



Independent Review into the Circumstances of Board Member Resignations in the RQIA

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We would like to commend the Minister of Health for his support during this assignment. He gave his word at the commencement of this assignment that we would be given the freedom to undertake this Review without any attempt to influence us and he honoured this commitment in full.

EXECUTIVE SUMMARY

EXECUTIVE SUMMARY

Preface

1. The Review Team acknowledges the work and commitment of the staff within the Department of Health and its Arm's Length Bodies (including the RQIA) during this period. Many of those interviewed as part of this Review went above and beyond what has ever been expected of them and undoubtedly saved lives in what was (and still is) an extremely challenging environment.

Background

2. On 17 and 18 June 2020, the Acting Chair and six Non-Executive Board Members of the Regulation and Quality Improvement Authority (RQIA) resigned with immediate effect. With the two other Board Members having resigned the previous week to take up other posts, this left the RQIA without a Board and without any Board Members.
3. In their letters of resignation to the Minister, the ex-Board Members of the RQIA set out their reasons for stepping down. These reasons included the following:
 - Concern at the lack of effort made by the Department to consult or engage with the Board prior to making key decisions affecting the core purpose and statutory remit of the RQIA
 - Particular concern over the decision by the Department at the end of March to (1) redeploy the RQIA Chief Executive to the Public Health Agency and (2) appoint (and extend the appointment of) an RQIA Interim Chief Executive without any communication with or involvement of the Board
 - By excluding the Board from involvement in any of these key decisions, the belief that the role of the Board had been diluted and compromised

- Dismay at the failure of the Department to communicate even at a basic level with the Board and finding out about decisions and directions after the event
 - The actions of Departmental officials in seeking to 'remove' the Acting Chair in June
4. On 30 June 2020, the Minister of Health, Robin Swann, appointed David Nicholl, Managing Director of On Board Training and Consultancy and a leading expert in corporate governance, to head up an Independent Review into the Circumstances of the RQIA Board Member resignations.

OVERALL CONCLUSIONS

5. In the Review Team's opinion, there is no doubt that the Pandemic, and the speed of decision-making in the midst of the Pandemic, was the primary cause of this crisis.
6. It is important to recognise that these were unique circumstances without precedence for all concerned. The pace of decision-making during the period from March to June 2020 was frenetic and it is not surprising that there were weaknesses in communication and some of the processes and procedures were different than in normal times.
7. However, it is also clear that this crisis could not have happened if the Department and the RQIA had had the basics of good governance in place - clear roles, well established and functioning relationships, clearly understood lines of communication, reporting and accountability etc.
8. As part of its Terms of Reference, the Review Team was asked by the Minister to review the Northern Ireland Civil Service Code of Ethics - ostensibly to establish if any of those involved had breached the Code and should be subject to further action (including disciplinary action). While this Review concludes that mistakes were made, some of them serious, the Review Team found no evidence of any material breach of the Code of Ethics.

9. All parties to this Review – the Department, RQIA Acting Chair and Board, and RQIA Executive Team - have demonstrated failings to some extent. The emphasis should be on learning from what has happened to effect improvements going forward.
10. The Minister of Health should give a high priority to implementing the recommendations from this Review to put the governance of the RQIA onto a solid footing and to ensure that this situation does not happen again - not in the RQIA and not in any other ALB within the Department of Health.
11. While this matter remains ongoing and unresolved, there is an even greater risk to the health and wellbeing of care users which in the final analysis is what the Department and the RQIA should be focusing on.

CONCLUSIONS BY SECTION

Section 2: Key roles and relationships

Overall

12. In overall terms, the governance framework of the RQIA is confused and contradictory, and does not comply with best practice. This was a major contributory factor in the problems that emerged during the Pandemic.

Roles

13. The Code of Conduct and Code of Accountability for Board Members of Health and Social Care (HSC) Bodies sets out the role of the Board clearly, succinctly and accurately. This document is fully in line with legislation and best practice, including the On Board guidance.
14. However, the Management Statement and Financial Memorandum (MSFM) for the RQIA and the Department's ALB Sponsorship Handbook are substantially flawed – in particular, they fail to reflect the primary accountability of a Chief

Executive to his/her own Board and place the emphasis on the secondary accountability of the Chief Executive to the Department (as Accounting Officer).

