Care Quality Commission

Response issued under the Freedom of Information Act 2000

Our Reference: CQC IAT 1819 0031

Date of Response: 10 May 2018

Information Requested:

"… I am writing to enquire about the two doctor model of consent under the 1967 abortion act. I know that the Department of health and British Medical Association have both stated publicly that there is nothing illegal in either one of the two doctors who must currently sign consent forms for abortions, not seeing the patient in person and that from the NHS guidelines on abortion and the Royal College of Obstetrics and Gynaecologists, it is acceptable for a nurse to see the woman and the doctor to sign off afterwards if there is no need for clarification.
(1): My first query is if health care assistants may see the woman rather than a nurse and in such a case is that sufficient from C.Q.C.'s viewpoint. This is based on the Daily Mail article by Dr. John Parsons, the retired specialist who worked for years with Marie Stopes UK. He stated that health care assistants saw the woman in a 20 minute session and did the bloods and ultrasounds. I was wondering is this practice specific to the clinic he was in or more general and whatever about a nurse doing. Dr. Parsons doesn't identify which clinic health care assistants do the face to face meeting in. http://www.dailymail.co.uk/news/article-4284290/Marie-Stopes-abortions-signed-just-phonecall.html
(2): Is it mandatory to offer counselling to a woman seeking abortion or only optional or if she asks for it? So if a woman rings up either BPAS or Marie Stopes must they offer counselling or only if she asks or if she doesn't answer queries in a way that suggests she is fully sure of her decision? If there is an algorithm for offering counselling assuming all women are not offered it, do you have information on if that is implemented by abortion providers?
(3): Separately in the Quality reports, if nothing comes up in the consultation with a nurse, a doctor can sign the form afterwards legally, without seeing the woman. I saw C.Q.C. documents that there is no evidence of pre-signing in the quality reports but as there is no necessity to see the woman, understand that post signing would be after the woman was seen by the nurse. Does that just happen in BPAS and Marie Stopes clinics or also in the NHS?
(4): At what point did post-signing as in signing afterwards without seening, become acceptable from C.Q.C.'s point of view by which I mean,

in what year did it become acceptable that the doctor signed the consent form on being handed it by a nurse without seeing the patient or was this always the practice under the 67 act? Is it the nurse / health care assistant who asks the woman to sign the consent form after taking her history / doing bloods / ultrasound or when is consent signed and who is present?
(5): The British Medical Association guidelines report that the practice of not having to personally oversee every stage of the process occurred after a legal case in 1981 and I know you are only in existence since 2008 so prior to that how was the overseeing of abortion facilities undertaken or were inspections made by the Department of Health?
(6): The Daily Mail also reported that in the Kent facility of Marie Stopes that the culture of encouraging abortions as a key performance indicator was in existence and that re inspection was unable to establish whether this practice was still ongoing. Also that there was a focus on ' do not proceed' women as a target group with the suggestion that if very early in the pregnancy, the woman was called back and offered another appointment. I am wondering if this has since been established and if as the article suggests it was established if the practice of calling back 'do not proceeds' was only at the Kent facility or beyond and if so if this has been stopped. http://www.dailymail.co.uk/news/article-4998810/Britain-s-largest-abortion-clinic-paid-staff-bonuses.html
(7): The Daily Mail reported that batch post signing of consent forms was happening citing that bulk signing in 2 minutes took place. But given that it is not necessary to see the woman, does the C.Q.C. have any view / guidelines on how many consent forms can be signed in any one sitting?"

The Information Access team has now coordinated a response to your request.

CQC has considered your request in accordance with the Freedom of Information Act 2000 (FOIA).

Our main obligation under the legislation is to confirm whether we do or do not hold the requested information.

In accordance with section 1(1) of FOIA we are able to confirm that CQC does hold recorded information in relation to this matter.

Your request for information

"(1): My first query is if health care assistants may see the woman rather than a nurse and in such a case is that sufficient from C.Q.C.'s viewpoint. This is based on the Daily Mail article by Dr. John Parsons, the retired specialist who worked for years with Marie Stopes UK. He stated that health care assistants saw the woman in a 20 minute session and did the bloods and ultrasounds. I was wondering is this practice specific to the clinic he was in or more general and whatever about a nurse doing. Dr. Parsons doesn't identify which clinic health care assistants do the face to

face meeting in. http://www.dailymail.co.uk/news/article-4284290/Marie-Stopes-abortions-signed-just-phonecall.html"

This would depend on what the role of the healthcare assistant and whether they are suitably qualified, competent, skilled and experienced to carry out that role.

