Department of Health & Social Care

[redacted]
Minister of State for Social Care

39 Victoria Street
London
SW1H 0EU

[redacted]

Mr S Naughton
HM Assistant Coroner, South
London

14 September 2026

Dear Mr Naughton,

Thank you for the Regulation 28 report of 8th June 2026, sent to the Secretary of State for the Department of Health and Social Care about the death of Mr Hugh Burgess. I am replying as Minister of State for Social Care.

Firstly, I would like to say how saddened I was to read of the circumstances of Mr Burgess's death, and I offer my sincere condolences to his family and loved ones. The circumstances your report describes are concerning and I am grateful to you for bringing these matters to my attention.

In your report, you raise the following concerns:

(1) There is no power under the Mental Health Act 1983 to enable health professionals in hospital emergency departments to ensure that individuals who are considered to be in need of urgent admission remain on site pending a formal assessment to determine whether compulsory detention is necessary and appropriate.

(2) This means that some patients who present significant risks to themselves and/or to others as a result of their mental illness who cannot be persuaded to remain at hospital cannot be prevented from leaving should they decide to do so unless a police officer can first attend to exercise their emergency powers pursuant to Section 136 of the Mental Health Act 1983.

(3) In contrast, a patient who has been (voluntarily) admitted for treatment may be detained temporarily pursuant to the "holding powers" of Sections 5(2) or 5(4) of the Mental Health Act 1983 should they have a similar change of heart.

(4) The Court heard evidence that there is no robust alternative legal power to enable health professionals to prevent individuals in this cohort from leaving hospital.

(5) The Court heard evidence that this is a longstanding and frequently occurring problem which represents a gap in safety.

In preparing this response, my officials have made enquiries with NHS England and the Care Quality Commission to ensure we adequately address your concerns and are highlighted below.

We know that people who are acutely unwell and in a mental health crisis often do go to emergency departments and in some cases, assessment under the Mental Health Act is required. We recognise that in some cases, often due to distress or delays, the person may try to leave the emergency department before the assessment can be completed. We acknowledge there may be confusion and often a lack of confidence, about whether or what legal powers are available to

health professionals to hold someone in emergency departments to keep them safe until the assessment can be completed.

This is a complex legal and ethical issue that requires care and caution. Any new legislation could extend the powers to detain people in circumstances that are currently not provided for in law, and in relation to people who have capacity to make decisions around their care and treatment.

We accept that there may be a need to provide greater clarity on the powers which are available to health professionals to keep people safe in a mental health crisis. We have committed to a consultation exploring the powers available to different professionals in different situations and settings, in particular but not limited to consulting on the operation of sections 135 and 136 powers under the Mental Health Act. The consultation will seek views on powers and joint working approaches to ensure health and social care professionals and police have the appropriate powers to act in order to protect people from harm to themselves and to others when in a mental health crisis. As part of this, we will look to understand how the current legal framework in Emergency Departments is applied and identify solutions to the problems raised. Work is already underway, engaging closely with key stakeholders from police, health and care representative groups and people with lived experience, to define the scope for the consultation. We firmly believe that this is the right approach to a complex issue that requires careful consideration and consultation to ensure that we reflect the views and needs of a diverse range of professionals, patients and the wider public. We have also committed to provide further guidance on the existing legal framework in Emergency Departments in the next revision of the Mental Health Act Code of Practice. Publication of the consultation on the draft Code is expected in early 2027.

Operational pressures in Emergency Departments, which can lead to long waiting times and increase distress, are best addressed by clear, efficient, and adequately resourced routes to appropriate crisis care, and community-based support to prevent people reaching crisis in the first place. Substantial progress has been achieved in building more robust crisis care pathways across all ages ensuring that people in mental health crisis have access to safe, timely and clinically appropriate support. There is now full national coverage of 24/7 liaison mental health teams in general acute hospitals as well as high fidelity crisis teams in a community.

