Independent Whole Systems Review

into Safeguarding and Care at Dunmurry Manor Care Home

EVIDENCE PAPER: 3

Regulation and Inspection

(Appendices)

October 2022

Summary of appendices

Appendix A: Sources of data and information

Description: This Appendix lists meetings with key stakeholders, including the HSCB, HSCT's, DH, DH Reference Group Meetings, Chief Medical Officer and Sponsorship Team for RQIA, Chief Nursing Officer and Sponsorship Team for the Patient and Client Council (PCC), PCC, Complaints Policy Team (DH), Workforce Policy Team (DH) NIPSO, NIHRC, COPNI, RQIA, IHCP. The Appendix lists dates of meetings with Runwood and visit dates to all Runwood Homes. Visit dates to other homes in Northern Ireland are listed. There is a list of contributors including trade unions, the voluntary and charity sector as well as academics and education organisations. Regulators such as the NMC and NISCC are listed as contributors, as well as organisations such as NIPEC. Contact and communication with families also feature and the identities of those families are held confidentially. The Review Team has maintained a comprehensive schedule of meetings and main contacts, which does not form part of any papers, Appendix A has been drawn from that primary source.

Appendix B: The legislative architecture

Description: This Appendix examines key statutory material.

Appendix C: RQIA review programme 2015-18

Slide from RQIA presentation DHSSPS Lunchtime Seminar, 3 February 2015.
Description: This slide sets out lists of RQIA reviews.

Appendix D: RQIA – learning from Dunmurry Manor Care Home

Document dated 16 February 2018, provided to the Review Team on 15 January 2020

Document untitled provided to the Review Team on 6 March 2020 by email from the then Interim Chair of the RQIA.

Description: This Appendix is in two parts, the first is the DMCH Action Plan that was requested in correspondence on 9 December 2019, on 16 December 2019, the RQIA responded by explaining that this was an internal document and had been superseded. The DMCH Action Plan was mentioned throughout the RQIA Annual Report 2018/2019 as an authoritative source of progress reporting on DMCH. It was provided to the Review Team in hard copy on 15 January 2020, at the DH Reference Group Meeting.

The second document was sent to the Review Team on 6 March 2020, by email, following correspondence that followed the session with the RQIA Board on 16 January 2020, as the Review Team had repeatedly asked for a summary of action post *Home Truths*. Follow up correspondence after the Board meeting consolidated outstanding information requests. In correspondence the RQIA referred the Review Team to Annex C on the COPNI website, part of the DH response to *Home Truths*. That document is Appendix F. These two action plans and the Annex C comprise the main responses to *Home Truths* by RQIA. The follow up meeting for 10 March 2020 with the RQIA Board was cancelled. Subsequently there has been re-

engagement with the incoming Interim Chair of RQIA to fulfil the Review Team's "no surprises" principle.

Appendix E: The role of the Commissioner for Older People for Northern Ireland in the context of complaints and regulation

Description: This Appendix gives an overview of the Commissioner's powers and the derivation of those powers. This is intended to give context to the investigation and the *Home Truths* Report.

Appendix F: Comments from RQIA to DOH on COPNI recommendations

Sourced from COPNI website published January 2020 as part of "Commissioners View."

Description: This is the Annex C that the Review Team were referred to when seeking detail about actions taken by RQIA post the *Home Truths* Report. This document is on the COPNI website as part of the DH response.

Appendix G: Vignettes

Description: These are included to show the impact of the 'dual registration' decision on older people as communicated to the Review Team by care home managers, families and family group representatives

Appendix H: RQIA Update/Postscript to Evidence Paper 3, May 2022

Description: A final and updated postscript paper dated 20 May 2022 after a draft of 21 July 2021. This emanated from a meeting with the Interim CEO of RQIA and DH in January 2021. The delays in the publication of this Paper made it appropriate to offer the opportunity to prepare a postscript to give the up-to-date position of RQIA on the subject matter covered by the IRT.

Appendix A: Sources of Data and Information

(See pages 7-8 of the Regulation and Inspection Evidence Paper for the Review methodology)

a) Meetings[1] where regulation and inspection were discussed along with other topics:

- 103 family members of residents in care homes. 86 of whom were DMCH resident's relatives including two who wished to remain anonymous. There were 17 family members related to residents in other care homes including one from another Runwood home and four who wished to remain anonymous. In all but two cases they told of elderly relatives being harmed and/or neglected. Six of the DMCH families loaned documents, including video recordings, photographs and contemporaneous records of failings in care. Some meetings took the form of semi-structured interviews, in groups and with individuals. Meetings with families spanned the period from 26 September 2018 and continued throughout the Review.
- Over 400 contacts with managers and providers of care homes; (including 189 at face-to-face meetings and the others at conferences, sessions and forums attended by the IRT);
- Four voluntary sector agencies and charities; Age NI, Alzheimer's Society, Association for Real Change, Action on Elder Abuse;
- Age Sector Platform;
- Federation of Small Businesses (FSB);
- Northern Ireland Ambulance Service (NIAS);
- Northern Ireland Health and Safety Executive (NIHSE);
- Eight PSNI personnel;
- Policy advisors, MLAs and local councillors;
- 176 individuals with responsibility across the five HSCTs for operationalising the policies and procedures;
- Managers networks' meetings convened by the RCN, ARC, NISCC and the My Home Life Team, University of Ulster;
- Two working sessions were held about complaints on 15 and 20 May 2019, attended by 78 people, care homeowners, providers and care home staff,
- Nursing and Midwifery Council (NMC);
- Northern Ireland Social Care Council (NISCC).

b) **RQIA**

- 11 December 2018: Head of Business Support Unit, RQIA and CEO, RQIA.
- 19 December 2018: Full team meeting at RQIA.
- 15 January 2019: Meeting with Interim Chair of RQIA, and later joined by CEO, RQIA.
- 18 April 2019: Meeting regarding the working session at RQIA.

[1] In respect of family members this includes face to face individual and group formal meetings, informal discussion meetings when visiting DMCH, the families' meeting called by DH, as well as telephone and email contacts. Contact ranged from multiple with some family members to a single instance with others

- 12 June 2019: CPEA Working Session with the RQIA.
- 21 October 2019: RADaR session with the RQIA.
- 10 January 2020: Conference call with CEO.
- 16 January 2020: CPEA meeting with RQIA Board Members and senior members of the RQIA Executive Team.
- 10 March 2020: meeting cancelled by RQIA Board Chair.

c) **COPNI**

29 November 2018 (Conference call)
4 December 2018
6 February 2019
26 February 2019
4 July 2019
7 August 2019
9 August 2019
20 August 2019
29 August 2019
3 September 2019
19 October 2019 (Conference call)
23 October 2019
25 October 2019
17 December 2019
17 February 2020

d) **PCC**

11 December 2018
21 February 2019
10 April 2019
2 May 2019
6 June 2019
20 September 2019 (Conference call)
10 March 2020 (Conference call)
11 March 2020 (meeting with Independent Consultant)
12 March 2020

e) **NIPSO**

13 March 2019
4 April 2019
17 September 2019
24 September 2019 (Research Event)
13 November 2019
18 December 2019

15 January 2020 (Reference Group Meeting)
19 February 2020
12 March 2020
11 May 2020 (Conference call)

f) **NIHRC**

29 August 2019

g) **DH**

Reference Group

Meetings were held with DH officials throughout the Independent Review and four meetings of a DH convened Reference Group took place on 11 Feb 2019, 9 April 2019, 1 October 2019, 15 January 2020 and a meeting date was set for 31 March 2020, which was cancelled due to the Coronavirus, COVID-19.

Other DH Meetings

22 January 2019. Meeting with Permanent Secretary and Senior Team.
25 June 2019. Meeting with Permanent Secretary and Senior Team.

A DH convened meeting with 69 attendees of Dunmurry Manor Families took place on 11 April 2019 attended by the Permanent Secretary, Richard Pengelly and the Senior Team.

Chief Nursing Officer and Sponsorship Team for the Patient and Client Council (PCC)

7 November 2018, 13 December 2018, 7 August 2019, 17 December 2019. Meetings with Chief Nursing Officer and on 7 November 2018 and 7 August 2019 and Deputy Chief Nursing Officer was in attendance. On 17 December 2019, the team met with Professional Lead, CNO Office.

Chief Medical Officer and Sponsorship Team for the Regulation and Quality Improvement Authority (RQIA)

26 November 2018, 13 December 2018. Meetings with Deputy Chief Medical Officer and on 26 November 2018 Head of Quality, Regulation, Policy and Improvement Unit, was in attendance.

21 February 2019 and 7 June 2019. Meetings with Chief Medical Officer and Acting Head of Quality, Regulation, Policy and Legislation Branch in attendance on 21 February 2019.

16 April 2019. Meeting with Head of Quality, Regulation, Policy and Legislation Branch and Acting Head of Quality, Regulation, Policy and Legislation Branch.

4 October 2019 Conference call with Head of Quality, Regulation, Policy and Legislation Branch Acting Head of Quality, Regulation, Policy and Legislation Branch.

10 October 2019. Meeting with Chief Medical Officer, Head of Quality, Regulation, Policy and Legislation Branch, Acting Head of Quality, Regulation, Policy and Legislation Branch, Principal of the Safety Strategy Unit (Complaints Policy Lead).

15 October 2019 Conference call with Head of Quality, Regulation, Policy and Legislation Branch, Acting Head of Quality, Regulation, Policy and Legislation Branch.

14 January 2020 Conference call with Head of Quality, Regulation, Policy and Legislation Branch.

Complaints Policy Team

25 September 2019, 19 November 2019, 19 February 2020, 12 March 2020. Meetings with Principal of the Safety Strategy Unit and Deputy Principal of the Safety Strategy Unit was in attendance on 25 September 2019.

Social Work

28 August 2018, 21 November 2018, 22 May 2019, 11 June 2019, 5 July 2019, 29 October 2019, 18 November 2019, 19 December 2019, 10 January 2020 (Conference call). Meetings with Chief Social Worker and Senior Team.

9 November 2018, 22 February 2019, 4 July 2019, 6 August 2019, 29 October 2019, 3 December 2019. Meetings with Deputy Chief Social Worker.

Workforce

15 January 2019, Meeting with Director of Workforce Policy, Pay and Conditions Lead, Workforce Directorate Policy Adviser.

h) **HSCB**

15 November 2018
4 February 2019
26 February 2019
26 June 2019
8 August 2019
19 August 2019
3 December 2019
17 February 2020
20 February 2020
10 March 2020

i) **Health and Social Care Trusts**

Meetings took place with all the Health and Social Care Trusts throughout the Review.
29 November 2018, 17 January 2019, NHSCT;
5 December 2018, 8 April 2019, 20 February 2020, BHSCT;
15 November 2018, 6 December 2018, 10 May 2019, 19 December 2019, SHSCT;
18 December 2018, 19 June 2019, WHSCT;

14 May 2019, 13 January 2020, all Trusts attended except WHSCT.
Trust representatives attended the meetings of the Reference Group.

j) **Runwood Homes and Runwood Homes visits**

3 October 2018
8 November 2018
13 November 2018
22 November 2018
3 July 2019
10 October 2019
22 October 2019
31 January 2020
13 February 2020
26 February 2020
27 February 2020
Meetings scheduled for March 2020 cancelled due to Covid-19, Coronavirus.
All Runwood Homes in Northern Ireland were visited as part of the Review.

k) **Other home visits**

Visits were made to the other providers homes where the regulation and inspection process was discussed among other things.

25 September 2018 (Nazareth House Care Village, Camphill Community, Glencraig)
12 December 2018 (Nazareth House Care Village)
5 February 2019 (Park Manor Care Home)
18 February 2019 (Daisyhill Private Nursing Home)
6 June 2019 (Muckamore Abbey Hospital)
11 November 2019 (Nazareth House Care Village)
14 February 2020 (Ratheane Nursing Home)

l) **Independent Health and Care Providers (IHCP)**

15 October 2018, 5 February 2018, 13 March 2019, 4 April 2019, 5 April 2019, 6 August 2019, 12 August 2019, 19 August 2019, 3 October 2019, 11 November 2019, Conference calls on 31 March 2020, 27 April 2020, 8 May 2020.

m) **Contributions** were sought from and information was provided by:

- Runwood which provided policies and procedures as well as documentation of its current approach to care practice.
- GPs providing treatment to the residents of care home settings.
- The HSCTs' commissioners of domiciliary care arrangements.
- The clinicians and professionals, including social workers and nurses associated with discharging older people from hospital directly to care homes.
- The Presiding Coroner for NI.

- The PSNI.
- Trade Unions, The RCN and Unison.
- Professional Associations, the BMA, NIPEC and the RCGP.
- Health and Social Care Regulators, NMC and NISCC.
- Nurse consultants and academics.
- Professor of Ageing and Health and Project Manager, University of Ulster (including 5 Conference calls).
- Nurse Lecturer, Queens University, Belfast.
- Project Manager and Kathy Fodey, Senior Programme Manager, as part of the HSCB Transformation Team.
- Nurse Consultants X 2.
- Representatives from a range of nursing agencies.
- Other Government Agencies and public bodies such as the Health and Safety Executive for Northern Ireland and the Regulation and Quality Improvement Authority.
- The Independent Health and Care Providers as the main trade association.
- A wide range of professionals, including social workers and nurses associated with caring for older people and discharging them to care homes.

n) **Documentation review** has included:

- Scrutiny of 12 filing cabinet drawers of documents submitted to COPNI from HSCTs and the RQIA, an analysis of complaints concerning DMCH
- Guidance in relation to Complaints, April 2009 and a revised version April 2019
- Runwood Care Homes Ltd, Complaints Policy
- Review of the Annual Reports from the HSCB and Trusts, 2014-18
- Annual Reports from the Ombudsman Offices of NI, England and Wales and Scotland.
- Annual Reports from COPNI
- Annual Reports PCC
- Annual Reports from NIHRC
- Annual Reports from RQIA
- Annual Reports from NIAO

All relevant legislation, standards, regulations including guidance documents.

Research documents from across the UK referenced in footnotes throughout the Evidence Paper.

Appendix B: The legislative architecture

Article 3 of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 established the Northern Ireland Health and Personal Services Regulation and Improvement Authority. This was formally renamed as the Health and Social Care Regulation and Quality Improvement Authority (RQIA) in accordance with Article 1 (2) of the Health and Social Care (Reform) Act (Northern Ireland) 2009.

The implementation of the Health and Social Care (Reform) Act (Northern Ireland) 2009 (1 April 2009) provided that the RQIA became responsible for carrying out the functions undertaken by the Mental Health Commission (MHC) as outlined in the Mental Health (Northern Ireland) Order 1986. Further work is ongoing in relation to Mental Capacity and implementation of a range of Mental Health legislation. The legislative programme was underway at the time that the Assembly, the devolved legislature, dissolved in January 2017 and is now being scrutinised as the Assembly has reconvened.

The duties and responsibilities of the RQIA are enshrined in law and can be summarised under 3 main headings:

(i) Keeping the Department informed about the overall state and provision of health and social care services, and in particular, about their availability and their quality.

(ii) Encouraging improvement in the quality of services by conducting reviews of health and social care organisations' clinical and social care governance arrangements against quality standards; and thematic and service reviews; and specific investigations as directed by the Department.

(iii) Regulation of relevant establishments and agencies.

For the purposes of the Review the work of the RQIA has predominantly been scrutinised in relation to Dunmurry Manor Care Home. During the Review other matters that fell outside the Review's Terms of Reference were identified and relayed to the DH and to RQIA. The key targets, standards and actions to be delivered by the RQIA are set out in its Annual Business Plan supported by the Corporate Strategy and reported on in the Annual Report.