In the case of a staff member working in the role of a healthcare assistant and undertaking sonography (or indeed a radiographer carrying out sonography) the purpose of the ultrasound would be considered, for example is it solely to confirm a pregnancy rather than to assess gestation. CQC would seek information from the provider of how they can demonstrate that staff carrying out ultrasound are suitably qualified, competent, skilled and experienced to do so. This would include taking into account continuing development. It may also include taking into account professional published guidance on the subject. In every case the legal requirements of Regulation 18 and Regulation 19 (1)(b) of the Health and Social Care Act 2008 Regulated Activities Regulations 2014 must be complied. These regulations state that sufficient numbers of suitably qualified, competent, skilled and experienced persons must be deployed in order to meet the requirements of this Part. The staff must have the qualifications, competence, skills and experience which are necessary for the work to be performed by them.

"(2): Is it mandatory to offer counselling to a woman seeking abortion or only optional or if she asks for it? So if a woman rings up either BPAS or Marie Stopes must they offer counselling or only if she asks or if she doesn't answer queries in a way that suggests she is fully sure of her decision? If there is an algorithm for offering counselling assuming all women are not offered it, do you have information on if that is implemented by abortion providers?"

The Department of Heath Procedures for the Approval of Independent Sector Places for the Termination of Pregnancy (Abortion) sets out the required Standard Operating Procedures for Termination of Pregnancy. In respect of counselling these standards set out that all women requesting an abortion should be offered the opportunity to discuss their options and choices with, and receive therapeutic support from, a trained pregnancy counsellor and this offer should be repeated at every stage of the care pathway. In addition, the Royal College of Obstetricians and Gynaecologists (RCOG) guidance 'The Care of Women Requesting Induced Abortion', sets out in recommendation 6.4: *'For the minority of women who require formal, therapeutic counselling, services should have referral pathways in place with access to trained counsellors.'*

It is not mandated by legislation that counselling is offered to all women seeking abortion, however, the standards referred to above should be in place.

Our inspection framework for NHS and Independent providers of termination of pregnancy services offer information about what our inspectors look at when carrying out inspection visits, which include provision of counselling. They can be accessed from our website below:

For independent acute and single specialty hospitals, please visit:

www.cqc.org.uk/sites/default/files/inspection-framework-independent-hospitals-termination-pregnancy.pdf

For NHS acute hospitals, please visit:

www.cqc.org.uk/sites/default/files/Inspection%20framework%20-%20NHS%20Hospitals%20maternity%20and%20gynaecology.pdf

Once the inspection process is complete, our findings about each service are published on our website in the inspection reports. You may access the individual published inspection reports regarding independent termination of pregnancy clinics; these are available on the CQC website. You can find these reports by entering/searching under the name of the provider.

For example, if you enter 'British Pregnancy Advisory Services' in the search box, the first result will show the provider details. You can then click on 'Full details', which will take you to the provider's profile on our website. You can download the CQC inspection report published on 7 December 2016, in which you will read about our findings relating to counselling.

"(3): Separately in the Quality reports, if nothing comes up in the consultation with a nurse, a doctor can sign the form afterwards legally, without seeing the woman. I saw C.Q.C. documents that there is no evidence of pre-signing in the quality reports but as there is no necessity to see the woman, understand that post signing would be after the woman was seen by the nurse. Does that just happen in BPAS and Marie Stopes clinics or also in the NHS?"

`Pre-signing` refers to the legally required HSA1 forms being signed by a medical practitioner before the individual circumstances of the woman seeking a termination are taken into account by the medical practitioner or where the medical practitioner had certified the abortion before being assigned the case, and before having any opportunity to consider the clinical files or other specific information to the woman. Pre-signing must not take place. It is a requirement (mandatory) that two medical practitioners take into account the specific woman's circumstances and form a good faith opinion as to which, if any, of the lawful grounds under the Abortion Act might apply. The HSA1 form is used by medical practitioners to sign to this effect and must be completed before a termination is carried out. The pre-signing of forms is considered to be incompatible with the requirements of the Abortion Act see page 7 and 8 of the DH guidance in relation to the Abortion Act

The exception is in the case of an emergency either to save the life of the pregnant woman or to prevent grave permanent injury to the physical or mental health of the pregnant woman. In these cases the law requires an HSA2 to be

completed by the medical practitioner before an abortion is performed or, if that is not reasonably practicable, within 24 hours of an emergency abortion.

