to release the report to the Severin family. The Director-General of PS agreed to do so and said that PS would have a new policy in place by 1 April 1999 in relation to the release of such reports on deaths in custody after that date.

Full report

1. Ms Coles, acting on behalf of the family of the late Mr Kenneth Severin, complained about the way in which the Prison Service (PS) had treated Mr Severin, who died while on remand at HM Prison Belmarsh: in particular, that there had been a lack of communication between health care and non-health care staff about the management of Mr Severin; a failure to follow guidelines concerning his relocation to an unfurnished cell; and a failure to ensure that officers were properly trained in the safe use of control and restraint techniques. She further complained that the report of an internal PS enquiry into Mr Severin's death had not been made available to his family before the inquest.

2. I issued my report into the allegations of maladministration on the part of PS in November 1998 [under the reference [C.993/97](#)] while discussions with them were still continuing about their policy in relation to the release of PS documents in the light of the Code of Practice on Access to Government Information (the Code). This is my supplementary report on that aspect of my investigation.

Background

3. Mr Severin died on 26 November 1995. Following his death, the lawyer instructed to represent Mr Severin's family (the solicitor) asked for certain documents relating to Mr Severin's treatment and death at HM Prison, Belmarsh. On 30 November 1995 he wrote to the Prison Governor (the Governor) saying:

'We note that Prison Service policy is that it would be prepared to disclose to the next of kin or their legal representative on request the relevant document (sic) which have been provided to the Coroner for the purpose of the Inquest. In this respect we enclose [Mr Severin's mother's] signed consent for disclosure.'

'We would, therefore, be grateful if, in advance of the Inquest, you would disclose to us all the documentation which will be disclosed to the Coroner ...

This letter was copied to the Treasury Solicitor (T Sol). On 5 December 1995 the solicitor wrote to the Coroner, asking him to confirm that he had no objections to HMP Belmarsh disclosing any such documentation to his family as soon as possible.

4. On 8 January 1996 T Sol wrote to the solicitor enclosing the following documentation from Belmarsh: the out-patients log; the chronological log; the continuous medical record from 1 to 26 November 1995; and the nursing record. On 2 July the solicitor wrote to the Coroner to say that he had received documentation from HMP Belmarsh but no statements. On 17 December 1996 the solicitor wrote again to T Sol saying:

'we are aware that you have confirmed on 26th January 1996 that you have disclosed to us all documentation which has been disclosed to the Coroner. We would be grateful if you would confirm that the position remains the same. We note that to date we have still not received statements from prison officers attached to the hospital wing in connection with the circumstances of Kenneth Severin's death. We would have expected that such statements would have been taken in connection with the prison's own internal inquiry (my underlining) and would be grateful for disclosure... We have previously had confirmation by both the police and the Coroner that they have no objection to disclosure in this case.

We would be grateful for a response as a matter of urgency.'

The solicitor told my officer that he did not recall receiving a reply to this letter (and T Sol confirmed that no reply was sent). The inquest opened on 2 January 1997 at Southwark Crown Court. On the first day of the inquest counsel for the Prison Officers' Association and the Royal College of Nursing agreed to disclose to all the interested parties the witness statements made by prison staff. However, these were not the same statements as those which formed an annex to the PS internal inquiry report. These were not released; nor was the report itself.

Reasons for refusing access

5. I know from a previous investigation that the PS's refusal to release their internal report was in accordance with their existing policy on disclosure. That earlier investigation revealed, in my view, sufficient inconsistencies in the PS's responses on the matter to lead my staff to question the basis of the policy. They renewed their questioning in the light of Mr Severin's case. In his response to the statement of complaint at the start of my investigation, the Director General of the PS confirmed that it was not PS policy to disclose reports of internal inquiries conducted in confidence. They were, therefore, not made available to the legal representatives of families before the inquest, although they were given on request to any Coroner who might wish to see them as part of the background. Information collated during the internal investigation report, which was produced by a governor at Belmarsh, was in any event brought out during the inquest into Mr Severin's death. Although PS were at present re-examining their policy on the disclosure of investigation reports, there were no plans to change it retrospectively.

6. In response to further inquiries made by my staff, the PS Director of Security said that the issue of the disclosure of internal investigation reports was highly complex and sensitive. They were made available to the coroner purely for background purposes: they were not provided as evidence to be placed in the public domain. The reports were produced for several reasons, including internal ones. As such they were likely, in general terms, to be protected from disclosure under a wide range of exemptions. These included, potentially:

Exemption 2 (Internal discussion and advice):

Exemption 4 (Law enforcement and legal proceedings, in particular sub-sections a), b) and c):

Exemption 7 (Effective management and operations of the public service, in particular sub-section b):

Exemption 8 (Public employment, public appointments and honours, in particular sub-section a):

Exemption 12 (Privacy of an individual):

Exemption 14 (Information given in confidence):

7. In relation to the release of the report into the death of Mr Severin, the Director of Security said that the PS investigation had been particularly limited in scope owing to the circumstances surrounding the death and the early police investigation following it. He said that disclosure of the internal report before the inquest would have run the risk of prejudicing subsequent legal or disciplinary proceedings, and claimed Exemptions 4 and 8 of the Code in support of this view. (This was the first time the PS had referred to either the Code or any of its exemptions in respect of this information request.)

