Department of Health

Rt Hon Alistair Burt MP
Minister of State for Community and Social Care

Richmond House
79 Whitehall
London
SW1A 2NS

Tel: 020 7210 4850

Senior Coroner
Civic Centre
Burdon Road
Sunderland
SR2 7DN

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Dear Mr Winter,

Thank you for your letter of 8 March 2016, following the inquest into the death of Elsie Tindle. I was sorry to hear of her death and wish to extend my condolences to her family.

The main concerns arising from this case are:

- that the Care Quality Commission's (CQC) internal target for provision of SOADs is not met in all circumstances and the impact this has on safeguarding against inappropriate treatment;
- that there is an insufficient number of Second Opinion Appointed Doctors (SOADs) to deal with requests for attendance in a timely way;
- that the use of section 62 of the Mental Health Act (MHA) is becoming a default position.

My officials have liaised with CQC about your concerns.

Firstly, with regard to CQC's lack of response to the request for a SOAD in this case, I have been advised by CQC that this was due to an administrative error.

CQC has confirmed that a second opinion request was submitted by Northumberland Tyne and Wear NHS Foundation Trust and received by CQC. Although the request was processed, there was a failure to action it any further by transferring it from the submission system onto the allocation database, which is currently a manual process.

Investigation of this error has led to two possible causes:

- The task completed line was ticked in error.
- There was an error on the submission and the request was misplaced before the query was resolved and the process completed.

CQC has undertaken a 100% comparison check between the submission database and the allocation database and has confirmed that this was an isolated incident. However, they have taken the following actions to mitigate against further error:

- The team have been reminded of the process for recording actions taken against requests received;
- Daily 100% comparison checks are now carried out by the team leader. Any requests submitted with queries are entered onto the allocation database with a status of pending. The team leader keeps checking the progress of pending second opinion requests until all issues are resolved;
- An electronic solution to enable automatic transfer of request to the allocation database is in the final stage of roll out. This will reduce the risk of human error in future.

You are also concerned that CQC do not always meet their internal target for provision of SOADs. Whilst CQC fully endeavour to meet these targets, there are several factors that can affect their ability to do so.

Requests for Second Opinions are demand led. CQC has no control over when and where a request will be required or the level of urgency required for each case. In addition, as most SOADS are in full or part time employment with provider organisations, it can be difficult to identify a local, available SOAD who can attend promptly. As a second treatment of the patient is often carried out within 48 hours of the request being submitted it makes timely attendance of a SOAD even more challenging. Missing or inaccurate request information submitted by the provider can add in further delay.

In addition, providers do not always make appropriate arrangements to enable the SOAD to attend the ward, interview the patient and have access to the statutory consultees either in person or at least via telephone, so that a certificate can be issued. Another problem, although less common, is when a SOAD is unable to access a ward due to protected times.

To turn to your concern about the available number of SOADs, CQC has an ongoing recruitment campaign and invites expressions of interest from prospective applicants. Their recruitment process is supported by HR colleagues and the Lead SOAD.

CQC will continue to recruit more Consultants as SOADS but because the work is so demand led, a model of continuous availability is not considered feasible. It is also essential to continue to ensure that the SOAD is independent of the provider and other parties.

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CQC continues to work with the Royal College of Psychiatrists to promote the value of the SOAD role and its importance to the provision of comprehensive mental healthcare. They are also considering other ways of promoting the SOAD role including reviewing the current fee structure and are looking at providing some aspects of the service in a different way that could free up more SOAD time.

Lastly, I will address your concern that the use of s62 of the MHA is becoming a default position. S62 of the MHA provides provision to urgently treat a person who has been detained under the MHA. Sometimes, decisions have to be taken rapidly to detain and then treat a deteriorating patient and this should be clearly understood by the s62 provision of the Act.

CQC has raised concerns about the use of s62, (separate from the issue of SOAD availability), which they highlighted in their MHA Monitoring Annual Report for 2013/14. They are concerned that these measures are being used in situations that are neither urgent nor emergency. They also perceive that there are occasions when s62 may be used, whether for medication or for ECT, for the purpose of clinical convenience rather than a situation of immediate necessity.

As a consequence of these concerns the 2015 MHA Code of Practice has been strengthened to state that hospital managers should monitor both the use of urgent treatments and exceptions to the certificate requirements, to make sure that they are not used inappropriately or excessively. CQC also expect providers to make sure that treatments given on this basis are reviewed regularly. Clinicians must specify review periods at the point that the urgent or emergency treatment is instigated.

CQC Inspectors and Mental Health Act Reviewers continue to look at compliance with the MHA Code of Practice during inspections and MHA monitoring visits. In addition SOADs have been instructed to feedback any issues regarding the use of s62 which they may encounter on their visits, directly to CQC, so that targeted intervention can be addressed to relevant providers as necessary.

I hope that this reply is helpful and I am grateful to you for bringing the circumstances of Ms Tindle's death to my attention.

Yours sincerely

Alistair Burt

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