"(4): At what point did post-signing as in signing afterwards without seening, become acceptable from C.Q.C.'s point of view by which I mean, in what year did it become acceptable that the doctor signed the consent form on being handed it by a nurse without seeing the patient or was this always the practice under the 67 act? Is it the nurse / health care assistant who asks the woman to sign the consent form after taking her history / doing bloods / ultrasound or when is consent signed and who is present?"

The patient consent form is different to an HSA1 form. It has never been acceptable for a medical practitioner to sign the HSA1 form without considering information specific to the woman when forming their opinion in good faith that one or more lawful grounds under the Abortion Act apply.

The consent of the patient to proceed with the termination is a separate matter. The medical practitioner providing the treatment is responsible for ensuring that the person has given valid consent before treatment begins. The GMC guidance states that the task of seeking consent may be delegated to another person, as long as they are suitably trained and qualified. In particular, they must have sufficient knowledge of the proposed investigation or treatment, and understand the risks involved, in order to be able to provide any information the patient may require. The practitioner who eventually carries out the investigation or treatment must also be able to determine whether the person has the capacity to make the decision in question and what steps need to be taken if the person lacks the capacity to make that decision.

(5): The British Medical Association guidelines report that the practice of not having to personally oversee every stage of the process occurred after a legal case in 1981 and I know you are only in existence since 2008 so prior to that how was the overseeing of abortion facilities undertaken or were inspections made by the Department of Health?

The Healthcare Commission inspected Abortion Clinics between 2002 and 2008**.**

(6): The Daily Mail also reported that in the Kent facility of Marie Stopes that the culture of encouraging abortions as a key performance indicator was in existence and that re inspection was unable to establish whether this practice was still ongoing. Also that there was a focus on ' do not proceed' women as a target group with the suggestion that if very early in the pregnancy, the woman was called back and offered another appointment. I am wondering if this has since been established and if as the article suggests it was established if the practice of calling back 'do not proceeds' was only at the Kent facility or beyond and if so if this has been stopped. http://www.dailymail.co.uk/news/article-4998810/Britain-s-largest-abortion-clinic-paid-staff-bonuses.html

The topic is discussed in the inspection report of the Marie Stopes International Maidstone Centre, which you can access here. You can read previous reports for other clinics by visiting their individual profiles from the below website:

www.cqc.org.uk/provider/1-102643434

We will not be able to provide more recent information because we are currently carrying out checks on locations registered by Marie Stopes International using our new way of inspecting services. We will publish the reports when our checks are complete.

As such, we consider that information exempt from disclosure at this time as provided at section 31 – Law enforcement of the FOIA. This is because disclosure of information relating to the inspections before publication of reports may prejudice our regulatory functions. For a detailed explanation, please see the section 'Exemptions from the right to know'.

(7): The Daily Mail reported that batch post signing of consent forms was happening citing that bulk signing in 2 minutes took place. But given that it is not necessary to see the woman, does the C.Q.C. have any view / guidelines on how many consent forms can be signed in any one sitting?"

For this part of your request we understood that by 'consent forms' you were referring to HSA1 abortion notification forms.

HSA1 forms are used to record information about the woman who will be receiving treatment for termination of pregnancy. CQC does not have a view or guidelines on how many HSA1 forms can be signed in any one sitting. However, CQC expect medical practitioners to certify their good faith opinion that the termination meets at least one and the same ground set out in the Act, given the information that they have about the woman's circumstances. Furthermore, CQC expect certifying doctors to have enough evidence of the woman's circumstances to justify that they were able to form a good faith opinion that the ground for the termination exists.

Purpose of the Freedom of Information Act

The purpose of FOIA is to ensure transparency and accountability in the public sector. It seeks to achieve this by providing anyone, anywhere in the world, with the right to access recorded information held by, or on behalf of, a public authority.

Recorded information includes printed documents, computer files, letters, emails, photographs, and sound or video recordings.

Public authorities spend money collected from taxpayers, and make decisions that can significantly affect many people's lives. Access to information helps the

public make public authorities accountable for their actions and allows public debate to be better informed and more productive.

The main principle behind FOIA is that people have a right to know about the activities of public authorities, unless there is a good reason for them not to.

A disclosure under FOIA is described as “applicant blind” meaning that it is a disclosure into the public domain, not to any one individual.

This means that everyone has a right to access official information. Disclosure should be the default – in other words, information should be kept private only when there is a good reason and it is permitted by FOIA.

An applicant does not need to give a reason for wanting the information. On the contrary, the public authority must justify refusing the information.

Public authorities are required to treat all requests equally, except under some limited circumstances. The information someone can access under FOIA should not be affected by who they are, whether they are journalists, local residents, public authority employees, or foreign researchers.