Department of Health's Accountability and Oversight

The Department of Health has a branch which acts as the Sponsorship body in accordance with the governance of Arm's Length Bodies. The DH have submitted a response to the Independent Review, which sets out the role of the Sponsorship Branch in holding the RQIA to account and this is set out below:

> *The Department determines the RQIA's performance framework in light of the Programme for Government (PfG), the Department's wider strategic aims, and current PfG objectives and targets.*
>
> *Proportionate assurance will be provided to relevant Policy leads at the Department of Health (DoH) and where applicable assurance will be provided in mid-year*

assurance/governance statements. The formal accountability process will be the vehicle for highlighting any exception issues. This approach does not preclude the Chief Executive, as Accounting Officer, putting in place whatever arrangements deemed necessary in RQIA.

The key objectives are described as follows:

Improving the Quality of Care

The RQIA will work to bring about measurable and enduring improvements in the safety and quality of health and social care services for the people of Northern Ireland.

Informing, Influencing and Enforcing

The RQIA will report and advise on the safety, quality and availability of healthcare and will use its powers to raise levels of compliance with service standards, sustain good practice and build public confidence.

Safeguarding Rights

The RQIA will act to protect the rights of all vulnerable people using health and social care services.

Functions, duties and powers of the RQIA

The Department of Health described the functions, duties and powers of the RQIA, as follows:

RQIA is established for the purposes specified in the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003 and the Mental Health (Northern Ireland) Order 1986.

The RQIA shall have the general duties of:

a) *Keeping the Department informed about the provision of services and in particular about their availability and their quality and encouraging improvement in the quality of services. [Part II (Article 4) of the 2003 Order].*

b) *Providing advice, reports or information on such matters relating to the provision of services or the exercise of its functions at the request of the Department. [Part II (Article 5(1) of the 2003 Order].*

c) *Providing advice to the Department on any changes which the RQIA thinks should be made in respect of appropriate changes to the minimum standards published in accordance with Article 38 of the 2003 Order and any other matter connected with the provision of services. [Part II (Article 5 (2) of the 2003 Order].*

d) *Regulation of establishments and agencies under Part III of the 2003 Order.*

e) *Keeping under review the care and treatment of patients with a mental health disorder, including (without prejudice to the generality of the foregoing) the exercise of the*

powers and the discharge of the duties conferred or imposed by the Mental Health (Northern Ireland) Order 1986. [Article 86 (1) of the 1986 Order)].

Functions:

Certain functions of the RQIA are set out in Article 35 of the 2003 Order: -

a) *Conducting reviews of, and making reports on, arrangements by statutory bodies for the purpose of monitoring and improving the quality of the health and social care for which they have responsibility.*

b) *Carrying out investigations into, and making reports on, the management, provision or quality of the health and social care for which statutory bodies have responsibility;*

c) *Conducting reviews of, and making reports on, the management, provision or quality of, or access to or availability of, particular types of health and social care for which statutory bodies or service providers have responsibility;*

d) *Carrying out inspections of statutory bodies and service providers, and persons who provide or are to provide services for which such bodies or providers have responsibility, and making reports on the inspections; and*

e) *Such functions as may be prescribed relating to the management, provision or quality of or access to or availability of services for which prescribed statutory bodies or prescribed service providers have responsibility.*

Additional duties of the RQIA

Additional duties of the RQIA, following transfer of the functions of the Mental Health Commission, under Part VI of the 1986 Order [as amended by the Health and Social Care (Reform) Act (Northern Ireland) 2009]: -

a) *To make inquiry into any case where it appears to the RQIA that there may be ill-treatment, deficiency in care or treatment, or improper detention in hospital or reception into guardianship of any patient, or where the property of any patient may, by reason of his mental disorder, be exposed to loss or damage*. [Article 86 (2) (a)].

b) *As often as the RQIA thinks appropriate to visit and interview in private patients who are liable to be detained in hospital under this Order*. [Article 86 (2) (b)].

c) *To bring to the attention of the Department, the Secretary of State, the HSC Board, an HSC Trust or the person carrying on a private hospital, residential care home, voluntary home or nursing home the facts of any case in which in the opinion of the RQIA it is desirable for the Department, the Secretary of State, the HSC Board, the HSC Trust or that person to exercise any of their functions to secure the welfare of any patient by:*

   i. *preventing his ill-treatment;*
   ii. *remedying any deficiency in his care or treatment;*
   iii. *terminating his improper detention in hospital or reception into guardianship; or*

iv. *preventing or redressing loss or damage to his property*; [Article 86 (2) (c)]

d) *To advise the Department, the Secretary of State, the HSC Board, an HSC Trust or any body established under a statutory provision on any matter arising out of this Order which has been referred to the RQIA by the Department, the Secretary of State, the HSC Board, the HSC trust or the body, as the case may be.* [Article 86 (2) (d)].

e) *To bring to the attention of the Department, the Secretary of State, the HSC Board, an HSC Trust or any other body or person any matter concerning the welfare of patients which the RQIA considers ought to be brought to their attention*. [Article 86 (2)(e)].

f) Where it thinks fit, refer to the Review Tribunal the case of any patient who is liable to be detained in hospital or subject to guardianship under this Order. [Article 86 (3) (a)].

g) At any reasonable time, visit, interview and medically examine in private any patient in a hospital, private hospital, residential care home, voluntary home or nursing home or any person subject to guardianship under this Order. [Article 86 (3) (b)].

h) *Require the production of and inspect any records relating to the detention or treatment of any person who is or has been a patient in a hospital, private hospital, residential care home, voluntary home or nursing home or relating to any person who is or has been subject to guardianship under this Order*. [Article 86 (3)(c)]

Powers

The RQIA's powers include:

a) *To issue improvement notices to persons registered under Part III of the 2003 order or on the HSC Board or on an HSC Trust or special agency if the Authority believes that that person, Board, Trust or agency is failing to comply with any statement of minimum standards under Article 38*. [Article 39].

b) *To require information and powers of entry and inspection relating to Boards and HSC Trusts, etc. The RQIA may at any time require the HSC Board, HSC Trust or special agency or service provider to provide it with any information which it considers necessary or expedient to have for the purposes of its functions*. [Part VI of the 2003 Order (Articles 40 & 41)].

c) *Subject to any directions given by the Department, the RQIA may do anything which appears to it to be necessary or expedient for the purpose of, or in connection, with the exercise of its functions*. [Article 3 & Schedule 1, paragraph 2 of the 2003 Order].

d) The RQIA may recommend that the Department take special measures in relation to the body or service provider in question with a view to improving the health and social care for which it is responsible or the way the body, service provider or other person or his practice is being run.

Additional duties of the RQIA

Additional duties of the RQIA, following transfer of the functions of the Mental Health Commission, under Part VI of the 1986 Order [as amended by the Health and Social Care (Reform) Act (Northern Ireland) 2009]: -

i) *To make inquiry into any case where it appears to the RQIA that there may be ill-treatment, deficiency in care or treatment, or improper detention in hospital or reception into guardianship of any patient, or where the property of any patient may, by reason of his mental disorder, be exposed to loss or damage.* [Article 86 (2) (a)].

j) As often as the RQIA thinks appropriate to visit and interview in private patients who a reliable to be detained in hospital under this Order. [Article 86 (2) (b)].

k) To bring to the attention of the Department, the Secretary of State, the HSC Board, an HSC Trust or the person carrying on a private hospital, residential care home, voluntary home or nursing home the facts of any case in which in the opinion of the RQIA it is desirable for the Department, the Secretary of State, the HSC Board, the HSC trust or that person to exercise any of their functions to secure the welfare of any patient by:

i. preventing his ill-treatment;
ii. remedying any deficiency in his care or treatment;
iii. terminating his improper detention in hospital or reception into guardianship; or
iv. *preventing or redressing loss or damage to his property*; [Article 86 (2) (c)]

l) *To advise the Department, the Secretary of State, the HSC Board, an HSC Trust or anybody established under a statutory provision on any matter arising out of this Order which has been referred to the RQIA by the Department, the Secretary of State, the HSC Board, the HSC trust or the body, as the case may be*. [Article 86 (2) (d)].

m) *To bring to the attention of the Department, the Secretary of State, the HSC Board, an HSC Trust or any other body or person any matter concerning the welfare of patients which the RQIA considers ought to be brought to their attention*. [Article 86 (2)(e)].

n) *Where it thinks fit, refer to the Review Tribunal the case of any patient who is liable to be detained in hospital or subject to guardianship under this Order*. [Article 86 (3) (a)].

o) *At any reasonable time, visit, interview and medically examine in private any patient in a hospital, private hospital, residential care home, voluntary home or nursing home or any person subject to guardianship under this Order*. [Article 86 (3) (b)].

p) *Require the production of and inspect any records relating to the detention or treatment of any person who is or has been a patient in a hospital, private hospital, residential care home, voluntary home or nursing home or relating to any person who is or has been subject to guardianship under this Order*. [Article 86 (3)(c)]

Overview of the Order 2003.

The Order[1] is in six Parts:

Part I (Articles 1 - 2) provides for the title and commencement and provides for the interpretation of certain terms and references;

Part II (Articles 3 - 7) provides for the establishment of the Regulation and Improvement Authority and sets out its general responsibility relating to the monitoring of the quality of health and care services;

Part III (Articles 8 - 33) makes provision for the regulatory procedures to be followed by the Regulation and Improvement Authority;

Part IV (Articles 34 - 35) introduces the statutory duty of quality and the responsibilities of the new Authority relating to services delivered by HSS Boards, HSS Trusts and special agencies;

Part V (Articles 36 - 37) sets out the functions of the new Authority relating to Boards and Trusts adoption and fostering services as well as the delivery of their functions regarding the regulation of day care and childminding for children aged under 12; not relevant for the Review;

Part VI (Articles 38 - 44) sets out the powers of inspection and review of the new Authority. It confers power on the Department to introduce minimum standards applicable to regulated and other services. It also covers the concept of improvement notices linked to minimum standards. Part VI also sets out the powers of a Tribunal with the role of hearing appeals against the decisions of the new Authority.; and

Part VI (Articles 45 - 50) deal with various miscellaneous provisions.

Schedules to the Order. There are 5 Schedules to the Order, and these are set out below:

Schedule 1 - The Northern Ireland Health and Personal Social Services Regulation and Improvement Authority. Schedule 2 - The Care Tribunal. Schedule 3 - Transitional Provisions and Savings. Schedule 4 - Amendments. Schedule 5 - Repeals.

PART II- ARTICLE 3 - THE REGULATION AND IMPROVEMENT AUTHORITY. Article 3 establishes the Regulation and Improvement Authority. Schedule 1 sets out detailed provisions regarding the Regulation and Improvement Authority.

ARTICLE 4 - GENERAL DUTIES IN RELATION TO PROVISION OF SERVICES. Article 4 specifies the remit of the Regulation and Improvement Authority regarding regulated services and regarding the HPSS and its general duties regarding quality. Paragraph (1) links the main role of the Regulation and Improvement Authority to services regulated under Part III and to services provided by HSS Boards, HSS Trusts and special agencies. Paragraph (2) sets out the Regulation and Improvement Authority's main functions of keeping the Department informed

[1] For clarity not all parts of the legislation are set out, as the Review Team focussed on the relevant provisions for Care Homes.

about the availability and quality of services. This includes reporting on trends in the provision of long-term health and care services. The Authority's other main function is of encouraging improvement in the quality of these services. Article 38 (check Article 38) suggests it will do this by, for example, disseminating examples of good practice and giving advice to service providers on how to meet minimum standards, the requirements of clinical and social care governance guidelines and the requirements arising from any other standards, guidance or guidelines which the Department may endorse as applying to the HPSS bodies and regulated services.

PART III- **ARTICLE 8**. Article 8 groups all the regulated services as either establishments or agencies. Establishments are places at which services are delivered. Agencies are organisations which deliver services at different locations. Throughout the Order this enables various articles dealing with regulation to refer to "establishments" and "agencies" and thereby apply to all the services. This article also gives the Department powers to prescribe additional establishments and agencies.

ARTICLE 9 - CHILDREN'S HOMES. This Article is not relevant for the work of the Review.

ARTICLE 10 - RESIDENTIAL CARE HOMES. Article 10 defines the various types of residential care homes which are to be regulated as providing board and personal care. This definition follows on from the definition in Part II of the Registered Homes (NI) Order 1992 except that some exceptions e.g. Trust homes and small homes were no longer exempted. Paragraph (3) defines disablement and personal care. "Personal care" may include, for instance, assistance with washing, bathing, toileting, dressing and eating for people who are unable to do these things without help. This means that an establishment is not defined as a residential care home unless that type of assistance is provided where required.

ARTICLE 11 - NURSING HOMES. Article 11 defines nursing homes. This definition follows on from the definition in Part III of the Registered Homes (NI) Order 1992 except that there are some exemptions.

ARTICLE 12 - REQUIREMENT TO REGISTER. Paragraph (1) provides that any person who carries on or manages an establishment or agency of any description must be registered, and it is an offence to carry on or manage such an establishment without being registered. The principle is that each establishment or agency should have a registered owner or proprietor (person who 'carries on' the business). If the person who carries on the business is not in day-to-day control of it, it is intended that the regulations will require the appointment of a manager who must also be registered by the Regulation and Improvement Authority (set out in Article 23). Paragraphs (4) and (5) relate to offences under the legislation.

ARTICLE 15 - CANCELLATION OF REGISTRATION. Relevant offences for the purposes of Article 15 include offences under legislation, such as the Registered Homes (NI) Order 1992, which is being repealed or amended by this Order. This allows for the continued possibility that offences which occurred prior to the commencement of the Order may not come to light or may not be dealt with until a date after the Order came into effect and previous legislation is

repealed or amended. The other offences relevant to this Part are set out in articles 24 to 28 and in article 42. There are other offences relating to adoption, children and mental health as well as a range of other matters. Cancellation of registration would not normally be the first step in a formal enforcement action. It is more likely to be used where other actions have failed to ensure compliance by the establishment or agency. If a registered person is convicted of a relevant offence, such as breaching a condition of registration (an offence under Article 24), and still fails to remedy the breach, the Regulation and Improvement Authority will be able to consider cancellation of the person's registration.

ARTICLE 16 - APPLICATIONS BY REGISTERED PERSONS. Paragraph (1) enables the registered person to apply for a change to conditions of registration (for example, to change the number of people accommodated in the home) or to apply voluntarily for the cancellation of registration, for example, if there are plans to close or sell the business. Paragraph (2) prevents a person voluntarily cancelling his registration if the Regulation and Improvement Authority has given notice of intention to, or decided to, cancel registration. Paragraph (3) enables the Department to make regulations specifying the particulars to accompany an application for registration. Paragraph (4) provides that if the Regulation and Improvement Authority grants the application it must give notice in writing and a new certificate of registration is provided for.

ARTICLE 17 - REGULATIONS ABOUT REGISTRATION. Article 17 provides for regulation-making powers with respect to registration. Regulations covering applications for registration (paragraph (1)(a)) will deal with matters such as the information that should be provided in the application. Regulations made under paragraph (1)(b) may require certificates of registration to include, for example, the conditions of registration for that person in respect of that establishment or agency e.g. the categories of person which a home may accommodate.

Paragraph (2) concerns fostering and voluntary adoption agencies and are not relevant for the purposes of the Review. Paragraphs (3) and (4) enable regulations to be made requiring registered persons to pay an annual fee and level and structuring of fees to be dealt with.

