

**From the Permanent Secretary
and HSC Chief Executive**



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Dear Chloe

Thank you for your correspondence of 19 June 2023 and follow up correspondence on the 6 September 2023 in relation to the judicial declaration, issued on 11 May 2023, in respect of the RQIA's role in regulation of Community Mental Health Services.

I will address each of your questions from your letter of 19 June in turn:

1. Can the Department please explain why statutory Community Mental Health services were not regulated for 14 years?

Relevant legislation

The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 ("the 2003 Order") constitutes the Regulation and Quality Improvement Authority (RQIA) and provides general duties and responsibilities of the organisation. The Order imposes a Statutory Duty of Quality on HSC Trusts in relation to services they provide and gives RQIA the functions of reviewing, investigating, inspecting, and reporting on the management, provision, quality, and availability of services which HSC Trusts provide. Community Mental Health Services are provided by HSC Trusts and as such are subject to the Statutory Duty of Quality and to RQIA scrutiny and regulatory oversight.

Further, following the implementation of the Health and Social Care (Reform) Act (Northern Ireland) 2009 ("the 2009 Reform Act"), the functions previously undertaken by the Mental Health Commission were transferred to RQIA. The duties of RQIA in relation to Mental Health are set out in Article 86 of the Mental Health (Northern Ireland) Order 1986, under which RQIA does have a statutory duty to regulate the provision of mental health services to patients in the community by keeping their care and treatment under review.

Role of RQIA

Unlike services that are required to register with RQIA under the 2003 Order (for example, Nursing and Residential Care Homes), HSC Trust statutory services such as CMHS are not required in law to register with RQIA in order to operate and are not subject to a specified frequency of inspection set out in Statutory Regulations. However, RQIA does have the power in accordance with Article 35 of 2003 Order to investigate either the management, provision or quality of the health and social care service for which a HSC Trust is responsible, including provision of mental health services in hospital or in the community. Further, RQIA also has the power (Article 39 of the 2003 Order) to issue Improvement Notices on a particular HSC Trust where failings in minimum standards related to the provision of a service has been found; or can report its view or findings to the Department and include recommendations for improvement of the service.

Under Article 35 of the 2003 Order, RQIA has a range of regulatory functions in respect of those services, including carrying out reviews, inspections and investigations, and reporting to the Department. Since 2008 the RQIA has conducted 18 reviews into mental health and learning disability issues: the last in 2019 (the RQIA programme was disrupted by the COVID-19 pandemic) was into emergency mental health provision across Northern Ireland. The review programme has resulted learning and recommendations for improvement for the in HSC system and services.

Role of the HSC Trusts - Statutory Duty of Quality

Statutory services – such as Community Mental Health Service (CMHS) which are provided by or commissioned by each of the five HSC Trusts - are subject to a Statutory Duty of Quality placed on the provider or commissioner of the service. Like most other statutory services, CMHS are not required to register with RQIA to operate. Most such statutory services are not subject to the same regulatory regime required of independent sector health and social care providers and there is no set frequency of inspection.

HSC Trusts have a statutory responsibility for the quality of care they provide or commission. Article 34 of the 2003 Order states that each Health and Social Care Board and each HSC Trust shall put and keep in place arrangements for the purpose of monitoring and improving the quality of—

- (a) the health and personal social care which it provides to individuals;
- (b) the environment in which it provides them.

Each of the five Health and Social Care Trusts (HSCT) have in place continuing arrangements/mechanisms for:

- monitoring and improving the quality of CMHS; and
- assuring the safety and quality in respect of CMHS delivered to individuals.

The Department's Strategic Planning and Performance Group (SPPG) has a role under its Directed Statutory Function Scheme to review how individual Trusts are meeting their obligations under statute annually and to agree action plans to address concerns which arise in fulfilling that role.

2. Why did the Department for Health fail to act once this gap in regulation was brought to your attention?

Further to the information provided at Question 1 above, the ruling has confirmed that the existing legislation provides for regulation and oversight of community-based mental health services across Northern Ireland by RQIA. In its response, RQIA has acknowledged these oversight and regulatory roles.

While there is no current statutory inspection regime in relation to CMHS, RQIA has the power to inspect or review services at any time in light of specific concerns being raised or other intelligence/ data. RQIA has worked with stakeholders on a series of engagement sessions to explain its role and future intent.

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?

The regulatory regimes for the health and social care statutory and independent sectors do differ.

The independent and non-statutory sector providers vary considerably in size and purpose. Those independent sector service providers that are registered with RQIA under the [Independent Healthcare Regulations \(Northern Ireland\) 2005](#) are subject to registration and inspection by RQIA in line with these regulations. Independent sector services commissioned by HSC Trusts are subject to clinical governance and quality oversight by Trusts in line with those commissioning arrangements.

