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**Participation and the  
Practice of Rights (PPR)**

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Mr. Peter May  
Permanent Secretary  
Dept of Health  
Castle Buildings  
Stormont Estate  
Belfast BT4 3SQ

19 June 2023

Dear Mr. May,

We are writing to you in relation to the recent judicial declaration issued on 11 May 2023, in respect of the RQIA.

In response to a judicial review taken by Mr. Paul Herbert, on behalf of his nephew Gareth Waterworth, the RQIA conceded that it had been 'misdirected' in law since 2009. It accepted that it *'does have a statutory duty to regulate the provision of mental health services to patients in the community by keeping under review the care and treatment of patients pursuant to article 86(1) of the Mental Health (NI) Order 1986'*. Mr. Herbert is represented by KRW Law in these legal proceedings.

Regarding the failures of care for Gareth Waterworth outlined in the judicial review application, the RQIA stated that it is *'taking steps to exercise that role in respect of the individual's care and treatment in the community'*, pursuant to article 86(2) of the Mental Health (Northern Ireland) Order 1986.

In a press release issued by the RQIA on 25 May 23 the RQIA stated that it is *'engaging with a number of organisations to clarify its role'*. We also note the Frequently Asked Questions published by the RQIA on 9

June and plans to hold a series of online events in the coming weeks, both of which we welcome.

We further note the statement issued by the Department of Health to the BBC's 'Evening Extra' programme on 8 June 2023, in which the Department welcomed the confirmation provided by the JR ruling, that in fact, monitoring, inspecting and regulating statutory community mental health services is the responsibility of the RQIA. The Department also stated that it has engaged with both the Trust and the RQIA with regard to implementing the recommendations and learning.

This case brought to light an extremely serious and prolonged failing by the RQIA in relation to the regulation of those community mental health services provided by the statutory sector in this jurisdiction. This is a matter of significant public interest that affects a very large number of individuals and families across society.

The effect of this regulatory deficit by the RQIA has further undermined confidence in the RQIA, following on from previously publicised deficiencies in governance, that emerged from an independent review conducted in 2021.

Prior to the judicial review, families had written to the RQIA, the Minister for Health, the Department of Health, the relevant Trust CEOs and the Assembly's Health Committee. Your Department, the RQIA itself and all of these other organisations and bodies were therefore fully aware of the failure in regulation of statutory community mental health services.

Regrettably, neither the statement by your Department, nor that from the RQIA, answers the many questions that those in receipt of support from statutory community mental health services, their families and carers, and indeed the wider public, all have.

In the interests of openness and transparency, and in view of the Department's governance relationship with RQIA, we are requesting that your Department now provide answers to the following questions that arise from this case, as follows:

1. Can the Department please explain why statutory Community Mental Health services were not regulated for 14 years?
2. Why did the Department for Health fail to act once this gap in regulation was brought to your attention?

3. Can the Department clarify whether a different regulatory regime exists in respect of private and charitable mental health services provided in the community, to that which pertains in the statutory community mental health services, and if so, why this is the case?
4. Please provide a full list of community mental health services that have not been regulated since 2009.
5. Could the Department of Health clarify how many individuals are currently in receipt of support from statutory community mental health services across NI and therefore, the number of people potentially affected by this regulatory failure?
6. Why is the RQIA not required to inspect community mental health services on a statutory timescale and is the Department of Health planning to address this gap in the regulatory framework?
7. How will the Department assess the impact of the failure to regulate community mental health services by the RQIA? Is it planning to engage in an independent process to assess this?
8. What steps is the Department planning to take to identify and implement the learning from this failure to regulate community mental health services and how do you intend to communicate any consequent changes in approach and delivery to mental health service users?
9. What steps will the Department take to rebuild the loss of credibility in RQIA and to restore public confidence?
10. Could the Department set out what additional financial, personnel and capacity building resources it intends to provide to the RQIA in order to support it to meet the identified gap in regulation?
11. What plans do the Department and RQIA have to include people in receipt of community mental health services in the design and delivery of their newly accepted role in the regulation of community mental health services?
12. Finally, we would request that the Department of Health provide clarity as to the RQIA's enforcement powers in respect of in-patient mental health service. In accordance with Article 39 of the HPSS ( Quality, Improvement and Regulation) (Northern Ireland) Order 2003, the RQIA has powers to engage in formal escalation or enforcement action, in accordance with its Escalation and/or Enforcement Policies and Procedures. Furthermore, the RQIA may recommend that the Department take special measures

in relation to a service provider. Please explain what is involved in formal escalation, enforcement and special measures and provide details of when and where each of these powers has been used in relation to in-patient mental health settings and the respective outcomes.

Please note we are requesting that questions 4 and 5 be treated as a request for information under the Freedom of Information Act 2000. Please also note that in the interests of transparency and accountability, we will be publishing this letter and your response on our website and social media channels.

Should you require clarification of any of the questions asked, please do not hesitate to contact me at [chloe@pprproject.org](mailto:chloe@pprproject.org)

Yours sincerely,

A handwritten signature in cursive script that reads "Chloë Trew". The signature is written in black ink on a white background.

**Chloë Trew**  
**Director, Participation and the Practice of Rights**