ARTICLE 18 - NOTICE OF PROPOSALS. This Article provides for the Regulation and Improvement Authority to give notice of decisions it intends to take ("notice of proposal") with respect to applications for registration, cancellation of registration or any change to the conditions of registration. Notice must be given to the applicant or registered person and must set out the reasons (Paragraph (6)). For example, in the case of a person applying for registration for the first time, the notice of proposal will state whether the Regulation and Improvement Authority proposes to register them, and if so, the conditions subject to which they propose to grant the application. Article 18 does not apply where the Regulation and Improvement Authority decides to grant an application for registration unconditionally, or subject to agreed conditions.

ARTICLE 22 - APPEALS TO THE CARE TRIBUNAL. Article 22 provides for an appeal against a decision of the Regulation and Improvement Authority under Part III. The appeal is to a new "Care Tribunal" established under the Order (Schedule 2). This Tribunal replaces the Registered Homes Tribunals which were established under the Registered Homes Order. Paragraphs (3), (4) and (5) set out the powers and jurisdiction of the Tribunal hearing appeals.

ARTICLE 23 - REGULATIONS RELATING TO ESTABLISHMENTS AND AGENCIES. This Article provides for regulation-making powers which cover the management, staff, premises and conduct of establishments and agencies (other than voluntary adoption agencies). It also provides for regulations to be made regarding the health and welfare of service users.

PART IV. **ARTICLE 34 – DUTY OF QUALITY.** Article 34 introduced a statutory duty of quality which applies to Boards and Trusts relating to the services they provide (paragraph (1)) including arrangements relating to the environment in which health and care services are provided. The "Duty of Quality" places a statutory requirement on all HPSS providers to put, and keep in place, arrangements for improving and monitoring the quality of health and social care services that they provide directly to individuals. That is, they must establish and sustain a system of clinical and social care governance.

PART IV. ARTICLE 35 – ROLE OF THE REGULATION AND IMPROVEMENT AUTHORITY

Certain functions of the RQIA are set out in Article 35 of the Order:

a) *Conducting reviews of, and making reports on, arrangements by statutory bodies for the purpose of monitoring and improving the quality of the health and personal social services for which they have responsibility;*
b) *Carrying out investigations into, and making reports on, the management, provision or quality of the health and personal social services for which statutory bodies have responsibility;*
c) *Conducting reviews of, and making reports on, the management, provision or quality of, or access to or availability of, particular types of health and personal social services for which statutory bodies or service providers have responsibility;*
d) *Carrying out inspections of statutory bodies and service providers, and persons who provide or are to provide services, for which such bodies or providers have responsibility, and making reports on the inspections; and*
e) *Such functions as may be prescribed relating to the management, provision or quality of, or access to or availability of services for which prescribed statutory bodies or prescribed service providers have responsibility.*

PART V. **ARTICLE 36 - PROVISION OF INFORMATION & ARTICLE 37 - ANNUAL RETURNS.** The provisions at Article 36 and 37 will require HSS Boards and Trusts to provide information and annual returns to the Regulation and Improvement Authority covering the way in which they exercise their functions and responsibilities regarding delivering fostering and adoption services. This is not relevant to the Review.

PART VI. **ARTICLE 38 - STATEMENTS OF MINIMUM STANDARDS**. Article 38 enables the Department to issue minimum standards for Northern Ireland applicable to all services including regulated services (paragraph (1)). These minimum standards are essential to the arrangements for regulating and inspecting these services. The Department established a Standards and Guidelines Unit which has a key role in the development and dissemination of standards and guidelines both for regulated and non-regulated services. The Unit has led the work of developing many standards and guidelines, some of the work has been undertaken by arrangement with existing standards and guidelines setting bodies. Any breach of these standards is not necessarily a breach of regulatory requirements, the standards are considered when determining whether a breach of the regulations has occurred. The Care Standards (insert citation) are dated x date and were issued on x date. Different services have different sets of regulations and standards which are appropriate to the type of service. Standards are also developed to apply to non-regulated HPSS services.

ARTICLE 39 - IMPROVEMENT NOTICES. Article 39 applies to all services at Part III, and all HPSS bodies in respect of any service for which the Department issues a statement of minimum standards. The Authority can issue an improvement notice to an establishment, agency or HPSS body which the Regulation and Improvement Authority judges is failing to meet a minimum standard. As part of this improvement notice the Regulation and Improvement Authority can specify what improvements it considers necessary (paragraph (2)(b)).

ARTICLE 41 – POWER TO REQUIRE INFORMATION FROM ESTABLISHMENTS AND AGENCIES AND POWER OF ENTRY AND INSPECTION. Article 41 confers powers of entry and inspection as well as powers to require a person who carries on or manages an establishment or agency to provide it with any information relating to the establishment or agency which the Regulation and Improvement Authority considers it necessary or expedient to have for the purposes of its functions. This part of the legislation sets out detailed provisions for interviews, inspection and document disclosure.

ARTICLE 44 - THE CARE TRIBUNAL. This Article along with Schedule 2 sets out provisions for the right of appeal to a tribunal. Under Article 22 there is a right of appeal against decisions by the Regulation and Improvement Authority, in respect of registration, (for example, a decision not to register an establishment or agency or to remove it from the register or to impose conditions on registration). Such decisions could affect the agency or establishment's ability to operate as a profitable business.

The Tribunal replaced Registered Homes Tribunals which were set up by the Registered Homes (Northern Ireland) Order 1992 and renamed by section 15 of the Health and Personal Social Services Act (Northern Ireland) 2001 as Social Care Tribunals. The Tribunal is now known as the Care Tribunal reflecting the wider range of services for which a tribunal panel may be required to hear an appeal. The Department has the power to make regulations covering the work of the Tribunal (paragraph (3)). Under paragraph (5) it is an offence to fail to co-operate with the Tribunal. Appeals against the findings of the Tribunal may be made to the High Court on a point of law (paragraph (6)). Schedule 2 sets out provisions for

appointments to the Tribunal and to individual panels. These are like the existing provisions covering Registered Homes Tribunals. A panel of persons who may serve as chairmen of the Care Tribunal will be appointed by the Lord Chancellor. The remaining provisions of Schedule 2 cover staff support to the Tribunal as well as remuneration, expenses and allowances payable to the tribunal members.

ARTICLES 45 - 47. During the consultation period, officials within the Department identified three changes to legislation, each of which was required in order to address outstanding issues for the HPSS. These changes are included within this legislation: Article 36 (1) and (2) of the Health and Personal Social Services (Northern Ireland) Order 1972, empowers Trusts to make care home placements only in accommodation registered under the Registered Homes Order (NI) 1992. This had the unintentional effect of preventing Trusts placing people in residential care or nursing homes located in other parts of the UK. The amendment to the draft Order (Article 45) enabled the Department to decide, through regulation, for HSS Trusts to place persons from NI into residential homes in England, Scotland, Wales, the Channel Islands and the Isle of Man. This brought the position in NI into line with the rest of the UK.

An amendment to the HPSS (NI) Act 2001 giving the NI Social Care Council additional powers so that universities/Trusts etc wishing to offer social work education and training 'programmes' would need to meet the requirements of the Council. The Council can include a requirement for partnership and set standards such as that personal tutors should be qualified social workers (Article 46). This amendment will give effect to the original intention which lay behind the HPSS 2001 Act and was widely consulted on receiving full endorsement from all interests. It has allowed improvements to social work training to operate more in line with other parts of the UK. There were some other amendments which also brought the arrangements in NI in line with those in the UK about the provision of drugs and medicines.

There are several related pieces of legislation and standards documents that the Review Team have analysed and considered. Notably the Nursing Homes Regulations (Northern Ireland) 2005 and the Residential Care Homes Regulations (Northern Ireland) 2005, The Regulation and Improvement Authority (Registration) Regulations (Northern Ireland) 2005 (“Registration Regulations”) Residential Care Homes Minimum Standards 2011, DH standards relating to the fitness of new premises and extensions.

NIPSO

Public Services Ombudsman Act (Northern Ireland) 2016

The Public Services Ombudsman Act (Northern Ireland) 2016 (the Act), received Royal Assent on 19 February 2016.

PART 1 of the Act establishes the office of the Northern Ireland Public Services Ombudsman ('the NIPSO') and sets out how it is constituted. **Section 1** provides for the office of Ombudsman. **Schedule 1** sets out the administrative details about the NIPSO and provides that the NIPSO is to be a corporation sole.[2]

The main function of the NIPSO is to investigate alleged maladministration in government, public and quasi-public bodies (these are collectively referred to as listed authorities and the full list of them is included). **Section 2** states that the NIPSO is independent of government. There are some exceptions to this, for example the Assembly Commission sets the NIPSO salary and other terms and conditions; the Assembly may request that the NIPSO be removed from office; and the NIPSO is accountable for his or her budget. **Section 3** states that the Assembly and the Assembly Commission are responsible for determining who is nominated for appointment as the NIPSO. The formal appointment is by Her Majesty. Appointment is for a single seven-year term. **Schedule 1** sets out how the NIPSO may leave office. **Section 4** abolishes the offices of the Assembly Ombudsman for Northern Ireland and the Northern Ireland Commissioner for Complaints, those offices were regulated by the Ombudsman (Northern Ireland) Order 1996 and the Commissioner for Complaints (Northern Ireland) Order 1996. Both those Orders were repealed by this Act. **Schedule 2** sets out transfer arrangements.

PART 2 deals with investigations. The main power of the NIPSO is to investigate listed authorities. Part 2 sets out how this power is to be used. The subject matter which can be investigated and the ways in which investigations must be conducted are specified. In **Section 5** it states that the key investigatory power is the power to investigate a complaint made by a member of the public. **Section 5** is a framework section. It sets out the key criteria for the exercise of this power and points to the other sections where the details on those criteria may be found. The key criteria are:

- The complaint is made by a member of the public
- The complaint relates to a listed authority
- The complaint must be about maladministration or injustice consequent on the exercise of professional judgement in health and social care
- The correct procedure has been followed

The person making the complaint is referred to as the "person aggrieved." **Section 6** sets out the Power to investigate complaints referred by a listed authority. The NIPSO can also investigate a complaint referred by a listed authority. **Section 6** is also a framework section,

[2] An individual person who represents an official position which has a single, separate legal entity

setting out the criteria and pointing to where the details on those criteria may be found. The key criteria are:

- The complaint made by the person aggrieved to a listed authority
- The listed authority is not able to resolve the complaint
- The complaint is about maladministration or injustice consequent on the exercise of professional judgement in health and social care
- The correct procedure has been followed.

Section 7 states that other people can act on behalf of the person aggrieved (for example where the person aggrieved has authorised this, or the person aggrieved cannot act). In some cases, the NIPSO will need to first confirm that the person is suitable to act on behalf of the person aggrieved.

Section 8 this Section deals with another key investigatory power – the power for the NIPSO to launch an investigation without waiting for a complaint from a person aggrieved. This was a new power which did not exist previously. The criteria are similar to the criteria for ordinary investigations. The key difference is that the NIPSO can only launch an own initiative investigation where there is a reasonable suspicion of systemic maladministration or systemic injustice (consequent on the exercise of professional judgement in health and social care). **Section 9** creates a requirement for criteria for own initiative investigations. The NIPSO must establish, and have regard to, further criteria for when to launch an own initiative investigation and publish findings. **Section 10** states that the NIPSO has the flexibility to use alternative methods of resolving complaints made about listed authorities. In **Section 11,** there is a summary of some of the purposes of an investigation. These are to check if the complaint was justified and how it can be resolved. **Section 12** details listed authorities. A body is a listed authority if it is listed in **Schedule 3.** This list can be updated, and a body can only be added to the list if it has a public or governmental dimension. **Section 13** makes provision for listed authorities to be able to have actions recognised by others acting on their behalf. The NIPSO can also investigate a failure by a listed authority to act. **Section 14** sets out the standard jurisdiction of the NIPSO as investigating alleged maladministration through action taken in the exercise of administrative functions by listed authorities. There are some specialised cases where the jurisdiction is slightly different. **Sections 15,16 and 17** extends the NIPSO powers so it can also investigate the merits of a body's decision to the extent that it was taken in consequence of the exercise of professional judgement. This can only be done in the health and social care field, in relation to three specific types of bodies:

- health and social care bodies (as defined in **Section 59**),
- general health care providers, and
- independent providers of health and social care.

Section 18 deals with powers in the university sector; **Section 19** covers tribunals; and **Sections 20, 21, 22,** deal with exclusions where the NIPSO does not have jurisdiction. **Section 23** reiterates that the prime function of the NIPSO is to investigate maladministration, except in the cases where the investigation concerns professional judgement. There is no definition

of maladministration in the Act. **Sections 24, 25, 26, 27, 28,** set out the procedure which must be followed for a complaint to be made to the NIPSO. The person aggrieved must first make the complaint to the listed authority and give the authority a chance to resolve the complaint. The NIPSO has discretion to waive this requirement. The listed authority must tell the person aggrieved when they have exhausted the complaints handling procedure and must also tell the person aggrieved that it is possible to refer the complaint to the NIPSO. It is for the NIPSO to determine the way in which complaints are to be submitted. For example, the NIPSO could allow complaints to be made in writing, by email or online. This could include a special procedure for allowing oral complaints in special circumstances as long as these are subsequently reduced to writing.

The ordinary time limit for making a complaint to the NIPSO is six months from the day that the complaints handling procedure has been exhausted. If the NIPSO has decided to accept a complaint which hasn't exhausted the internal complaints handling procedure, the time limit is 12 months from the day that the person aggrieved first became aware of the problem. **Section 24** states that the complaints handling procedure must be exhausted. **Section 27** sets out how that is done. Normally a complaints handling procedure is exhausted when the listed authority makes a final decision on a complaint. **Section 28** sets out the time limit for complaints referred to the NIPSO by a listed authority. The NIPSO may waive these time limits if there are special circumstances which make it proper to do so.

Section 29 deals with the procedure for own initiative investigations, which is quite different from that for other investigations. The NIPSO must send an investigation proposal to the listed authority. The proposal must state how the criteria for an own initiative investigation have been satisfied. **Section 30** sets out how the NIPSO must carry out investigations**.** This is complemented by **Section 31** where it is clear that the NIPSO is entitled to request documents and seek assistance from the persons being investigated. The NIPSO has the power to compel people to give evidence or provide documents. **Section 32** states that the normal rules on confidential information and legal privilege do not apply for the purposes of the NIPSO investigating a listed authority. Normally, a listed authority could refuse to disclose this information. However, the NIPSO can insist on seeing it in the course of an investigation. There are safeguards for this in the Act. Under **Section 47,** information subject to legal privilege cannot be included in a report and under **Section 56,** this information cannot be used in court proceedings. **Sections 49 and 50** contain further provision on disclosure of information obtained by the NIPSO in the course of an investigation. **Section 33** deals with obstruction and contempt. It is an offence to obstruct the NIPSO in course of their work. This is treated as the equivalent to contempt of court.