8. The Director of Security confirmed that the PS were taking the Code into account in considering a revision of their policy on the treatment of internal investigation reports. He said that their overall aim was to reach a position where they could disclose as much information contained in a report as soon as possible, subject to not prejudicing the conduct of other proceedings or investigations, any criminal investigation or proceedings, and any disciplinary action. The PS aimed to have a protocol in place to facilitate this progress by April 1999.

Assessment

9. The issue I have to consider is the refusal to release to his family, before the inquest, the report of an internal PS investigation into the death of a remand prisoner, together with the associated witness statements. The PS lawyers (T Sol and counsel) had a copy of the report and its attachments, and a copy of those documents was given to the Coroner as background information. All the prison officers whose statements, taken immediately after Mr Severin's death, provided the raw material from which the chronology of the night's events was constructed, were subsequently questioned by the Coroner and counsel in open court, as were two former prisoners.

I have examined the report. It consists, in the main, of a brief factual account of the events of the night of 25/26 November. There are various annexes attached to it, which consist of prison records, incident report forms and witness statements compiled on 26 November. I note also the Coroner's statement that the inquest was required to establish four matters: who the deceased was; when he died; where he died; and how he died.

10. In considering the applicability of the Code to the information sought by the complainant I have looked only at the two exemptions cited by the Director of Security ([paragraph 7](#)), as the PS have not suggested that any others apply in this particular case. I turn first to Exemption 4. The PS did not specify which sub-sections of Exemption 4 they thought applied to the information in question: I assume they are relying on the three sub-sections they identified as applicable, in general terms, to the kind of information usually found in their internal inquiry reports: and indeed the other four sub-sections do not appear to be relevant. The three sub-sections read, in full:

- a. *Information whose disclosure could prejudice the administration of justice (including fair trial), legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigations (whether actual or likely) or whose disclosure is, has been, or is likely to be addressed in the context of such proceedings.*
- b. *Information whose disclosure could prejudice the enforcement or proper administration of the law, including the prevention, investigation or detection of crime, or the apprehension or prosecution of offenders.*
- c. *Information relating to legal proceedings or the proceedings of any tribunal, public inquiry or other formal investigation which have been completed or terminated, or relating to investigations which have or might have resulted in proceedings.*

11. In considering the possible application of Exemption 4 I need to determine how disclosure of the information contained in the report and associated documents before the inquest might, in the PS's words, 'have run the risk of prejudicing subsequent legal....proceedings'. I must note at the outset that the PS have provided no evidence in support of this assertion: in other words, their argument depends essentially upon a view that the family might (my underlining) have used the information in this way had they been given it before the inquest began, presumably by disseminating it in such a way that it could be said to have interfered with the course of justice. I have seen no evidence for such an assertion. I also need to ask - what proceedings? The purpose of the inquest was to establish, as the Coroner made clear, what had happened. The internal report and witness statements consisted primarily of factual accounts by those involved of what took place - statements which were subject to cross-examination at the inquest by lawyers representing all the parties. I find it difficult to accept an argument which, in effect, denies one of those parties an opportunity of access to part of the available evidence when the underlying purpose (to establish what happened) can be achieved only by ensuring that all those involved are on equal terms in testing the various witnesses whose evidence is presented. It seems to me that proceedings at the inquest could only have been assisted, not prejudiced, by providing the report to the family beforehand, particularly as it would

then have allowed them a full exploration of any possible inconsistencies in the evidence.

12. If it is the case, as I believe, that disclosure of the report in advance could not have prejudiced the inquest, what other proceedings could it have prejudiced? In practical terms, the answer is "none". I have been given no evidence that criminal proceedings were in contemplation (although I accept that the police were considering the events); and no criminal proceedings followed. But even if they had followed, they could only have been against some or all of those members of the prison staff who had played a part in the circumstances which led to Mr Severin's death, and the evidence would have been provided in the main by the statements of those staff themselves. I cannot suppose that the PS is arguing that the report could have been withheld from any such proceedings, or indeed from any consideration by the police or other relevant authority of whether or not such proceedings should take place. Allowing the family access to the information in the internal report, therefore, could not in this case have prejudiced any criminal investigation. In any event, the information relating to Mr Severin's death would have been considered in public in the Coroner's Court. If criminal proceedings had begun before the conclusion of the inquest then the inquest proceedings would, in all probability, have been adjourned. Moreover, in that event the media and others are subject to strict rules on what may be reported. Those rules would equally apply to criminal proceedings begun after the conclusion of the inquest. I therefore do not believe that allowing the family access to the information contained in the report could have harmed any legal proceedings had any in fact occurred. The test of prejudice has to be applied to each case on its merits: on this occasion, I do not find that Exemption 4 applies.