4. Please provide a full list of community mental health services that have not been regulated since 2009.

The Department does not hold the information to answer this question as asked.

HSC Trusts can be approached for details of community mental health services provided in each Trust area.

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?

HSC Trusts can be approached for details of numbers of individuals currently in receipt of community mental health services in each Trust.

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?

While there is no requirement set in Regulations for minimum number of inspections of community mental health services, RQIA has the power to inspect or review services at any time in light of specific concerns being raised or other intelligence/ data.

Statutory services – such as Community Mental Health Service (CMHS) which are provided by or commissioned by each of the five HSC Trusts - are subject to a Statutory Duty of Quality placed on the provider or commissioner of the service.

The Department acknowledges that the legislation underpinning the regulation and inspection of health and social care services dates back to 2003 and a future review of regulation would provide a platform to consider any identified improvements in the regulation and monitoring of services, including community mental health services.

Departmental officials have developed a new draft regulatory policy framework which considers a range of matters including principles of regulation, a broad scope of services that may be subject to regulation and a proposal that the regulator might have wider powers of enforcement. This work was a first phase of the project to review regulation. However, due to the Department's work on the COVID-19 pandemic response, the next stage of policy development including public consultation on the draft policy work has been delayed. Before the draft policy can be consulted upon, it will be subject to necessary further review taking account of additional lessons from the pandemic and other developments in regulatory policy and good practise that have emerged over the past few years.

The Department is currently operating within a significantly constrained budgetary position and, pending the restoration of the NI Executive, is required to make decisions in relation to the work it can deliver within current resources. In this context, work on the review of the regulation is currently paused to allow for other priority projects to progress. Timescales in relation to recommencing this work will depend on the priorities of an incoming Minister and available resources within the Department.

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?

The Department welcomes the confirmation provided by the judicial review ruling. RQIA has committed to continue to review and consider opportunities to enhance its regulatory oversight of the sector and the Department will continue to engage with RQIA in relation to its responsibilities for CMHS.

There are no current plans for an independent review.

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?

The Department welcomes the statement from RQIA in response to the judicial declaration in which it acknowledges its regulatory roles in relation to Community Mental Health Services. RQIA has stated that it is committed to working closely with key stakeholders to ensure that its role in relation to the oversight of CMHS and how it will fulfil that role is clearly communicated and delivered. The Department supports this proactive approach and will continue to work with RQIA in this regard. RQIA has held four open meetings with interested parties in recent weeks.

RQIA has advised that it is currently drawing up protocols, in collaboration with interested parties (including as the Patient and Client Council's Engagement

Platform for Mental Health and Learning Disability; the NI Human Rights Commission, NIPSO, the Mental Health Champion, Commissioners for Older People and Children, independent advocacy groups, and representatives of service delivery organisations) to help ensure that RQIA is made aware of concerns around community mental health services in a timely manner and in sufficient detail to enable these to be assessed, considered and appropriate regulatory action taken, using the powers available under relevant legislation.

RQIA has advised that this new approach is now in operation and that any reports of concerns about community mental health services are being carefully examined to determine the most appropriate action.

9. What steps will the Department take to rebuild the loss of credibility in RQIA and to restore public confidence?

The Department welcomes the response and steps taken by RQIA following the Judicial review ruling, including acknowledgement of its regulatory roles, communication with stakeholders, and in developing protocols for more timely and appropriate interventions. The Department will continue to engage with RQIA on this work.

The Department recognises RQIA's own continuing commitment to building the independence and credibility of the organisation and to enhancing its performance as Northern Ireland's independent regulator of the health and social care system.

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?

The Department and the HSC are currently operating within a significantly constrained budgetary position and continue to face significant financial challenges. The Department has consistently communicated that there will simply not be funding for all that we want, or need, to do as a healthcare system. Making funding available for new or additional activity or modernisations also remains a significant challenge. Further, there is a continuing clear need across our HSC systems for a focus on making the best use of existing resources through greater levels of efficiency, productivity and targeting use of resource. Any request for additional funding that may be required will need to be considered within that constrained financial context.

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?

Please refer to the information provided at Question 8.

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.

RQIA's enforcement procedures are publicly available on RQIA's website at the following link [www.rqia.org.uk/who-we-are/corporate-documents-\(1\)/rqia-policies-and-procedures/](http://www.rqia.org.uk/who-we-are/corporate-documents-(1)/rqia-policies-and-procedures/)

In your letter of 6 September, you ask that that the Department provide a way forward in relation to the care and support provided to Mr Herbert and his nephew Gareth Waterworth. I can advise that the Department is currently addressing recent correspondence from Mr Waterworth's family and will be responding to them directly on the issues raised.

I trust this is helpful.

Yours sincerely



Peter May