£473 million capital funding is also being made available over the next four years which includes investment in Mental Health Emergency Departments and community-based mental health centres. Mental Health Emergency Departments provide rapid assessment and support in a therapeutic setting, helping those with mental health needs get the right care quickly and reducing reliance on Emergency Departments. People with severe mental illness will be able to walk into community-based mental health centres without an appointment if they need mental health support - as well as advice on employment, housing, or volunteering - and receive psychological therapies, medication, and other intervention.

We are also taking steps to ensure there is consistency in the quality of care provided by community mental health teams. The Personalised Care Framework – a new approach being used by Trusts - sets out minimum standards of care so that everyone across mental health services gets the basics of good care, regardless of local configuration. The framework was published on 17 July 2026. We are also developing a Modern Service Framework for severe mental illness which will support consistent, high-quality, and high-value care. The Modern Service Frameworks will define an aspirational, long-term outcome goal, underpinned by a set of specific quality commitments that support progress, with a focus on driving up value and equity. They will be designed to inspire and galvanise the entire system.

We acknowledge the findings of Health Services Safety Investigations Body's report Mental health crisis care: legislative challenges in emergency departments and the safety recommendation for DHSC to urgently review the current legal framework and address the current legislative gaps in

emergency care for people in mental health crisis and clarify the extension of legal powers for health professionals to hold someone in the emergency department. We are considering their recommendation and will respond in due course.

Care Quality Commission's response

This is a longstanding issue of a gap in legal powers for health professionals in hospital emergency departments. Please note this was highlighted by the Health Services Safety Investigations Body report this year - Mental health crisis care: legislative challenges in emergency departments.

The Health Services Safety Investigation Board report made 2 recommendations:

- For DHSC to review urgently the current legal framework and address the current legislative gaps in emergency care for people in mental health crisis and clarify the extension of legal powers for health professionals to hold someone in the emergency department.
- For CQC to work with stakeholders to produce a position statement on existing legal powers, and the expectations for support for staff, for the care of people experiencing a mental health crisis in emergency departments, who are not detained under a formal legal framework.

The government committed to provide further guidance on the existing legal framework in the next revision of the Mental Health Act Code of Practice.

The Care Quality Commission responded to the second recommendation as follows:

We welcome the opportunity to support the resolution needed for the risks and issues this report so clearly exposes for patients and staff. As the report sets out, this is an area of concern that we have reflected in our own reports, highlighting the safety risks that arise when there is an absence of clear legal powers to lawfully prevent vulnerable individuals in mental health crisis from leaving an emergency department whilst awaiting assessment for admission.

To meet the recommendation, and to help address the challenges reported in how Care Quality Commission implements our regulatory framework in this area, we will work with relevant national stakeholders, as well as a consortium of mental health leads in acute providers, to set out the proportionate and consistent regulatory response to such situations.

This will ensure that our regulation serves to drive best practice and guards against complacency over breaches of statutory timescales, whilst recognising that providers are caught with competing obligations, including the duty to preserve life.

To ensure this is consistent with our remit and purpose, the guidance will take the form of a Brief Guide, which provide guidance to our inspectors and Mental Health Act reviewers when undertaking their assessments and reviews with services, but are also published externally for the public, providers and stakeholders to access.

We also welcome the recommendation to DHSC and will continue to offer support to DHSC and others in identifying options to close the gap and consequences of this to patients and staff.

NHS England's response

NHS England have informed my officials that the London Region trust have responded directly to you with their findings, but have provided the following response:

NHS England's ''Right Care, Right Person' guidance sets out how acute hospitals, including EDs, should respond when a person with mental health needs leaves before assessment and/or treatment is complete (sections 4.2.3 and 4.2.4). The guidance states that acute hospitals should have protocols in place, that staff are familiar with, covering the actions that the hospital should take while the person remains in hospital, as well as the required steps if they leave.

This includes undertaking a risk assessment to determine what further action is needed, such as arranging a non-urgent or urgent follow-up with mental health services or contacting the police where emergency action is required to locate the person, prior to health support being provided.

I hope this response is helpful. Thank you for bringing these concerns to my attention.

Yours sincerely,





MINISTER OF STATE FOR SOCIAL CARE