Part 3 establishes the NIPSO as a complaints standards authority modelled on the provisions introduced for the Scottish Ombudsman in the Public Services Reform (Scotland) Act 2010. **Sections 34 to 42** introduce provision for the NIPSO to establish principles of complaints handling and issue model complaints handling procedures with which listed authorities' procedures must comply. **Section 34** defines a "*complaints handling procedure"*

for the purposes of the Act as the procedure of a listed authority for examining complaints in respect of matters which the Ombudsman may investigate. **Section 35** sets out the requirements for a Statement of Principles and the approval and publication process. Under **Section 36,** a listed authority must have a complaints handling procedure which complies with the statement of principles. **Section 37** states that the NIPSO may publish model complaints handling procedures (model CHPs) which comply with the statement of principles after consultation with such listed authorities and others, as the NIPSO thinks fit. Any revisions must follow a similar process. **Section 38** sets an obligation to comply, where the NIPSO specifies a listed authority to which a model CHP is relevant then the authority, when notified of this, must ensure that its procedure complies with the model CHP and send a description of its procedure to the NIPSO within six months. Under **Section 39**, the NIPSO may make a declaration that a procedure does not comply with a specified model CHP or with the statement of principles. The NIPSO must give reasons and specify required modifications. A listed authority must re-submit its procedure within two months, having taken account of the modifications. Under **Section 40**, A listed authority must submit a copy of its complaints handling procedure to the NIPSO within three months of the NIPSO requesting it and such additional information as the NIPSO requests. **Section 41** provides that the duties in in **Sections 36 and 38** do not apply where this would be inconsistent with any other statutory provision or where the listed authority lacks the necessary powers to ensure compliance with the duties. Most powerfully, under **Section 42** the NIPSO must monitor the complaints handling practices of listed authorities and identify trends, promote best practice and encourage cooperation and sharing of best practice. Listed authorities must cooperate with the NIPSO unless they lack the power to do or doing so would be inconsistent with any other statutory provision. **Part 4** contains miscellaneous provisions about the functions of the NIPSO. It obliges the NIPSO to make reports. It gives the NIPSO protection from defamation proceedings for statements made in exercising the functions of the office. It regulates the disclosure of information by the NIPSO. It obliges co-operation with other ombudsmen. It also sets out the power for the NIPSO or a person aggrieved to apply to a court, following an investigation, in order to remedy any maladministration discovered by that investigation. **Sections 43, 44, 45** set out who receives reports of investigations, the NIPSO must send a copy of a report about an investigation to the people concerned with that investigation. The NIPSO may publish a report if it is thought in the public interest to do so. The NIPSO must first consult with any persons that the report is about. If the NIPSO has launched an own initiative investigation, a report on that investigation must be published. Under **Section 46,** the NIPSO has several reporting obligations to the Assembly. Firstly, the NIPSO must lay an annual report before the Assembly on what the NIPSO has done during the year. Secondly, in a case where an injustice has been uncovered by the NIPSO but not remedied, a report on that case can be laid before the Assembly. Thirdly, if an own initiative investigation has been launched, the NIPSO must report on this to the Assembly. Finally, the NIPSO has discretion to make any other reports to the Assembly thought suitable. There is a wide discretion afforded to NIPSO and protections relating to legal privilege and protection from defamation proceedings are

contained in **Sections 47 and 48** where confidentiality provisions appear. In **Sections 49 and 50** there is a power to Ministers and the Secretary of State to prevent the NIPSO disclosing information where it is not in the public interest to do so. It also requires the Secretary of State and the NIPSO to agree a memorandum of understanding concerning the exercise of their functions in relation to this section. This memorandum of understanding could make it easier for the NIPSO and Secretary of State to liaise in advance over material which it would not be in the public interest to disclose. The NIPSO must lay a copy of the agreed memorandum, and any revisions to it, in the Assembly. **Section 51** anticipates a scenario that might arise if the NIPSO is investigating something that another ombudsman is investigating, the NIPSO must consult that other ombudsman. The NIPSO may co-operate with that other ombudsman, for example by disclosing information, working together or jointly publishing a report. This consultation and co-operation only applies where the other ombudsman is one of those referred to in Subsection (4) which lists ombudsmen and commissions from Northern Ireland, Scotland, Wales and England. The NIPSO can also work with the Ombudsman from the Republic of Ireland where the investigation concerns a North / South Implementation body. **Sections 52 and 53** deal with court applications for compensation. **Sections 54 and 55** deal with High Court applications by the Attorney General in cases of systemic maladministration. **Section 57** sets out that the court may rely upon what the NIPSO states in any report as being correct, unless there is some evidence to the contrary.

APPENDIX:C

RQIA Review Programme 2015-18

2015-16	2016-17	2017-18
RQIA Hospital Inspection Programme	RQIA Hospital Inspection Programme	RQIA Hospital Inspection Programme
DHSSPS Commissioned Reviews		
Review of Advocacy Services for Children and Adults	Review of the Use of Restraint and Seclusion	Review of the Northern Ireland Single Assessment Tool: Stage III
Review of HSC Trusts Early Years Services	Review of Access to Plastic Surgery	Review of Renal Services
Additional DHSSPS Commissioned Review	Additional DHSSPS Commissioned Review	Additional DHSSPS Commissioned Review
RQIA Initiated Reviews		
Review of Learning Disability: Community Services: Phase II	Review of the Northern Ireland Ambulance Service	Review of Safeguarding for Adults at Risk in their Own Home
Review of Maternity Services	Review of Out-of-Hours Social Services	Review of Paediatric and Neonatal Surgery
Review of Suicide Prevention Services	Review of the Recommendations from the RQIA Child Protection Review 2011	Review of Autism / Asperger's Services for Young People
Review of Primary Care Arrangements relating to General Practitioner Services	Review of Acute Emergency Mental Health	Review of the Out-of-Hours GP Services
Review of Services for People with Parkinson's Disease	Review of Bereavement Care	Review of the Regional e-Health and Care Strategy
Review of Allied Health Profession Services in the Community	Review of Services for People with Eye Disease	Review of the Complaints Procedure within Health and Social Care
Review of Quality Improvement Systems and Processes	Additional RQIA Review	Additional RQIA Review

The Regulation and Quality Improvement Authority

APPENDIX:D

Feb 16 2018

RQIA- Learning from Dunmurry Manor Care Home

Introduction

1. Dunmurry Manor Care Home (DMCH) is currently subject to an investigation by the Commissioner for Older People for Northern Ireland (COPNI) due to alleged failings in care. In January 2017 RQIA took the opportunity, as a Relevant Authority named in the COPNI investigation, to review the evidence presented to support the initial findings. The RQIA Chief Executive has subsequently written to the Commissioner with comments on the findings and evidence and has requested more information before she can accept or reject the findings for the Authority.

2. However, RQIA is concerned at the themes arising from the initial findings as well as the emerging commentary in the media and on social media and wishes to take the earliest opportunity to identify and act on learning arising from this situation.

3. In parallel, another home in the same group has been subject to closure following enforcement instigated by RQIA in August 2017 and whilst the two are separate entities, it is possible that there will be learning to be gained by cross-referencing the two.

Look Back Exercise

4. Following the review of the COPNI evidence, a group of RQIA staff met with the main objective to determine a timeline of events and identify learning points for RQIA. It quickly became evident in mapping the timeline (including references to evidence cited by COPNI) that there was learning not only for RQIA but across the regulated and wider HSC system. We have identified learning not only in the findings from COPNI, but our processes in responding to these findings. Learning in the first instance has been identified for:
    - RQIA internal policies, procedures and processes;
    - Nursing and residential care homes;
    - HSC trusts; and
    - The HSC system including the Department.

5. The purpose of this paper is to set out the learning points identified thus far and present an initial plan of action to address these points of learning. Many of these have been considered as part of the RQIA transformation and reform strategy- including customer focus and internal processes.

Learning for RQIA

6. In preparing out response to the COPNI findings, several areas of internal learning have been identified. We have agreed several actions as below:

Inward focus

- To increase capability and capacity to make full use of the iConnect system in identifying all actions in respect of regulated services;
- Training and development for staff to better reflect and prepare efficient and effective briefing for the senior team on similar issues in future;
- Effective debrief for staff who have been interviewed and reviewed the evidence as part of this investigation to disseminate learning to other RQIA staff;
- A review of the current duty desk system to make it more consistent and meaningful for callers and inspectors;
- More effective use of intelligence received by RQIA in planning inspections; and
- New focus on the methodology used during an inspection, ensuring we measure what matters.

External focus

- Programme of engagement with service users and their families to determine what would be valuable for them in terms of information and guidance about the quality of care in homes. This will be available in a format accessible and suitable for their needs, including on line video as well as paper;
- Programme of education and awareness raising for the general public as to the role, responsibilities and functions of RQIA in respect of regulated and statutory services; and

- A review of all public-facing resources such as inspection reports to ensure they are accessible and meaningful to all stakeholders .

Learning for Nursing and Residential Care Homes

7. Regarding improvements for service providers we will review our intelligence from notifications and inspection reports to determine a number of key areas where guidance can be developed to improve the quality of care delivered. COPNI has identified a number of these in his findings:
    - Personal care and hygiene;
    - Records management;
    - Continence care;
    - Skin and wound care;
    - Nutrition, hydration and the dining experience ;
    - Moving and handling of residents;
    - Falls management;
    - Laundry and care of personal possessions; and
    - Medicines management.

    We will begin with these issues and expand as necessary. As with resource for service users and families, we will ensure that these are available in formats best suited to the sector's needs. All guidance will be evidence based and signpost to other resources available. We will engage with our colleagues in Trust, PHA, PCC, the voluntary and community sector and providers in co-designing and producing the guidance .

8. We have agreed that there are some areas that require immediate attention. Firstly, it is our experience that it is the presence of a stable, competent manager that sets the tone and culture within a home. This is particularly important in a brand new home, such as Dunmurry Manor, where a newteam is assembled and there is no shared history to rely on. It is our intention therefore to restrict the opening of a brand new home until a registered manager is in place. We are requesting legal advice to ensure this is lawful and it is our intention to advise the sector as soon as possible. We note that

the presence of a long-term manager in Dunmurry Manor ran alongside a period of stability and good quality care in the home. We do not believe these things to be coincidental.

9. We were struck on reviewing the evidence cited by COPNI at the references to the home not having been prepared fully to receive residents. We therefore intend to focus our first piece of new guidance on the managed entry of residents to a new home.

Learning for HSC Trusts

10. The Chief Executive has written to Trust Chief Executives and the Chief Social Worker in the Department to request a meeting to discuss a number of issues arising from our review of the COPNI evidence. These include:
    - Implementation of the 2015 Adult Safeguarding policy;
    - Sharing intelligence between agencies to ensure everyone is aware of issues of concern;
    - Developing a protocol to ensure that RQIA staff attend safeguarding meetings where significant issues have been identified or escalated in a service;
    - A more consistent approach to care planning and care management between Trusts;
    - The use of the commissioning contract as a vehicle to deliver the statutory duty of quality in care homes; and
    - The appropriateness of interventions such as 15-minute observations to manage behaviour and the unintended consequences of same.

11. We hope to establish a regular forum for such issues and whilst we acknowledge that it is not for RQIA to lead on many of them; we are able, as a regional quality improvement body to facilitate such work. In doing so we hope to provide evidence of successful co-working and communication between all those with an interest in the quality of care in regulated services.

Learning for HSC System including Department

12. The COPNI findings have also highlighted some issues which require departmental attention. These will be discussed at the regular sponsor branch meetings as well as with the liaison meetings with the Chief Social Worker and Chief Nursing Officer that have been recently reinstated. Matters include:

    - A review of RQIA's legal powers to take action against providers;
    - The potential for RQIA to regulate groups as well as individual providers (akin to the new Welsh model);
    - Expanding our relationship with NISRA to increase our capacity to analyse and interrogate data; and
    - The potential to offer inward and outward secondments or peer development opportunities between RQIA and Trusts to improve understanding of roles, responsibilities and processes.

13. A summary of plans is included at Annex A. Where necessary project teams will be formed to manage each issue. The transformation manager will oversee the programme on the authority of the Chief Executive. Updates will be provided to EMT and the Board on a regular basis.

Theme	Improvement Project	Interfaces With	RQIA Key Personnel	Indicators of Success	Timescale for Completion
RQIA Learning - internal	Capability and capacity in use of iConnect	RQIA restructure; Information Review; Improved use of intelligence	Head of Business Support Unit; Information team; NISRA secondee	Measurable improvement in the capacity of RQIA teams to use iConnect to its full potential	September 2018
	Training and development in preparing briefing for senior staff	RQIA restructure; Transformation and Reform strategic direction people stream); Capability and capacity in use of iConnect.	Head of Business Support Unit; RQIA EMT; Departmental secondees.	Number of staff trained; Use of new skills in preparation of papers in other high profile cases.	September 2018
	Debrief and shared learning in giving and reviewing evidence in investigations .	Transformation and Reform strategic direction (people and leadership	RQIA EMT; RQIA staff involved in giving and reviewing	Number of staff attending learning sessions.	June 2018

		streams).	evidence.		
	Review of duty desk arrangements	Transformation and Reform strategic direction customer focus stream); RQIA restructure; Capability & capacity in use of iConnect.	Head of Business Support Unit; RQIA EMT.	System to audit and monitor information given via duty desk. Increased resource in inspection teams.	End March 2018 for review. New system in place by July 2018
	Improved use of intelligence	Transformation and Reform strategic direction (measurement stream); RQIA restructure; Capability & capacity in use of iConnect; Fees and frequencies	Head of Business Support Unit; RQIA information team; NISRA secondee; RQIA EMT	Key intelligence indicators developed and evaluated	Indicators developed by end March 2018; evaluated by end March 2019.

		regulations; Inspection methodology.			
	Review of inspection methodology	Transformation and Reform strategic direction (customer focus; people; measurement workstreams); Fees and frequencies regulations; Improved use of intelligence; Capability and capacity of iConnect; Engagement with service users and providers.	RQIA EMT; UU consultant; QUB researchers; extant RQIA project team	Check project measures of success	Check project timescales
RQIA External	Engagement with	Transformation and	Head of Business	Interest and	Initiative launched

Focus	service users and families	Reform strategic direction (customer focus workstream); RQIA inspection methodology	Support Unit; RQIA EMT; Communications team; Complaints and representations manager; engagement person (title??).	attendance at events co-produced with stakeholders to give advice and information about living in a care home. Feedback from participants.	by end March 2018; two/three events held as per demand by December 2019; evaluation complete by March 2019
	Awareness raising with general public	Transformation and Reform strategic direction (customer focus workstream)	Head of Business Support Unit; RQIA EMT; Communications team.	Record increase in baseline awareness as measured by Household Survey	July 2019
	Review of public facing resources	Transformation and Reform strategic direction (customer focus workstream); Inspection	Head of Business Support Unit; RQIA EMT; Communications team	Establish baseline satisfaction with focus groups/survey;	Establish baseline July 2018; test prototype re-design September 2018; refine products and

		methodology		record improvement after review	implement redesign December 2018; evaluate by March 2019.
Care Homes	New process for managers of newly-opened homes	Transformation and reform strategic direction (customer focus and measurement workstreams)	Head of Business Support Unit; RQIA registration team	Arrangements agreed and rolled out	End February 2018
	Guidance on the managed entry of residents to new homes	Transformation and reform strategic direction (customer focus and measurement workstreams); Inspection methodology	Head of Business Support Unit; RQIA registration team; RQIA inspection teams; Communications team	Guidance developed and issued; impact measured with survey data and inspection reports	Guidance developed and issued by end July 2018. Evaluation of impact end March 2019.
	Guidance on care issues	Transformation and reform strategic direction (customer	Head of Business Support Unit, Communications	Guidance developed and issued; impact	Guidance all developed and issued by

		focus and measurement workstreams); engagement with residents and families; Inspection methodology	team; RQIA inspection teams	measured with survey data and inspection reports	September 2018. Evaluation of impact end March 2018
HSC Trusts	Implementation of the 2015 Adult Safeguarding policy				
	Sharing intelligence between agencies	Capability and Capacity in use of iConnect; Transformation Reform strategic direction (measurement and people workstreams)	RQIA EMT; Information team	MOUs/protocols agreed as necessary	Protocols in place by June 2018
	Developing a protocol for RQIA attendance	Inspection methodology	RQIA EMT; Inspection teams	MOUs/protocols agreed as	Protocols in place by June 2018

	at safeguarding meetings			necessary	
TBC following meeting	Care planning and management arrangements				
TBC following meeting	The commissioning contract as a vehicle to deliver the statutory duty of quality in care homes				
TBC following meeting	The appropriateness of interventions such as 15-minute observations to manage behaviour and the unintended consequences of same				
HSC System / Department - TBC following next bi-	A review of RQIA's legal powers	Review of 2003 Order	RQIA EMT		

monthly			
TBC following meeting	The potential for RQIA to regulate groups as well as individual providers (akin to the new Welsh model)	Review of 2003 Order	**RQIA EMT**
TBC	Expanding our relationship with **NISRA**	Information review; Transformation & reform strategic direction (customer focus & measurement workstreams); Capability and capacity in use of iConnect	RQIA EMT; NISRA secondee
TBC	The potential to offer inward and outward secondments or peer development opportunities between	Transformation & reform strategic direction (customer focus; people & leadership	RQIA EMT

j RQIA and Trusts	] workstreams)	

6 MARCH 2020

Theme	Improvement Project	Update March 2020
RQIA Learning – internal	Capability and capacity in use of iConnect	RQIA continue to make more effective use of information sources to provide intelligence about the services it regulates. In the last two years, RQIA has continued to develop and monitor findings from the Risk Adjusted, Dynamic and Responsive (RADaR) model of assessing levels of risk within a service which comprises both an assessment completed as part of the inspection process and ongoing monitoring of intelligence about each service. This intelligence comes from both internal RQIA data sources and external data sources e.g. Northern Ireland Ambulance Service. RQIA have also made information held by the organisation more accessible by developing a suite of reports at service, provider and service type level which can be run at any time for any date parameters which summarise and chart timeline analysis of events such as inspections, enforcement activity and reporting of notifiable events and the impact that these may have on each other and enable easy comparison with previous years.
	Training and development in preparing briefing for senior staff	Training has been delivered in house by the Head of Business Support. Templates have been provided and systems are now in place in BSU to collate, manage and QA all briefings and correspondence from CEx.