15. The RQIA's governance framework gives the Minister no clear and specific role in the oversight of the RQIA and this leaves a significant democratic deficit.
16. Most of the governance documents for the RQIA were developed when there was no Northern Ireland Assembly or local Ministers in place and need to be updated to take account of the role of the Minister.
17. In many instances, the deficiencies in the governance framework of the RQIA flow from core governance documentation which emanated from the Department of Finance (e.g. MSFM and Sponsorship Handbook). This suggests that these structural governance weaknesses may be more widespread and deep-seated than just the RQIA and the Department of Health.

Relationships

18. The Board's role, as described in much of the RQIA's core governance documentation, is more akin to that of an Executive Agency or a Departmental Board (i.e. advisory in nature) rather than the pivotal governance role of the Board of an Executive NDPB and ALB (as described in the Code of Conduct and Code of Accountability for Board Members of HSC Bodies).
19. In the absence of a substantive relationship between the RQIA Chair/Board and the Minister, and the apparent primacy of the Chief Executive's role as Accounting Officer, most of the actual power and authority as well as decision-making seems to reside with the Department working directly with the Chief Executive of the RQIA.

Section 3: How events unfolded during the Pandemic (1)
– the five Departmental Directions/decisions

20. The concerns referred to in the letters of resignation of the ex-Board Members largely relate to five key decisions taken by the Department in March and April 2020 in response to the emergency situation.

(1) Departmental Direction to reduce the minimum frequency of inspections in care homes (Chief Medical Officer [CMO], 20 March)

21. It is clear to the Review Team that:

- The Department has authority to issue Directions to the RQIA under Article 6(2) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003
- The decision to issue this Direction was not imposed on the RQIA but was taken in consultation with, and with the full agreement of, the Chief Executive (and Executive Team) of the RQIA
- The decision to scale back much of the RQIA's inspection activity and review programme had the effect of aligning the RQIA's regulatory practice with that of other social care regulators in England, Scotland, Wales and the Republic of Ireland
- The rationale for the decision was reasonable and reflected the scaling back of many ALB activities during the Pandemic. Ex-Board Members, collectively, do not appear to be disputing the merits of the Direction, but rather the lack of consultation and communication around the decision
- The Acting Chair was notified (and e-mailed a copy) of the impending Direction by the Chief Executive at an early stage (13 March), but was asked '*not to share it*' and consequently did not inform her Board. This was of such importance that it should have been shared with the Board immediately

- The response by the RQIA Board to the Chief Executive's briefing on the impending Departmental Direction at the Board meeting of 19 March was inadequate. The minutes record that no questions were asked and no concerns were expressed by Board Members

(2) Departmental letter asking RQIA to take a pragmatic approach to care provider inquiries (CMO, 23 March)

22. This letter was issued in good faith by the CMO in response to a request from the RQIA Executive Team. In the view of the Review Team, the rationale behind the letter was sound.

(3) Repurposing the RQIA into a single point of contact and support for providers (Chief Social Worker, 25 March)

23. There was an identified need for this service and the Department, Independent Health and Care Providers and Trusts appear to have appreciated the RQIA's efforts as part of the HSC response to the Pandemic.

24. However, this decision to make the RQIA into a single point of contact and support for providers fundamentally altered the 'purpose' of the RQIA. This was fundamental and strategic, and clearly a Board matter. It should not have been the subject of a private agreement between the Department and the RQIA Executive Team.

25. Although Board Members are right to feel aggrieved at being left out of discussions and deliberations on this decision, the Review Team noted with concern that the RQIA Acting Chair had been fully briefed about this matter well in advance and chose not to inform the Board.

26. In the Review Team's opinion, the Acting Chair should have made the Executive Team clear about the Board's expectations and not to take the support of the RQIA Board for granted just because of the unique nature of the Pandemic.