13. The other exemption claimed by the PS is Exemption 8, which is essentially concerned with matters related to public employment. It appears, from their general view about the exemptions which might be applied to reports of this kind ([paragraph 6](#) above), that it is sub-section a), which relates to personnel records, that the PS have in mind; again, the other sub-sections do not seem to be in point. In that context, the PS have said that the release of the report before the inquest might have harmed any subsequent disciplinary proceedings. To my mind, this argument has little or no force. To begin with, such matters are internal to the PS. The family, even if fully aware of all the facts surrounding the case, could have had no influence on either the conduct or the outcome of any proceedings. Nor would it have made any difference to those who might have been the subject of such proceedings, as they would themselves have been the main authors of any testimony used against them. In fact, there were no such proceedings. Additionally, I do not consider that the report and the information in it can be held to constitute a personnel record of the kind referred to in the exemption. In an earlier case (A32/96, published in Selected Cases Fourth Report 1997-98) I concluded that a similar kind of report did not constitute a personnel record (although comments on the contents of such a report, when referring to individuals and placed on their personal files, undoubtedly would). On that basis, I find that Exemption 8 does not apply to the information sought.

Findings

14. I have seen the evidence which shows that a request was made to the PS before the inquest for the release of all the documentation made available to the Coroner. That documentation included the internal inquiry report and its associated witness statements. Some information was subsequently provided, but not the report and those other documents. The request, as far as it related to the report, appears not to have been explicitly rejected; but neither was it complied with. The later failure of either the PS or T Sol to respond to the solicitor's faxed request of December 1996 for confirmation that he had received all the documentation disclosed to the Coroner ([paragraph 4](#)) merits my criticism: in effect, the request for the internal report was ignored. I have seen no evidence to suggest that the complainant's request was considered even on its specific merits, let alone by reference to the Code. The Code was not referred to when the complainant originally sought the information, nor was it mentioned when the PS responded to the statement of complaint issued by my office. I find that failure hard to understand and impossible to justify. The Code has been in existence now since April 1994. The PS should have been generally aware of its requirements, particularly when responding to the statement of complaint, since my office had recently reported on a complaint (see [paragraph 5](#)) of a similar nature. They made no attempt to justify their decisions by reference to exemptions under the Code until prompted by my staff, some while after my statement of complaint had issued. Even then, their response referred to no fewer than six exemptions (a practice I and my predecessor have criticised in previous investigations) although it appeared that, in practice, they were applying only two of them to the case in question. Every request for information should be considered on its individual merits, a process which I do not believe was undergone here. I find that the PS have not been able to make a case that the information should have been withheld before the inquest. I believe that the information should have been provided at that time. As to the question of whether or not the information should be provided now to the family, I take the view that it should. The contents of the report did, of course, form the subject matter of the inquest, so it could be argued that the matter is now in the public domain. The family do not, however, know what the report actually contains because they have not seen it. Because I can find no reason under the Code to deny the family access to the information the report holds, it is my belief that it should be released to them, and I so recommend. I suggest that, in accordance with practice in other cases, this would best be done by provision of the document itself.

Conclusion

15. I welcome the PS's declared intention to develop a new policy on the treatment of internal investigation reports in line with the requirements of the Code, to be operational from 1 April 1999. However, the fact remains that each request for disclosure should, on an individual basis, be under consideration now in relation to the Code and its requirements. On that basis, I invited PS to release a copy of their internal inquiry report to Mr Severin's family.

16. In reply, the Chief Executive of the Prison Service said that at the time of the request for the internal investigation report and accompanying statements these documents would not have been disclosed to anyone other than the Coroner before an inquest. That was because of an assumption, however wrong, that they would not be appropriate for disclosure beyond the Coroner. The Chief Executive accepted that their policy should have been made clear and wished to apologise unreservedly to Mr Severin's family for the PS's failure to do so. He also accepted my criticisms that the PS did not apply the Code in this case or give any specific reasons for the exemptions they cited.

17. In conclusion, the Chief Executive said he was satisfied that the needs of Mr Severin's family were such that they should have the reassurance that there was nothing in the internal report that had not already emerged at the inquest and agreed to release the report. He also offered to clarify any points with Mr Severin's family if they would find that helpful.

18. I regard this as a satisfactory outcome to a justified complaint.