	Debrief and shared learning in giving and reviewing evidence in investigations.	Debrief undertaken iro DMCH and learning shared in respect of giving evidence in investigations.
	Review of duty desk arrangements	CEx sponsoring a project to oversee review of duty desk arrangements. Work almost complete with IT supplier to update concerns module to allow for better recording, tracking and monitoring of concerns raised through duty desk.
	Improved use of intelligence	The RADaR model is just one example of our improved use of intelligence. Inspection teams have also introduced safety briefs and huddles to share intelligence and discuss the response to real time issues arising in their services. Complaints and concerns that are sent to the Chief Executive now receive a response from her which is informed by a consideration of the issues raised and further inquiry with service providers if necessary. Meetings with COPNI and the Head of BSU have been re-established to share information and MOUs have been signed with other key stakeholders.
	Review of inspection methodology	A project board has been established to oversee a review of our inspection methodology. This work has slipped due to resource issues.

		However, MDT inspections have been introduced as appropriate in care homes. These have included the services of our MHLD nurses and hygiene inspectors from other teams as well as estates, finance and pharmacy colleagues. We are actively seeking to increase the use of lay inspectors in our inspections and are working with VOYPIV to develop a pathway for care experienced young people to join us in our inspections of children's homes to engage with residents on a meaningful level.
RQIA External Focus	Engagement with service users and families	This is part of the review of inspection methodology. We have renewed our links with the PCC and work with them to direct families and service users who need advocacy or support to deal with issues in the HSC. Senior staff (Directors, Chief Executive and Chair) have met with families of residents in homes where there have been high profile failings (including Owen Mor as well as Runwood Homes) to listen to their concerns and issues and explain the role of RQIA. Chief Executive also initiated a Membership Scheme to engage service users and families.

	Awareness raising with general public	Revised comms and engagement strategy approved by RQIA Board in 2019. Social media refresh including use of animations to show key features of our work. Open House event held in October 2019.
	Review of public facing resources	Review of website underway. Refresh of RQIA branding and resources including posters and have we missed you cards which will include inspector direct contact details.
Care Homes	New process for managers of newly-opened homes	A newly registered home may now not open unless a registered manager is in post.
	Guidance on the managed entry of residents to new homes	This is done as part of the planning with providers of newly-registered homes.
	Guidance on care issues	The NICE Facilitator for NI participated in our 2018 roadshows giving well-received presentations on medicines management in care homes. In 2018 we published resources and guidance on winter planning for care homes in partnership with PHA and NIAS https://www.rqia.org.uk/guidance/guidance-for-service-providers/winter-pressures/

HSC Trusts	Implementation of the 2015 Adult Safeguarding policy	This was overtaken by DoH coordination of response to report and then CPEA review.
	Sharing intelligence between agencies	This has been developed on a Trust by Trust basis through closer engagement with the Director of Assurance.
	Developing a protocol for RQIA attendance at safeguarding meetings	This is now developed.
TBC following meeting	Care planning and management arrangements	This was overtaken by DoH coordination of response to report and then CPEA review.
TBC following meeting	The commissioning contract as a vehicle to deliver the statutory duty of quality in care homes	This was overtaken by DoH coordination of response to report and then CPEA review.
TBC following meeting	The appropriateness of interventions such as 15-minute observations to manage behaviour and the unintended consequences of same	This was overtaken by DoH coordination of response to report and then CPEA review.
HSC System / Department – TBC	A review of RQIA's legal powers	This is on the list of issues to be covered in the review of the 2003 Order.

following next bi-monthly		
TBC following meeting	The potential for RQIA to regulate groups as well as individual providers (akin to the new Welsh model)	This is on the list of issues to be covered in the review of the 2003 Order.
TBC	Expanding our relationship with NISRA	We have expanded capacity of information team to four analysts and an information technician. The newly appointed Head of Information is a statistician and member of the Association of Public Health Analysts.
TBC	The potential to offer inward and outward secondments or peer development opportunities between RQIA and Trusts	Letter to Trusts was issued in 2018/19 and no responses received. Other peer opportunities are available and successful in respect of hospital inspections.

Appendix E: The Role of the Commissioner for Older People for Northern Ireland in the context of Complaints and Regulation.

The Commissioner for Older People Act (Northern Ireland) 2011 (thereafter "The Act") set up the role of the Commissioner with all the powers and duties that are reflective of the roles of other similar commissioners in other jurisdictions.

This not legal advice nor is it a comprehensive account of the entirety of the Commissioner's remit. It sets a context to *Home Truths*, explains how and why families found the Commissioner and details how the statutory framework was engaged in the process. It raises questions about legislative change and future roles for a range of statutory bodies.

The Background and Policy Objectives to the Role of Commissioner

The statistical demographic show that older people represent an ever-growing percentage of the population in Northern Ireland as well as across the United Kingdom. Current estimates at the time of the legislation being enacted suggested that by 2041, 42% of the population would be 50 or over; persons of pensionable age would represent 25% of the population and those aged 75 and over would double to at least 14% of the population.

Given this context, the Executive committed in the Programme for Government [2008-2011] to providing a **'*strong independent voice*'** for older people.

Following that commitment and in order to hear views from older people and their representative groups as to how best to make this happen, in 2007, the First Minister and the deputy First Minister asked an independent external consultancy firm to look at the case for, and the potential roles and responsibilities of, an independent Commissioner for Older People ("the Commissioner"). In May 2008, the final feasibility report*, "Examining the Case for a Commissioner for Older People"* was produced. That report concluded that there was strong support and a need for a Commissioner for Older People.

The Report recommended that legislation be introduced to enable a Commissioner to be appointed with a range of functions, powers and duties.

Ultimately the intended policy outcomes were:

"a society in which older people's voices are heard and respected and their interests and rights are safeguarded and promoted;

the promotion of positive attitudes towards older people and their participation in public life;

a coordinated and holistic approach to matters affecting the lives of older people across all government departments and other public bodies known in the Act as relevant authorities;

the active participation of older people on matters affecting their interests; and

more effective ways for older people to obtain help if their interests have been adversely affected."

Consultation Process

Following the production of the feasibility report, officials consulted with stakeholder organisations to ensure that there was the broadest possible involvement at every stage of the policy development and legislative processes prior to formal public consultation. This culminated in the production of a detailed consultation document including an illustrative draft Bill. A 14-week formal consultation was launched on 1 October 2009 and ran until 7 January 2010. As part of the consultation process, nine public events were held across Northern Ireland in November 2009. Following the formal consultation, officials continued to meet with and brief key stakeholders on the development of the policy.

The majority of responses were in favour of the model suggested, which was drawn up in the light of best practice locally, in neighbouring jurisdictions and internationally. The Commissioner for Older People Act (Northern Ireland) 2011, therefore, implemented the main features of the policy outcomes proposed.

Overview of The Act

The Act has 29 sections and 3 Schedules. Sections 1 and 2 establish the Commissioner for Older People for Northern Ireland and set out the principal aim of the Commissioner.

Sections 3 to 20 set out the functions (duties and powers) of the Commissioner. This includes the provision for three different types of investigation:

- informal general investigations (section 4). These can be used in relation to any of the Commissioner's functions (sections 3-12);
- review of the adequacy and the effectiveness of the law and practice relating to the interests of older people and review of the adequacy and effectiveness of the services provided to older people by relevant authorities (section 3 and Schedule 2). This intermediate type of investigation has set procedures but few associated formal powers;
- formal investigations (sections 13 to 20). These relate specifically to a range of organisations listed or referenced in the Commissioner for Older People Act (Northern Ireland) 2011, as relevant authorities. Formal investigations cover the investigation of complaints (section 8), or the review of arrangements for complaints, inspections, whistleblowing or advocacy, either in relation to individual cases (section 6) or general reviews (section 5). There are set procedures; formal powers of entry; evidence gathering; sanctions to deal with obstruction; and safeguards on the disclosure of information.

Section 21 provides for reviews of the legislation and sections 22-29 deal with matters such as interpretation, commencement and short title of the Commissioner for Older People Act (Northern Ireland) 2011.

Schedule 1 provides for the staffing, funding and other procedural and governance arrangements and Schedule 2 sets out the procedures in relation to investigations under section 3(2) or 3(3). Schedule 3 provides a list of relevant authorities which is additional to those defined in Section 26.

Home Truths and the investigation that preceded it was conducted under Schedule 2 of the Act which allows, at the Commissioner's discretion, for a statutory investigation into specific matters affecting older people. The Commissioner's investigatory powers fall into two categories - formal investigatory powers and non-formal investigatory powers.

The investigation into Dunmurry Manor Care Home was conducted using the non-formal investigatory powers. The Act at Schedule 2(2)-(4) sets out the legal framework under which the investigation was conducted.

Analysis

Section 1 - The Commissioner for Older People for Northern Ireland

This section sets up the office of a Commissioner for Older People for Northern Ireland (the Commissioner) who will be appointed by the First Minister and deputy First Minister jointly. It makes provision for Schedule 1 of the Commissioner for Older People Act (Northern Ireland) 2011, which deals with the establishment and operation of the Commissioner and his or her office. For example, general powers, finances, tenure of office (4 years, renewable once), staffing matters and accountability.

Schedule 1 allows the Commissioner to cooperate with other bodies, whether in the UK or elsewhere, which exercise functions relating to older persons or their interests. The appointment of the Commissioner will be after Ministers have taken account of the views of older people.

The sponsorship of COPNI is with the Department for Communities.

Section 2 - Principal aim of the Commissioner

This is to safeguard and promote the interests of older people. Importantly, in considering what the interests of older people are and in the course of carrying out his or her work as a Commissioner, the Commissioner is required to take account of the United Nations' Principles for Older Persons.

This section makes it clear that, in deciding whether or how to act in relation to a particular older person, the interests of that older person are to be the Commissioner's main consideration. The Commissioner must work within all other relevant laws.

Section 3 - Duties of the Commissioner

This sets out a series of important duties which the Commissioner must perform. These include duties to: -

"Promote an awareness of matters relating to the interests of older people and of the need to safeguard those interests;

Keep under review the adequacy and effectiveness of the law and practice relating to the interests of older people;

Keep under review the adequacy and effectiveness of the services provided to older people by relevant authorities;

Promote the provision of opportunities for, and the elimination of discrimination against, older people;

Encourage best practice in the treatment of older people;

Promote positive attitudes towards older people and encourage participation by older people in public life;

Advise the Assembly, the Secretary of State and a relevant authority on matters concerning the interests of older people (this could cover any issue);

Take reasonable steps to make older people aware of the existence and functions of his/her office and its location;

Take reasonable steps to encourage older people to communicate with the Commissioner and his or her staff and to seek the views of older people; and

Make themselves or their staff available, as far as is practicable, at a place convenient for older people."

Section 4 - General Powers of the Commissioner

This gives the Commissioner powers to do several things to help him/her fulfil the aim of protecting the interests of older people. These powers (including the power in this Section to carry out informal investigations) enable the Commissioner to carry out a wide range of activities. This means the Commissioner will be able to influence the actions of many organisations and individuals that affect older people's lives in many ways.

The general powers include:

"Undertaking, commissioning or providing assistance for research or educational activities concerning the interests of older people;

Issuing guidance on best practice in relation to any matter concerning the interests of older people;

Conducting investigations in relation to any matter;

Compiling, providing and publishing information on matters concerning the interests of older people; and

Making representations or recommendations to anybody or person about any matter concerning the interests of older people."

This section at 4(6) specifically provides for the advocacy powers and role of the Commissioner. It gives the Commissioner the power to carry out a formal investigation in relation to two of his/her duties which are listed in sections 3(2) and 3(3) of the Act. The procedures to be followed when doing this are set out in an Annex to the Act (known as Schedule 2).

Section 5 - General review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities

The Commissioner's powers contained in this section enable him/her to review a range of activities carried out by a group of organisations and individuals that are known in the Act as relevant authorities (see section 26 and Schedule 3). The purpose of these reviews is to enable the Commissioner to discover whether the procedures that these organisations have in place have been effective in promoting and protecting the interests of older people.

However, before the Commissioner can use these powers, he/she must first confirm:

That he/she has good reason to believe that the organisation's procedures are not working properly or are not working at all; and

In the case of inspection arrangements, that there is no other organisation or person that is likely to review the inspection arrangements. This is to avoid the Commissioner reviewing inspection arrangements when there is already an organisation that has the legal power to undertake this and has done so or is planning to do so.

In the case where an organisation does not have appropriate procedures in place at all, the Commissioner can carry out a review to see what the effect of this is on older people.

Section 6 - Review of advocacy, complaint, inspection and whistle-blowing arrangements of relevant authorities in individual cases.

This section is like section 5. Whilst section 5 enables the Commissioner to carry out general reviews of an organisation's procedures as listed in Section 5(1), this particular section gives the Commissioner the power to carry out such reviews whilst specifically looking at the effect of those procedures on a *particular person or at a particular location*. Again, the Commissioner must confirm the two points listed above at section 5 before he/she can act.

Where an organisation does not have these procedures in place, the Commissioner can review what the effect of this is on a particular older person.

Section 7 - Assistance with complaints to relevant authorities

This section gives the Commissioner the power to provide whatever help an individual older person needs, and that includes financial help, to enable the older person to bring a complaint to the organisation or organisations involved (the 'relevant authority'). This includes acting on behalf of an older person both in making the complaint and in any investigation or other proceedings conducted by the organisation or authority following the complaint.

However, in deciding whether to provide assistance to an older person the Commissioner may take account of whether there is another organisation or person likely to support the older person in taking a complaint.