(4) Departmental decision to redeploy the Chief Executive (and three other members of the RQIA's senior team)

27. The Board of the RQIA is the employer of the Chief Executive and the Chief Executive's Contract of Employment was with the RQIA. It is not clear to the Review Team that the Department had the legal authority to redeploy RQIA senior staff without prior consultation with, and approval of, the Board. Even if it had, the manner in which this was handled by the Department showed a lack of respect to the RQIA and its Board.
28. Nevertheless, the Review Team recognises that the redeployment of the RQIA Chief Executive took place at the height of the Pandemic when the PHA was struggling to cope and decisive action was necessary to address the situation. The Review Team is not questioning the merits of the decision, just the way in which it was carried out.
29. Under the 2003 Order, the RQIA as a corporate body appoints its own Chief Executive subject to the appointment being approved by the Department. The decision by the Department to appoint a new Interim Chief Executive without the involvement of the RQIA Board was wrong and contributed significantly to the breakdown of Board/CEO relationships shortly afterwards.

(5) Departmental request to the RQIA to make inspection staff available to work in the care home sector (CMO, 23 April)

30. The former Chief Executive of the RQIA told the Review Team that she would have had significant concerns about any redeployment of RQIA staff to care homes and would have resisted such a move, had she been in post at that time. Whilst recognising the urgency of the situation in care homes, the Review Team would share her concerns.
31. As an independent regulator, it could be problematic for the RQIA to inspect care homes in future if its own inspectors had been responsible for some of the decisions and actions that they are likely to be inspecting. Decisions on closure can be appealed to the Care Tribunal and the High Court and if there has been

RQIA staff involvement at any stage, this could be construed as condoning and, potentially, contributing to some of the failings in the care service.

32. The Board did subject this request to appropriate scrutiny at its Board meeting on 27 April. However, this created significant tensions and contributed to the subsequent breakdown of the Board's relationship with the Interim Chief Executive.

Section 3: Overall conclusions

RQIA Executive Team

33. In a letter to the CMO on 29 April, the Interim Chief Executive of the RQIA stated:

“Directions to develop these new functions, and to step down some aspects of our inspection activity, have been issued variously by the Chief Medical Officer (20 March 2020; 23 March 2020; 23 April 2020) and the Chief Social Worker (25 March 2020). Each of these Directions has followed engagement with members of RQIA’s Executive Team”

34. In this letter, the Interim Chief Executive unwittingly gets to the heart of the problem in that the Board has been excluded by its own Executive Team from some major decisions affecting its core purpose and statutory remit.

RQIA Acting Chair

35. There were several occasions when the Acting Chair could and should have formally brought matters to the Board but did not. For example, when she was informed by the RQIA Chief Executive on 13 March of the impending Departmental Direction (issued on 20 March), she should have called an urgent meeting of the Board, not just to make the Board aware of the Direction but to enable it to have the opportunity to consider and advise on the associated risks.
36. Any examination of governance includes a critical review of the relationship between the Chair and Chief Executive – arguably the most important relationship

in an organisation. The evidence suggests that, during this period, the relationship between the Chief Executive and Acting Chair of the RQIA was too close.

37. As a minimum, the Acting Chair should have insisted that the Chief Executive test all key issues in the first instance with her and the Board so that the Department could be clear that what it had was not simply an 'Executive' agreement but a 'Body Corporate' one, which had the full backing of the Board.

RQIA Board

38. It should be standard practice within the RQIA (as it should be within any public body) that communication of any significance from the Department on any issue impacting on the organisation's operating parameters should receive consideration by the Board. These communications from the Department were, by any standard, **significant issues**.
39. From the outset, the Board should have set out and agreed (with the Executive Team) a common understanding of how business would be conducted during the unique circumstances of the Pandemic. This may have involved daily/weekly updates from the Chief Executive to the Acting Chair, regular briefings (at least weekly) from the Acting Chair to Board Members to ensure that they were kept informed and ad hoc meetings of the Board when significant issues arose.
40. In March and most of April, the Board was passive and almost reactive in how it was operating. If it had set out more clearly how it wanted to conduct business during the Pandemic and, as part of effective governance, defined the relationship between the Acting Chair and Chief Executive, then this crisis might not have occurred.

The Department

41. The Department cannot escape its share of responsibility for this situation. In particular, the decision to redeploy the Chief Executive and then appoint an Interim Chief Executive to the RQIA without any consultation or communication

with the Board – which is legally the employer of these staff – was high handed and disrespectful.

