PE1786/F
Mental Welfare Commission for Scotland submission of 6 May 2020

Thank you for inviting the Mental Welfare Commission for Scotland to respond to Petition PE1786 which was discussed at the petitions committee on 19th March 2020. The petition makes reference to the Commission report of the deaths of individuals subject to compulsory treatment[1]. It does not directly follow that these patients were ill-treated, as the cause of death might be due to natural reasons such as a pre-existing physical health care condition. However some of these deaths will be due to suicide. Currently the process around notifying deaths of individuals detained under the Act is complex and involves notifications to regulatory organisations including Healthcare Improvement Scotland (HIS) and the Mental Welfare Commission. As well as the regulatory oversight, local health boards will conduct their own reviews into these deaths in order to identity learning for the organisation. If the care or behaviour of an individual employed by a health board was to fall below standards considered acceptable, the health board could refer the practitioner to the relevant professional standards body or take any other steps deemed appropriate and proportionate.

We note the information shared at the petitions committee that during the ten year period between 2008/09 and 2018/19 there were a number of prosecutions which resulted in conviction. However it does not necessarily follow that there is a link between the deaths reported to the Commission and prosecutions under section 315.

The Mental Welfare Commission welcomes the attention on detentions that take place without mental health officer (MHO) consent. The Commission has previously published a detailed report on emergency detention certificates (EDCs) without consent based on a request to audit the reasons behind the lack of consent and the variation with this process across Scotland.[2]

In practice, there may be a variety of reasons behind the lack of consent obtained from an MHO. The pattern of reasons are broadly similar across health boards although the numbers differ. These are detailed in the report above.

It is useful to be aware that issuing an EDC without the consent of an MHO is legally acceptable where it is not practicable to obtain the consent of an MHO, and the relevant form requests that the detaining doctor explains why that has been the case. The fact that this happens does not give rise to an inference that doctors are being dishonest. Nor does the fact that the figures vary from place to place, which could be caused by many factors, including variations in the availability of MHO services round the clock. If a doctor were to have been deliberately dishonest and falsified reasons why the input of an MHO was not possible and this was brought to the attention of local management, then we would expect that an appropriate response would be initiated. Such a response might include carrying out a local review, informing their regulatory body (in this case the General Medical Council) and prosecution under Section 318. There is no obligation for any such action to be brought to the attention of the MWCS by any of the regulatory or public bodies, although in practice they may choose to do so.

[1] https://www.mwcscot.org.uk/sites/default/files/2019-06/death_in_detention_final.pdf
[2] https://www.mwcscot.org.uk/sites/default/files/2019-06/edc_report_2016.pdf

The issue may also be directly relevant to the newer legal powers contained in the Health (Tobacco, Nicotine etc. and Care) (Scotland) Act 2016, in particular the use of Section 26/27 which are much wider and allow charges against (26) care worker, and (27) care providers which does not narrow down the charge to relate only to persons who have a 'mental disorder'[3]. I hope that this response is helpful to the Committee and to the petitioner.

[3] https://www.legislation.gov.uk/asp/2016/14/part/3/crossheading/offences -by-care-workers-and-care-providers