For the purposes of this section alone, the term "relevant authority" also includes the Northern Ireland Office, the Northern Ireland Commissioner for Complaints, the Assembly Ombudsman for Northern Ireland, the Information Commissioner and the Pensions Ombudsman. This will enable the Commissioner to be able to help an older person bring a complaint to these bodies within the remit of their statutory complaint's provisions.

Section 8 - Investigation of complaints against relevant authorities

Sometimes complaints do not get sorted out to the satisfaction of the older person making them. This section gives the Commissioner the power to investigate a complaint made by an older person against one of the organisations known as "relevant authorities".

To make sure that only the most serious cases come to the Commissioner, the Commissioner must be satisfied that the case raises a question of principle.

The Commissioner must check that the complaint is not covered within an existing statutory complaints system. The purpose of the paragraph 8(2)(b) of this section is to avoid duplication of the Commissioner's work with that of other bodies which already possess the responsibility, the expertise and the resources to act on a complaint raised by an older person.

In addition, in relation to the public bodies referred to in the Act as relevant authorities, if the Commissioner believed that such a body did not take action or did not, in a timely manner, adequately investigate a complaint coming under its responsibility, the Commissioner may challenge that organisation by making representations or recommendations as empowered under section 4(6) of the Commissioner for Older People Act (Northern Ireland) 2011. The Commissioner also has the power under sections 5 and 6 of the Act to formally Review the complaint procedures of the organisation. This Review could be focused on an individual older person's case and could be the subject of the Formal Investigatory Powers contained in the Act. If paragraph 8(2) (b), in practice, caused the Commissioner significant difficulties in acting in the interests of older people, then this issue can be raised through the provisions in the Act which enable the Commissioner to carry out reviews of the Act on its adequacy and effectiveness with recommendations for amendments to this legislation if appropriate.

Ministers could move ahead of the review process to address and remedy the problem, if necessary, by an amendment to the Act.

Section 9 - Actions which may be investigated: restrictions and exclusions

This section of the Act provides that the Commissioner is not able to carry out an investigation in a case where the older person involved has a right of appeal, complaint or review to a tribunal set up by law or to a court. The Commissioner can, however, act if it is believed that it is not reasonable to expect the older person to use the right to appeal or complaint or review or to take the case to court.

Another case in which the Commissioner could not carry out an investigation is in cases involving criminal or civil proceedings by any person other than a relevant authority. The Commissioner would not be able to investigate these cases because they will be dealt with by the court.

Finally, the Commissioner would not be able to investigate any cases that a local or public inquiry is investigating or any case where there has been an unreasonable delay in making the complaint.

Section 10 - Power to bring, intervene in or assist in legal proceedings

This section sets out the power of the Commissioner to bring civil proceedings relating to the law or practice relating to the interests of older persons, and to assist in or intervene in any legal proceedings which relate to the interests of older people.

There may be problems that arise for older people in which the law may have been broken. If a case like this were brought to the Commissioner, this section states that the Commissioner must consider the following questions:

does the case involve a question of principle?

are there special circumstances involved?

If the answer to either of these questions is "yes," this section gives the Commissioner the power to take the case to court so that the court can decide the case. This does not apply to cases involving criminal law where there are separate procedures for taking cases.

This section gives the Commissioner the power in any court cases (except for criminal cases) to act as a "friend of the court" (*amicus curiae)*, by giving information to the court on matters affecting older people, for example as an expert witness.

Section 11 - Assistance in relation to legal proceedings

This section sets out the scope of the Commissioner's power to assist an older person in relation to certain legal proceedings, that is proceedings which involve law or practice concerning the interests of older people, where they have brought the case. It gives the Commissioner the power to help an older person in these circumstances. A similar test is applied as in section 10.

The Commissioner must check whether there is another organisation or person who is able and likely to help the older person with the court case. If there is, the Commissioner must not act in the case.

The power of the Commissioner to help an older person involved in a court case could take the form of whatever help the Commissioner thinks is necessary and includes arranging for someone qualified to give legal advice or arranging for a solicitor or barrister to represent an older person.

The Commissioner would be able to recover costs/expenses from the older person as part of the arrangement to provide assistance, if the Commissioner thinks that this is reasonable in the circumstances of the case.

Section 12 – Conciliation of disputes

This section gives the Commissioner the power to commission conciliation services in relation to disputes that may lead to court action. Conciliation services means services provided—

by a person who is not a party to a dispute;

to the parties to the dispute; and

with the aim of enabling the dispute to be settled by agreement and without proceedings.

These services include conciliation and mediation. This provides an alternative and hopefully faster method of resolving disputes than legal proceedings.

Section 13 - Formal investigations

This section gives the Commissioner the power to conduct formal investigations of the actions of those organisations known as relevant authorities (see section 26 and Schedule 3).

These formal investigations differ from the informal or general investigations that the Commissioner has the power to do (see section 4) in relation to any organisation.

The Commissioner has the power to carry out a formal investigation of the following actions of relevant authorities both generally and in relation to cases involving individual persons:

their advocacy arrangements;

their complaints procedures;

the inspection procedures to examine how they manage and treat older people;

their "whistle blowing" arrangements.

The Commissioner has the power to carry out a formal investigation of a complaint made by an older person against a relevant authority (section 8).

Section 13 details the procedures that should be followed when a formal investigation is being carried out. For example, terms of reference of the investigation must be written and sent to the relevant authority involved. Also, the Commissioner must give the relevant authority the opportunity to give its opinion on the investigation and to offer evidence for this.

All formal investigations must be carried out in private (see also section 16). Apart from the procedures set down in this section of the Commissioner for Older People Act (Northern Ireland) 2011 (see also section 14) the Commissioner has the flexibility to carry out the investigation in the way that he/she believes is best.

The Commissioner may obtain the information that he/she needs for the investigation from the people who hold it. The Commissioner is not required to arrange formal meetings at which people can speak and provide evidence.

Because attendance at meetings with the Commissioner can be expensive, the Commissioner is given the power to pay expenses or allowances for the loss of time of a person involved in a formal investigation.

Section 14 - Formal investigations: exclusions

This section prevents the Commissioner from carrying out a formal investigation into a matter in respect of which he or she has previously brought, intervened in, or provided assistance with legal proceedings.

This is to ensure that there is no conflict between the Commissioner's legal and investigatory roles. If the Commissioner, through section 10 acts as *amicus curiae* in a court case, this does not prevent the Commissioner from carrying out a Formal Investigation.

Section 15 - Report on formal investigation

This section sets out more detail on the procedures that should be followed when the Commissioner carries out a formal investigation of the actions of a relevant authority. It states the Commissioner must prepare a report on the investigation and which persons or organisations the Commissioner must send a copy of the report to.

The section contains a confidentiality requirement in that the Commissioner's report must not name individual people or contain any details which might help to identify that person, unless the Commissioner believes that it is necessary to do so.

The Commissioner's report may include recommendations for action to be taken by a relevant authority. The Commissioner must give reasons for the recommendations in the report. In relation to a report following an investigation into how a complaint made by an older person was handled by an authority, the Commissioner may recommend that the relevant authority consider the complaint again. The relevant authority involved in the case must consider the report and decide what action to take on the Commissioner's recommendations.

Section 16 - Further action following report on formal investigation

This section follows on from section 15 and relates to follow-up action which the Commissioner can take after a report on a formal investigation has been published. In cases where the Commissioner has made a report which recommends that a relevant authority take a particular action, the Commissioner is given the power in this section to issue a formal Notice to the organisation involved. It requires the organisation to write back to the Commissioner within three months explaining either what it has done to follow the Commissioner's recommendation or if it has decided not to follow the recommendation, to explain the reasons why.

If the organisation has not followed the Commissioner's recommendation and the Commissioner considers that the reason given is inadequate, the Commissioner can again issue a further Notice to the organisation setting out the inadequacy and requiring the authority to reconsider the matter and reply within one month.

The Commissioner is given the power in this section to publish information on:

the recommendations he/she has made;

how the Commissioner may have followed them up with letters to the organisations involved;

what the organisation did or did not do in response to the Commissioner's letters and/or recommendation(s).

This information will be kept in a register and the Commissioner can arrange for copies of the register to be made available for public inspection in any way he/she believes is appropriate.

Section 17 - Evidence in formal investigations

This section sets out the type of evidence or information which the Commissioner may have access to in order to conduct a formal investigation.

In this section the Commissioner is given the power, when carrying out a formal investigation, to obtain the information he/she needs from the person who holds it. The Commissioner is given powers equivalent to those of the High Court when it comes to interviewing people and requiring documents or other papers to be disclosed and released.

Section 18 - Powers of entry and inspection for purposes of formal investigation

In this section the Commissioner is given the power when carrying out a formal investigation to enter premises at any reasonable time managed by a relevant authority in which an older person lives or is being held, or is receiving for example, care or education. This power may be used in relation to a review of arrangements (sections 5 and 6) or the investigation of a complaint (section 8). The Commissioner can inspect the state of the building, how it is managed and can take copies of important documents (if the Commissioner considers it necessary). The Commissioner can interview in private any older person in the building, who consents to be interviewed, or anyone who works there. The Commissioner does not have the power to enter someone's private home.

Section 19 - Obstruction and contempt in relation to formal investigation

This section provides a sanction against obstruction of the Commissioner as he or she conducts a formal investigation. If anyone, without lawful excuse, impedes the Commissioner in the conduct of the investigation or acts in a way which would otherwise constitute contempt of court. The Commissioner can report the matter to the High Court and it can be dealt with as contempt of court.

Section 20 - Disclosure of information by Commissioner

This section provides for restrictions on the disclosure of information obtained by the Commissioner during a formal investigation. He or she can only disclose such information for:

the purposes of the investigation and the report of an investigation;

any civil proceedings or court proceedings involving a criminal offence;

any enquiry with a view to the taking of proceedings for a criminal offence;

any proceedings related to obstruction of the Commissioner; or for

health and safety reasons of a person at risk.

Section 21 - Review of this Act

This Section provides that three years after the passing of this Act, [The Commissioner for Older People Act (Northern Ireland) 2011] and no earlier than every three years or later than five years after that, the Commissioner must review the workings of this Act and send a report to the First Minister and the deputy First Minister.

Section 22 - Privilege for certain publications

This section provides that any report which the Commissioner is required or permitted to publish is exempt from challenge under the law of defamation.

Section 23 – Application of this Act: relevant authorities with mixed functions

This section provides that for a general health care provider, the relevant authority provisions of the Act apply only to the general health care provided by the provider service.

In relation to an independent provider, the relevant authority provisions of this Act apply only to the service the independent provider was providing (or which it was its function to provide) under arrangements with a health and social care body or a general health care provider.

In relation to any other relevant authority, (except a nursing or residential care home) the relevant authority provisions of this Act apply only to the public functions exercised by the relevant authority.

All nursing and residential care homes, whether in the public, private or voluntary sector are included as relevant authorities for the purposes of the Act.

Section 24 - Application of this Act: matters arising before commencement

This provides for the retrospectivity of the Act; this means that the Commissioner would be able to look at issues which happened before the Act passed into law.

Section 25 - Interpretation: "older person"

This section defines the use of the words "older person" to mean a person aged 60 or over. It proposes that the Commissioner could deal with a matter raised by someone aged 50 or over if it was an issue that raised a question of principle affecting people age 50 or over generally or there were exceptional circumstances.

Further that where an older person has died or is for some reason incapable of representing himself/herself, a representative acting on their behalf should also be able to do anything under this Act that can be done by an older person.

This section provides that the age ranges (60 and over and 50 and over) can be changed by Order.

Section 26 - Interpretation: "relevant authority"

This section defines the term "relevant authority", for the purposes of the Act. It includes any authority which falls within the purview of the Assembly Ombudsman or the Commissioner for Complaints. It includes other organisations which carry out work directly relevant to the lives of older people and which are specifically listed in Schedule 3. This list includes several bodies in the area of health. This Section provides that it is possible for the Office of the First Minister and deputy First Minister to add, modify or remove a body from the list. The Section specifies that any reference in the Act to action taken by a relevant authority relates to action taken regarding Northern Ireland.

Section 27 - Interpretation: general

This section defines terms used throughout the Commissioner for Older People Act (Northern Ireland) 2011. It includes the definition that any reference to older persons' interests in the Act includes their rights.

Section 28 - Commencement

This section provides for the commencement provisions of the Act.

Section 29 - Short title.

This section provides for the short title of the Commissioner for Older People Act (Northern Ireland) 2011.

SCHEDULES TO THE ACT

SCHEDULE 1. THE COMMISSIONER FOR OLDER PEOPLE FOR NORTHERN IRELAND

This Schedule provides for the status, general powers, tenure of office and general staffing and procedural arrangements.

1. Status

This ensures that the Commissioner has an independent legal status distinct from the sponsoring Department. This Schedule permits the post to pass from one Commissioner to the next successor-in-office and allows the delegation of the role of Commissioner and any or all of his/her accompanying functions by the Commissioner to a member of staff within the Commission.

The Commissioner is not regarded as a servant or agent of the Crown and does not enjoy any status, immunity or privilege of the Crown. This status ensures that the Commissioner enjoys equal status with other statutory bodies and Commissions.

2. General powers

This provides the Commissioner with a 'General Power' which allows the Commissioner to do anything related to the Commissioner's functions, unless it is specifically prohibited within this or other legislation. Importantly, the Commissioner is enabled to co-operate with other bodies in the UK and elsewhere. This enables the Commissioner to build relationships, avoid duplication and cooperate well with other bodies in order to provide a strategic approach to addressing those issues of interest to, or affecting, older people. The importance of the Commissioner making every effort to agree memoranda of understanding with relevant and appropriate organisations is set out.

A joined-up approach will ultimately better protect the rights and interests of older people as well as ensuring efficient use of resources.

3. Tenure of office

The term of office for the Commissioner is for four years with the opportunity for reappointment for one further term only. The Commissioner can be removed from office on the grounds of misconduct or incapacity including specifically if the Commissioner has been convicted of a criminal offence, become bankrupt, failed to discharge his/her functions for a continuous period of three months, or become unable or unfit to carry out his/her functions.

4. Salary, etc.

The Commissioner is a full-time salaried appointment. Importantly, there is no compulsory retirement age for the Commissioner. This paragraph makes provision for the payment of compensation, under special circumstances, to a person who no longer holds office as Commissioner.

5. Staff

The Commissioner has the power to employ staff as he/she considers necessary.

6. Exercise of functions of Commissioner

The Commissioner has the power to delegate his/her role of Commissioner and any or all his/her accompanying functions to a member of staff within the Commission.

7. Seal

The Commissioner's signature or that of his/her authorised staff authenticates or forms the 'Seal' of the Commissioner's office on any documentation.

8. Evidence

Any document signed by the Commissioner or that of his/her staff (i.e. with the 'Seal' of the Commissioner's office) will be permissible as documentary evidence in a court of Law/Judicial or administrative proceedings.

9. Property

This allows property, for example, the offices of the Commissioner to be transferred to his/her successor.

10. Funding

The Commissioner's office receives funds through the standard procedures for all non-Departmental public bodies and office holders in Northern Ireland. Annual grants to the Commissioner will form part of the annual budget and the Commissioner is invited to submit a budget bid to the Department for each financial year.

11. Accounts

This paragraph sets out the arrangements for the financial accountability and audit requirements for the Commissioner's office. The Commissioner is required to keep proper accounting records and to prepare an annual financial statement of accounts in accordance with directions and in keeping with Department of Finance guidance.