FOIA also recognises that there may be valid reasons for withholding information by setting out a number of exemptions from the right to know, some of which are subject to a public interest test.

Exemptions exist to protect information that should not be disclosed into the public domain, for example because disclosing the information would be harmful to another person or it would be against the public interest.

A public authority must not disclose information in breach of any other law.

When a public authority, such as CQC, refuses to provide information, it must, in accordance with section 17 of FOIA, issue a refusal notice explaining why it is unable to provide the information.

Exemptions from the right to know

Section 31 – Law enforcement

We consider that disclosing some of the requested information at this stage could prejudice our regulatory functions in that it would negatively impact on the completion of the inspection reports.

Section 31 states:

“(1)Information which is not exempt information by virtue of section 30 is exempt information if its disclosure under this Act would, or would be likely to, prejudice—

g)the exercise by any public authority of its functions for any of the purposes specified in subsection (2

(2)The purposes referred to in subsection (1)(g) to (i) are—

c)the purpose of ascertaining whether circumstances which would justify regulatory action in pursuance of any enactment exist or may arise,"

Under this exemption, CQC can withhold any disclosure which would prejudice the exercise by any public authority of its functions relating to protecting the public from misconduct, incompetence, dishonesty or malpractice.

"Prejudice" may be the obstruction of our regulatory function in determining whether a provider is compliant with regulations and standards.

Section 31 is a qualified exemption which means that CQC is required to take into account the public interest in reaching a decision on disclosure. The public interest test requires us to consider whether the public interest in favour of disclosing the information outweighs the public interest in withholding the information.

Having considered the public interest test, we consider there is a strong assumption that the public interest favours withholding this information as there is genuine danger of prejudice.

However we do recognise that this should not be adopted as a default position and that the public interest must be considered on an individual case by case basis.

This exemption is intended to safeguard the exercise of public functions intended to protect the public from harm caused by wrongdoing, incompetence or mismanagement.

In conducting this test, we have considered the following factors in favour of disclosure:

- there is a general public interest that CQC are open and transparent in the way we function
- the public interest that public authorities are accountable for their actions
- the public interest that services registered to provide health and adult social care are accountable for their actions

Against this, we have considered the following factors against disclosure of the information:

- the strong public interest in avoiding likely prejudice to the regulatory function of CQC

- disclosure of this information could bypass our systems of checks and controls under the Health and Social Care Act 2008
- disclosure of this information could obstruct our regulatory function in determining whether registered care providers are compliant with the relevant standards and regulations
- disclosure of this information would bypass our plan to publish our findings
- disclosure of the information prior to any checks planned to determine its accuracy would not be in the public interest

Having considered the above factors, it is our view that the public interest in withholding the information is greater than the public interest that may be served by disclosure, therefore CQC will not provide the requested information.

The public interest will be served when the reports are available on our website for public consumption.

Advice and assistance

Under section 16 of the Freedom of Information Act 2000 (and in accordance with the section 45 code of practice) we have a duty to provide you with reasonable advice and assistance.

If you need any independent advice about individual's rights under information legislation you can contact the Information Commissioner's Office (ICO).

The ICO is the UK's independent authority set up to uphold information rights in the public interest, promoting openness by public bodies and data privacy for individuals.

The contact details for the ICO are detailed below.

There is useful information on the ICO website explaining how individuals can access official information:

www.ico.org.uk/for-the-public/official-information

CQC Complaints and Internal Review procedure

If you are not satisfied with our handling of your request, then you may request an internal review.

Please clearly indicate that you wish for a review to be conducted and state the reason(s) for requesting the review.

Please be aware that the review process will focus upon our handling of your request and whether CQC have complied with the requirements of the Freedom of Information Act 2000. The internal review process should not be used to raise

concerns about the provision of care or the internal processes of other CQC functions.

If you are unhappy with other aspects of the CQC's actions, or of the actions of registered providers, please see our website for information on how to raise a concern or complaint:

www.cqc.org.uk/contact-us

To request a review please contact:

Information Access
Care Quality Commission
Citygate
Gallowgate
Newcastle upon Tyne
NE1 4PA

E-mail: information.access@cqc.org.uk

Further rights of appeal exist to the Information Commissioner's Office under section 50 of the Freedom of Information Act 2000 once the internal appeals process has been exhausted.

The contact details are:

Information Commissioner's Office
Wycliffe House
Water Lane
Wilmslow
SK9 5AF

Telephone Helpline: 01625 545 745
Website: www.ico.org.uk