12. Annual report

To ensure accountability, the Commissioner is required to report back annually to the appointing authority, that is to the First Minister and the deputy First Minister, on how he/she is carrying out the role of Commissioner and on the use of the financial resources at his/her disposal. This report contains details of the steps taken by the Commissioner that year to comply with his or her duties, to make older people aware of his/her functions, the location of the office and how older people can communicate with the Commissioner. An annual report must be laid before the Assembly and sent to the Secretary of State for NI.

13. The Northern Ireland Assembly Disqualification Act 1975 (c. 25)

This paragraph adds the Older People's Commissioner to The Northern Ireland Assembly Disqualification Act (1975), ensuring that the Commissioner and any member of his/her staff (once in post) cannot also hold membership of the Northern Ireland Assembly.

14. The Commissioner for Complaints (Northern Ireland) Order 1996 (NI 7)

This paragraph ensures the Older People's Commissioner is subject to investigation by the Commissioner for Complaints in Northern Ireland. As a result of this, the Commissioner for Older People would be automatically bound by the statutory equality duty set out in section 75 of the Northern Ireland Act 1998, which requires public authorities to have due regard to the need to promote equality of opportunity and good relations. Inclusion in the Commissioner for Complaints Order also brings the Commissioner for Older People under the Commissioner for Public Appointments who will then regulate, monitor and report on the appointment process of the Older People's Commissioner.

15. The Freedom of Information Act 2000

The Older People's Commissioner is added to Schedule 1 of the Freedom of Information Act (2000) and in so is bound by its requirements including the obligation to provide information through a publication scheme and in response to requests made under the general right of access.

SCHEDULE 2. INVESTIGATION UNDER SECTION 4(4)

This Schedule sets out the procedures to be followed when a formal investigation is being carried out in relation to the Commissioner's duties under section 3(2) or 3(3) of the Act. Terms of reference of the investigation must be written and sent to the relevant authority involved. The Commissioner must give the relevant authority the opportunity to give its opinion on the investigation and to offer evidence for this. All formal investigations must be carried out in private.

Apart from the procedures set down in Schedule 2, the Commissioner has the flexibility to carry out the investigation in the way that he/she believes is best. The Commissioner is not required to arrange formal meetings at which people can speak and provide evidence.

Because attendance at meetings with the Commissioner can be expensive, the Commissioner is given the power to pay expenses or allowances for the loss of time of a person involved in a formal investigation.

The section states that the Commissioner must prepare a report on the investigation and it states what persons or organisations the Commissioner must send a copy of the report to. The report must not name individual people unless the Commissioner believes that it is necessary to do so. The Commissioner must give reasons for the recommendations in the report. The relevant authority involved in the case must consider the report and decide what action to take on the Commissioner's recommendations.

In cases where the Commissioner has made a report which recommends that a relevant authority take a particular action, the Commissioner is given the power in this section to issue

a formal Notice to the organisation involved. This section requires the organisation to write back to the Commissioner within three months explaining either what it has done to follow the Commissioner's recommendation or if it has decided not to follow the recommendation, to explain the reasons why.

If the organisation has not followed the Commissioner's recommendation and the Commissioner considers that the reason given is inadequate, the Commissioner can issue a further Notice to the organisation setting out the inadequacy and requiring the authority to reconsider the matter and reply within one month.

The Commissioner is also given the power in this section to publish information on:

- the recommendations he/she has made;
- how the Commissioner may have followed them up with letters to the organisations involved;
- what the organisation did or did not do in response to the Commissioner's letters and/or recommendation(s).

This information will be kept in a register and the Commissioner can arrange for copies of the register to be made available for people's inspection in any way he/she believes is appropriate.

SCHEDULE 3. RELEVANT AUTHORITIES

This Annex to the Act provides a list of organisations which carry out work directly relevant to the lives of older people and so are included as relevant authorities. It includes several bodies working in the area of health care.

ANNEX C – Comments from RQIA to DOH on COPNI Recommendations

Safeguarding and Human Rights

No	COPNI Recommendation	Response to Recommendation	Comment
R1	An Adult Safeguarding Bill for Northern Ireland should be introduced without delay. Older People in Northern Ireland must enjoy the same rights and protections as their counterparts in other parts of the United Kingdom. It remains arguable that a policy based approach may not be Human Rights compatible as it does not guarantee an appropriate level of protection. This was the point made by the reports on the statutory guidance in England and in Wales prior to new legislation coming into force.		
R2	The Safeguarding Bill should clearly define the duties and powers on all statutory, community, voluntary and independent sector representatives working with older people. In addition, under the proposed Adult Safeguarding Bill, there should be a clear duty to report to the HSC Trust when there is reasonable cause to suspect that there is an adult in need of protection. The HSC Trust		

	should then have a statutory duty to make enquiries.		
R3	All staff in care settings, commissioners of care, social care workers, and regulators must receive training on the implications of human rights for their work. Such training must be specific rather than disconnected from more general training. The level of training should vary depending upon the nature of the duties undertaken and refresher courses should be undertaken regularly. Human rights should be an essential component of practitioner dialogue.	**Accepted**	RQIA agrees with this recommendation. Generic human rights training has been provided to staff in the past but we will deliver a bespoke package to our staff in 2018/19 and refreshed on a regular basis. This training will focus specifically on RQIA's responsibilities. We will input to Trust training programmes as necessary. The training programme has already commenced for inspection staff and will be complete by the end of the year. This training will now be mandatory for all RQIA staff.

R4	Practitioners must be trained to report concerns about care and treatment in a human rights context.		RQIA staff already report concerns in a human rights context. This is evidenced through our enforcement procedures and in the reporting of safeguarding issues to Trusts and through the requirements placed on staff via their professional regulators.

R5	Policies and procedures relating to the care of older people should identify how they meet the duty to be compatible with the European Convention on Human Rights.		

R6	The registration and inspection process must ensure that care providers comply with the legal obligations imposed on them in terms of human rights. An important component of the registration and inspection procedures, is to ensure that the human rights of people in care settings are protected and promoted. The Commissioner commends the approach of Care Inspectorate Wales (formerly the Care and Social Services Inspectorate Wales) in mapping individual rights to inspection themes and potential lines of enquiry. (CSSIW, Human Rights, 2017, a copy of which can be found at Appendix 3 of COPNI Report.)	**Accepted**	The Care Standards for Nursing Homes are already prepared on the basis of endorsing, maintaining and facilitating the Human Rights of residents. RQIA aims to adopt this approach in all that we do. In order to ensure that registration and inspection processes maintain the appropriate focus on human rights we will undertake a review of our processes and a mapping exercise as described by December 2018.

R7	The Department or RQIA should produce comprehensive guidance on the potential use of covert and overt CCTV in care homes compliant with human rights and data protection law.		RQIA published guidance on the use of overt CCTV in May 2016. The use of covert CCTV is a policy matter for DoH to resolve - although RQIA would have concerns about its use whilst maintaining the human rights of residents.

Care and Treatment

No	COPNI Recommendation	Response to Recommendation	Comment
R8	HSC Trust Directors of Nursing, as commissioners of care in the independent sector, should assure themselves that care being commissioned for their population is safe and effective and that there are systems to monitor this through the agreed contract between both parties.		
R9	There should be meaningful family involvement in care and treatment plans and decision making at all key milestones. Electronic or written care plans should be available to families on request, including nutritional information.		Standard Four of the Care Standards for Nursing Homes already includes requirements for families to be involved in care plans. This standard also requires the home to ensure that the plan is shared in an accessible format with residents and their families if appropriate. RQIA routinely check compliance with this standard. It must be noted that residents do not always consent to their relatives' involvement in or knowledge of their care and treatment plans and this must be respected in line with their right to a private or family life.
R10	The Commissioner reiterates Recommendation 4 of the Inquiry into Hyponatraemia-related Deaths that, “Trusts should ensure that all healthcare professionals understand what is required and expected of them in relation to reporting of Serious Adverse Incidents (SAIs).”		

R11	The Commissioner reiterates Recommendation 32 from the Inquiry into Hyponatraemia-related Deaths that Failure to report an SAI should be a disciplinary offence.		

R12	Failure to have an initial six week care review meeting should trigger a report in line with SAI procedures.		

R13	The RQIA should pro-actively seek the involvement of relatives and family members as well as explore other routes to getting meaningful information, data and feedback on the lived experience in a care setting.	**Accepted**	RQIA accepts this recommendation and following receipt of the draft findings in February 2018 we have undertaken measures to improve our performance in this area. We had engaged Age NI to undertake a pilot programme of visits to care homes to evaluate the lived experience of residents. However, the care group who had agreed to undertake the pilot has now disengaged due to the publicity surrounding DMCH. RQIA has been unable so far to find a replacement group to undertake the pilot. On 6 June 2018 RQIA launched its membership scheme to encourage members of the public using or with a relative using HSC services to work with us to improve how we involve them in our work. We aim to have our first event in the autumn. RQIA is also reviewing each of its MOUs with other stakeholders to ensure that there is a protocol for information sharing in place.

R14	The movement of residents by relatives to other homes should be viewed as a red flag and feedback should be obtained by the commissioning HSC Trust and the RQIA on the reasons for such moves.		This is not currently an event which is notifiable to RQIA and there are many reasons as to why a resident may move homes.

R15	There should be adequate support and information provided to older people and their families when facing a decision to place a loved one in a care home. Each HSC Trust should allocate a senior health professional to oversee these placements and good practice. This would be greatly helped by the introduction of a Ratings System for care settings		Overall ratings for regulated services is a policy mater for DoH. RQIA commissioned QUB to undertake research on the issue and no evidence was found to support the theory that ratings improved the quality of care. The issue of ratings is a matter for the Department and requires policy direction and/or legislative change

Medicines Management

No	COPNI Recommendation	Response to Recommendation	Comment
R16	Dunmurry Manor should consistently use a Monitored Dosage System for medicines administration which would prevent many of the errors identified in this investigation for the administration of regular medications.		RQIA notes that NICE published a comparison of the advantages and disadvantages of MDS and use of original medication packs and did not find any evidence to suggest MDS is safer. (https:// **www.nice.org.uk/guidance/sc1/evidence/full-ouideline-** pdf-2301173677)
R17	Care must be taken by staff to ensure any medicine changes, when being admitted / discharged from hospital, are communicated to the medical prescriber in order to institute a proper system to identify and amend any errors.		We would note that this is already covered in best practice for medicines management. For that reason we would suggest that all homes are included rather than Runwood/DMCH alone.
R18	Families of residents must have involvement in changes in medication prescribing. Explanation should be provided so that resident and family members understand the reasoning for any change.		We suggest that it is a wider issue than for just Runwood Homes.

R19	Staff should ensure it is clearly documented on each occasion why a resident might not be administered a medication.		Care standards already require these events to be documented. We suggest that this is a wider issue than just for Runwood Homes

R20	A medications audit must be carried out monthly or upon delivery of a bulk order of medication. This must be arranged with a pharmacist. To assist with more effective medicines management, providers of care homes should consider contracting with their community-based pharmacist (for a number of hours each week) to ensure that medicines management is safe and effective. The pharmacist could assist in staff training, identify where there are competency issues in the administration of medications and improve medicines governance within the home.		

R21	The RQIA Pharmacist inspectors need to review all medication errors reported since the previous inspection and review the Regulation 29 reports in the home to ensure steps have been taken to improve practice.		Inspectors already review all notifiable medicines incidents as they are reported. This is not deferred until inspection planning. Monthly quality monitoring reports (referred to here as regulation 29 reports) are reviewed during inspections. Not all medication errors are notifiable to RQIA. If there is a requirement to increase the range of notifiable incidents, this can only be done with the policy direction of DoH.

Environment and Environmental Cleanliness

No	COPNI Recommendation	Response to Recommendation	Comment
R22	It must be a pre-registration requirement for RQIA and a pre-contract requirement for HSC Trusts that all new care homes specialising in dementia care comply with dementia friendly building standards (and that buildings already in place are subject to retrospective "reasonable adjustment" standards).[2] This must form part of periodic inspections to ensure suitability is maintained.		The pre-registration requirements for homes are set out in legislation and standards.
R23	Premises must be one of the areas that RQIA inspectors routinely inspect as an integral part of an integrated inspection with a focus on the condition of residents' rooms.		Premises are already a routine component of RQIA inspections. Care inspectors undertake an inspection of a sample of residents' rooms as well as communal areas.
R24	Runwood must devolve goods and services budgets to a local level for staff to manage.		

R25	The RQIA must review how effective inspections are for periodically covering all of the regional healthcare hygiene and cleanliness standards and exposing gaps that a home may have in relation to these.		The regional healthcare, hygiene and cleanliness standards were designed for hospitals. A nursing home is not a hospital environment and policy direction is therefore required if it is to be treated as such. Infection prevention and control is already a substantive part of care inspections and is covered in the care standards.

R26	Consideration should also be given to expanding these Standards in line with the NHS 'National Specifications for Cleanliness', which emphasise additional issues like the cleaning plan of the home and a specified standard of cleanliness for different parts of the home/different types of equipment.		

R27	The programme of unannounced 'dignity and respect spot checks' should also include assessment of the suitability and state of the environment. In Dunmurry Manor the breaches of key environmental indicators raise the question of whether residents were being treated with appropriate dignity and respect and whether this should have triggered warning signs about Dunmurry Manor at an earlier stage.		

Regulation and Inspection

No	COPNI Recommendation	Response to Recommendation	Comment
R28	Integrated inspections which cover all of the lived experience of residents should be introduced by the RQIA as soon as possible.	**Accepted**	See Recommendation 23.
R29	A protocol for collaborative partnership working in improving care in a failing care home should be developed and implemented as a matter of urgency by the RQIA and the HSC Trusts. The protocol should address the handling of complaints and the use of intelligence deriving from these to better inform all those with responsibility for the care of older people placed in homes.		The definition of a “failing care home” must be set and agreed centrally before a protocol could be developed. RQIA already informs Trusts when we are taking enforcement action.
R30	RQIA need to review their inspection methodology in order to access reliable and relevant information from residents and their families.	**Accepted**	RQIA acknowledges that one of the unforeseen consequences of moving to unannounced inspections is the lack of opportunity for families and carers to plan to speak to inspectors. We have taken steps to improve our visibility including the "Have We Missed You" initiative and will work with the volunteers for our new membership scheme to ensure people know how to contact us. RQIA is also undertaking a review of all aspects of its inspection processes with support from Care Inspectorate Scotland.

R31	RQIA inspectors must engage effectively with staff, especially permanent staff, in order to glean a more comprehensive view of the home being inspected.	**Accepted**	RQIA inspectors speak to a range of staff on all inspection visits and actively seek out agency staff who have a particularly useful perspective. We are exploring the introduction of a mechanism whereby staff can provide intelligence to RQIA on care issues through their trade union representative and hope to have an agreement in place shortly with UNISON to pilot this initiative.

R32	The use of lay assessors/ inspectors in the inspection of care settings for older people should be introduced.	**Accepted**	RQIA agrees with this recommendation and is working to introduce lay inspectors in residential and nursing home inspections in 2018-19.

R33	There should be a strict limit to the length of time a home is given to make improvements to bring its service back into full compliance.		

R34	The RQIA should implement an inspection regime which includes weekend and night-time inspections for all homes on a more regular basis (and at least once per year), especially where there are indications of problems within a home. This offers an opportunity to reflect on the management of night time and weekend needs when fewer staff may be present and residents may present with more challenging behaviours.	**Accepted**	This will be covered in the review of inspection processes. Where we have urgent concerns we will inspect at night and weekends.

R35	The DoH / RQIA should introduce a performance rating system / a grading system, as is the practice in other jurisdictions of the United Kingdom as soon as possible.		

R36	The system of financial penalties should be strengthened and applied rigorously to providers of independent care homes which exhibit persistent or serious breaches of regulations.		

R37	The RQIA should have a statutory role in ensuring that complaints are actioned by care providers to the satisfaction of complainants.		

Staff Skills, Competence, Training and Development

No	COPNI Recommendation	Response to Recommendation	Comment
R38	The Department / Chief Nursing Officer (CNO) as the commissioners of pre-registration nurse education should ensure workforce plans are developed that take full account of nurse staffing requirements for the independent sector.		
R39	The Chief Nursing Officer as a matter of priority should undertake a workforce review and commission work to design tools to measure nurse workforce levels required in the independent sector in Northern Ireland i.e. normative staffing level guidelines and the minimum standard staffing guidance revised accordingly.		
R40	The RQIA should collaborate with the CNO in this work and revise the minimum nurse staffing standard No 41 to give more clarity to the independent sector on levels of nurse staffing which are required to deliver safe, effective and compassionate care.		

R41	A high level of staff turnover and use of agency should be considered a “red flag” issue for commissioners of care and the RQIA. Staff turnover should be monitored and findings of high levels of staff attrition should trigger further investigation. The nursing home minimum standards on staffing should reflect concerns where there is a high staff turnover and state that exit interviews are required in the event of any staff terminating their contract with a provider.	**Accepted**	RQIA routinely considers staff turnover as part of inspections. DoH is responsible for changes to care standards. RQIA is working in partnership with Ulster University to implement a mathematical model to analyse risk in respect of care home and inspection planning. Staff levels are included as a risk factor.

R42	Trust Executive Directors of Nursing, as commissioners of care in the independent sector should ensure that there are sufficient numbers of nursing staff with specialist knowledge to deliver safe, effective and compassionate care in the independent sector and assure themselves through the contract agreements with providers.		

R43	The RQIA inspection process must review levels of permanent staff attrition as well as the balance of agency / permanent staffing levels across all shifts in place in a home and review exit interviews.	**Accepted**	RQIA routinely reviews staff rotas including use of agency staff as part of inspection. Exit interviews are not currently required by standards but inspectors do ask about reasons for leaving the service. Policy direction and/or legislation would be required to require exit interviews to be shared with RQIA. We further suggest that Trusts use this measure as part of their assessments in the quality monitoring process.

R44	Runwood Homes must carry out an urgent staffing review to address weaknesses in induction, to investigate the high levels of attrition of nursing staff and managers in Dunmurry Manor and to make improvements to workforce management to encourage retention of permanent nursing staff and managers.		RQIA suggest that this is a wider issue than for just Runwood Homes.

Management and Leadership

No	COPNI Recommendation	Response to Recommendation	Comment
R45	The RQIA should require managers leaving employment with a home to provide them with an exit statement, within a defined timeframe, to enable them to identify patterns or issues which should trigger an inspection. Exit statements would be treated in confidence (and not available to the employer).		Providers are required to report any absence of the Registered Manager to RQIA. Current legislation and standards does not allow for RQIA to request an exit statement when they are no longer a Registered Manager. Standards and/or regulations would require amendment in order to implement recommendation.
R46	Any reports of inappropriate behaviour by senior managers in the independent sector should be investigated in full by the HSC Trust (at a contract level) and by the RQIA (in terms of the registered individual status). The outcome of these investigations should be a material consideration for the RQIA in terms of the "Fit and Proper Person Test".		The fit and proper person test is a pre-registration requirement of the responsible individual. Not all senior managers are required to be registered individually by RQIA. Inappropriate behaviour is covered by employment legislation and policy. Standards and/or regulations would require amendment in order to implement this recommendation as written.

R47	An independent body should be established to encourage and support whistleblowers throughout the process and whistleblowers need to be protected by the law to make genuine disclosures.		

R48	Relatives / residents who raise concerns which are not resolved locally should have their complaints handled by the commissioning Trust or the RQIA (see Section 8 on Complaints and Communication of COPNI Report).		

Complaints and Communication

No	COPNI Recommendation	Accept Recommendation	Response
R49	Dunmurry Manor / Runwood must introduce an open and transparent complaints management system and welcome the early involvement of families and relatives in complaints resolution. Families should be well informed at all times of the next steps in the complaints process. Families should be given meeting dates well in advance rather than requesting a meeting themselves. If a meeting has to be cancelled due to unforeseen circumstances this should be communicated to the families promptly.		
R50	There must be improved communication between all bodies receiving complaints. Central collation would enable complaints to act as a better 'Early Warning System' about a failing home. A requirement for annual reporting of numbers and types of complaints, how they were dealt with and outcomes, would be a first step towards more open and transparent		RQIA has no role in the handling of complaints.

	communication about complaints.		

R51	Given the poor information sharing over the issues in Dunmurry Manor, there should be a central point of access where the RQIA can access all complaints made to a home. They must then use this access to track patterns and look at the detail of complaints that are indicative of serious concerns.		

R52	Complaints statistics relating to care homes should be published annually and be made publicly available, subject to adherence to appropriate data protection protocols.		

R53	A duty of Candour (see Section 9) must be introduced to provide a transparent and meaningful learning process from complaints.		

R54	In the event of a complex and serious complaint not being resolved locally, an independent complaints process should be engaged that allows access to alternative dispute resolution providing appropriate support for whistleblowers and families.		

Accountability and Governance

No	COPNI Recommendation	Response to Recommendation	Comment
R55	The sharing and analysis of communication regarding concerns about low standards of care must be improved within and between the HSC Trusts, the RQIA, including its Board and the Department of Health to enable a more efficient and effective information flow, action and follow-up in all matters pertaining to failures of care.	**Accepted**	RQIA already has in place mechanisms for the communication of issues about the quality of care to its board and DoH. A bi-monthly meeting is held with DoH and papers shared with the Department's Top Management Group for information. RQIA also participates in the Early Alerts process whereby immediate concerns are flagged to the DoH for information. RQIA is not a provider or commissioner of care and therefore the quality of care in individual homes is a matter for the quality monitoring and risk committees of Trust commissioners. RQIA has begun to explore better collaborative working with Trust through our programme of "Building Sustainable Partnerships".
R56	Those who commission care should assure themselves that they contract with organisations which have strong governance and accountability frameworks in place. Record keeping should be subject to rigorous and regular audit.		

R57	An individual Duty of Candour should be introduced in Northern Ireland for all personnel and organisations working across and in the system which governs and delivers care to older people to encourage openness and transparency.		

R58	The Regional Contract should be reviewed and training provided in relation to its content and effective use of its terms. The Department of Health should conduct a review of whether this contract is adequate in terms of being able to enforce the performance obligations contained therein.		

R59	All Relevant Authorities should develop and implement Escalation Policies that ensure senior officials are sighted in operational matters that are serious, protracted or otherwise significant in their business area.	**Accepted**	This is already in place in RQIA. RQIA's Serious Concerns and Complaints Group is the mechanism to ensure directors and Chief Executive are sighted on significant issues. RQIA's corporate and directorate risk registers are discussed quarterly at Executive Management Team meetings which include Chief Executive, Directors and Assistant Directors. The Chief Executive's brief to the RQIA board is published on the RQIA website and includes an overview of regulatory activity. The bi-monthly reports to DoH are also share with Board members. RQIA also utilises the Early Alert process where necessary to ensure the Department is sighted on potential issues at the earliest stage.

Appendix G: Vignettes

Impact of the "dual registration" decision on older people as communicated to the Review Team by care home managers, families and family group representatives

The person had lived in the home, in the same room for eleven years, she became unwell and RQIA said she had to move to the nursing unit, she did not want to move and was told she had no choice, she became withdrawn and we were all worried about her, we were told RQIA would take legal action against us, we had no choice, we moved her and two days later she had died – how can this be right – we were her family and we let her down

A member of the Trust said they did not agree with this policy and old people had to be moved out of a place they called home to another home

A provider says we had a person in our residential home, her partner visited every day and had lunch with her, she became ill and we were told as she needed nursing care she would have to be moved – the family did not want the person moved – she was moved, RQIA said it had to happen, the move to an nursing home was 35 miles away - this meant the relationship with the partner was lost as they couldn't travel to the new home – this is wrong and not about care - it would never happen with any other age group

A home manager said when a person moves into a care home it is a major move with what they have left behind and then they are moved if they become ill – we could have cared for them with community support but NO - this is not what care should be about and we have to face families who think we are making the decision – it needs to be changed and people should be able to stay and be cared for – as they would do in their own home

APPENDIX H

20 May 2022

UPDATE/POSTSCRIPT from RQIA to CPEA REPORT: Independent Whole Systems Review into Safeguarding and Care at Dunmurry Manor Care Home.

Evidence Paper: 3. Regulation and Inspection

INTRODUCTION

The Regulation and Quality Improvement Authority (RQIA) welcomes the publication of the Evidence Paper on Regulation and Inspection (Evidence Paper 3), prepared by CPEA, as part of the Independent Whole Systems Review into Safeguarding and Care at Dunmurry Manor Care Home. The commentary and recommendations offer a valuable resource in the further development of regulatory and improvement functions, as undertaken by RQIA.

The fieldwork for Evidence Paper 3 was undertaken between June and December 2019, and its recommendations reflect this. In view of the significant amount of development work progressed since the whole systems review was undertaken, RQIA appreciates the opportunity to contribute this update, which provides an overview and update of progress made.

CONTEXT

Role and Scope of RQIA

It is important at this point to recognise that RQIA has an important remit across the entire Health and Social Care system, including social care, acute health care and a wide range of regulated services. This update of progress made has relevance to all of RQIA's activities, but necessarily focuses on social care and in particular on nursing and residential care homes.

Equally, it is important to acknowledge the significant impact that the Covid-19 Pandemic has had on the whole system, and on the work of RQIA. The Pandemic has presented both opportunities and challenges, and it has contributed to change in the way RQIA undertakes its functions.

PROGRESS

Involvement and Experience of Service Users, Families and Representatives

Crucially, the COPNI Home Truths Report reiterates the essential role of family and carers in the well-being of residents and service users, and to the necessity to have

their lived experience heard and acted upon on regulatory work. RQIA accept and endorse this approach. We have taken a number of steps to improve service users and family involvement:

- In late 2020 RQIA established relationship with the representatives of Care Home Advice Support Northern Ireland (CHASNI – which had been developed by families as a result of the Home Truths report).

- We now liaise with the Patient Client Council (PCC) in particular through the Care Homes Visiting Platform , to build connections and dialogue about issues and experience relating to care homes

- RQIA are refreshing and relaunching our Lay Assessors initiative. PCC and others are working alongside RQIA to further develop this role. This will bring a focus to the Inspection with a member of the Inspection Team taking the time to listen to the views and experience of the residents and of their families, and ensuring this is taken into account in our inspection, in the report and in the actions we take. We plan to begin to test this approach, evaluate and adjust it, from this summer

- We ensure that in our Inspection Reports of each Care Home, our engagement with residents and their families is documented and their experience as provided to us is reflected upon on in undertaking our inspection work. The role of the Lay Assessor will enhance this further..

- We established a 'Guidance Team' in RQIA to take telephone calls or emails from anyone who wants to raise a concern with us. The team is contactable weekdays 9.00 am to 4.30 pm. Last year (2021/22), we received 1500 calls or contacts about Care Homes, a third of these were from service users, families or members of the public.

During 22/23 we are planning to introduce:

- Introduce a requirement for the provider to feedback to residents and families that an Inspection has taken place, share its findings and what actions are being taken

- Publish a list of all Care Homes inspected each month, in advance of the Inspection Report being published, so that residents, families, public and others know an Inspection has taken place and can raise any concerns with us while the Report is being prepared for publication

- Provide a focussed section in Our Annual Report our findings and actions taken in relation to Care Homes, which will be shared with families and representatives through involvement event/s

Working with Providers and Commissioners

- We have established a regular meeting with the IHCP, as a representative body of Independent Care providers. Meeting (usually weekly) also include senior staff from the Public Health Agency (PHA), the HSC Commissioner and Department. This provides an opportunity to discuss policy issues and challenges , listen to the issues and find ways forward that can help with shared understanding and communications.

- RQIA provides a central point of contact for the distribution of all communications on policy, COVID19 and other issues for the HSC via our corporate communications.

- HSC Trusts are important in both the commissioning, contracting and oversight of quality of care provided to their funded residents in Care Homes. RQIA has established an RQIA/Trust Liaison Group with each of the five HSC Trusts, to share information and agree joint/ complementary actions in relation to issues identified in specific care homes. Regular communication with Trust colleagues continues between meetings to address any escalating issues.

- RQIA have built an effective working relationship with COPNI, meet regularly and reviewing progress made since the Home Truths Report. We also agree on more areas of work that need to be progressed.

- RQIA staff continue to contribute to the 'My Home Life' programme delivered by Ulster University to Care Home Managers. My Home Life is part of an initiative that promotes quality of life and delivery of positive change for care homes for older People. The programme also focuses on the development of the care home manger and their leadership to increase positive cultural change in their homes.

Approach to Registration, Regulation and Inspection

- During 2020, RQIA commissioned an academic benchmarking report by Queens University Belfast, which set out evidence of effective regulatory systems available from the available relevant academic literature. As a result we have set out to review our Regulation Framework and have commenced a process to examine:
  - how we use our information/ intelligence to inform a risk based approach to assessment
  - our approach to planning an Inspection to ensure it reflects the risk assessment of the service, probes key issues and is effectively planned

The Review is also considering:

- our approach to regulatory actions including enforcement, to ensure it is proportionate (firm but fair) , consistent and effective.
- involvement of service users, providers and others as we take forward this reform programme.

- We have established a Registration Improvement project to ensure we stream line the process and effectively assess applications, whether for new registrations or for changes to existing registrations, scrutinising them thorough and efficiently

- Almost all of our care homes inspections are un-announced (98% in 2021/22) with a third of Nursing Homes inspections conducted entirely or partially, out of hours.

- We continue to maintain a web based portal that enables Care Home managers to submit information about the Care Home on a daily basis. This information is shared across the HSC services to enable a collective response to support for Care Homes

Safeguarding

- The Home Truths Report recommended more work needed to be undertaken with regard to policy direction and guidance for both the overt and covert use of CCTV. RQIA commissioned Queens University Belfast to undertake a study to guide future deployment of CCTV, the outcome of which was published on our web site and shared with the Department of Health. RQIA also have published Guidance on the use of Overt Closed Circuit Televisions (CCTV) for the Purpose of Surveillance in Regulated Establishments and Agencies.

- Human Rights Training is now mandatory for all RQIA staff , with an initial programme in 2018/19, and we refreshed our training in 2022 with the support of the University Of Bristol Human Rights Unit. We are now working to incorporate this into induction for all new staff.

Leadership and Strategic Direction

- The interim Chair and Authority Members are committed to working in partnership with and across all RQIA stakeholders , to keep people safe and to raise standards in health and social care using the Authority's regulatory powers to drive improvement.

- RQIA's Management Plan for 2022/23 moves towards a focus on outcomes. We are ensuring that our regulatory systems and processes are robust; that as a result of regulation built on assessing service compliance against standards, that we improve safety and quality across health and social care services; and that as a consequence, standards are raised and lived experience improved. The management plan demonstrates a continued focus on achieving improvement for those who live in Care Homes and for service users across all sectors.

In Summary

In summary, RQIA has welcomed, listened and proactively responded to, the findings of both the COPNI Home Truths Report and the CPEA Evidence Paper Number 3. RQIA can evidence its strong commitment to being an effective, modern, and responsive regulator. RQIA is dedicated to improving safety and driving quality improvement, overseeing the delivery of safe and effective care, enhancing the meaningful lived experience of service users and being outcome orientated, and doing so through involvement and partnership.