42. The absence of any meaningful engagement or communication with the Acting Chair or the Board throughout the Pandemic suggests that the Department did not understand or value the role of the Board (or Acting Chair).
43. Departmental officials did not satisfy themselves that the communication with the RQIA had full Board backing – rather they assumed that this was the case and they went on assuming. In that regard, officials let the Minister down.
44. While the Department clearly has the right under legislation to issue Directions to the RQIA, these Directions should be issued to the Chair (and copied to the Chief Executive) so that it is clear that this is not simply a Direction to executives but a Direction to a statutory body.

Section 4: How events unfolded during the Pandemic (2) – breakdown in relationships

Breakdown in the relationship between the RQIA Board and the new Interim Chief Executive

45. The Interim Chief Executive was inexperienced and was thrown in at the deep end in the middle of a crisis. He was provided with no proper induction training or any other preparation for the role. It is the opinion of the Review Team, and several others interviewed during this Review, that he failed to understand the roles and responsibilities of a Chief Executive and his accountability to his own Board.
46. Nevertheless, the Review Team notes that Departmental officials must have believed that he was of sufficient calibre and had adequate experience to perform this role fully and effectively as they appointed him to the position.
47. Some Departmental officials acknowledged that, with the benefit of hindsight, its decision to redeploy several senior members of the RQIA's Executive Team at the

end of March had left the Interim Chief Executive with very limited management support.

48. However, the Interim Chief Executive did not seek to use the extensive experience and expertise of his Board to help him understand his role and perform his functions. This was especially important during the Pandemic when he most needed the support and backing of his Board.

49. There were several occasions when the Interim Chief Executive sought to exclude or override his Board:

- The request from the CMO on 23 April to deploy RQIA inspectors into care homes and the Board's desire to consider the risks around this
- The preparation (defence) for the Judicial Review
- The request from the Board to hold more frequent meetings and/or briefings during the Pandemic
- His objections to the level of scrutiny from Board Members and their efforts to hold him to account
- The request from the Board to have sight of his opening statement to the Health Committee meeting on 14 May

On each of these occasions, the Interim Chief Executive was wrong.

50. However, the Review Team noted that the Interim Chief Executive regularly sought the advice and support of the Department prior to taking key actions in respect of these matters.

51. In the view of the Review Team, these matters were not purely operational. [Indeed, several were entirely strategic and critical to the workings of the RQIA and the impact on the people it serves.] It is also important to note that the Board

has the right to access **any** information and papers that it deems necessary to discharge its role.

52. While the Board normally delegates operational matters to the Chief Executive, the Chief Executive is primarily accountable to the Board for these matters (and not to the Sponsor Department). The role of the Chief Executive as Accounting Officer has been used in this case to circumvent his primary line of accountability to the Board.
53. While it is understandable that an inexperienced Chief Executive would be mistaken on his roles and responsibilities, especially given the confusing messages in the MSFM, it is difficult to understand how the Department could have been - but it was.

Breakdown in the relationship between the Department and the RQIA Acting Chair and Board

54. The communication between the Department and the RQIA Board was weak and the Department has acknowledged this - even to the extent that it forgot to copy in the Acting Chair on several of the Directions/requests that it issued to the RQIA. By not copying in the Board on critical correspondence, there has been a clear systemic failure within the Department.
55. The lack of any real relationship between the Minister/Department and the Acting Chair/Board of the RQIA meant that it was only the Interim Chief Executive that had the ear of Sponsor Branch and senior Departmental officials.
56. With an Acting Chair and Board that was, in the mind of the Department, 'invisible' and an RQIA Interim Chief Executive who was eager to please, the Department was persuaded that the RQIA Board was a nuisance and 'getting in the way'.
57. The Department appears to have been comfortable with the dysfunctional, one-sided relationship with the RQIA Executive Team and supported the Interim Chief Executive in his disagreements with the RQIA Board even when he was clearly in

the wrong or was not giving a full and accurate account to the officials in the Department.

58. The relationship between the RQIA Board and Interim Chief Executive broke down at an early stage due to a lack of understanding and appreciation of the roles and responsibilities of a Chief Executive on the part of the post holder in the RQIA. The fact that the Department appointed the Interim Chief Executive in the first place without involvement or consultation with the RQIA Board (the employer) only served to make matters worse.

The letter of 28 April from the Acting Chair to the CMO

59. While the Review Team has a degree of sympathy for the Acting Chair and Board and the manner in which they were treated by the Department and their own Interim Chief Executive, the letter from the Acting Chair to the CMO of 28 April was unfocused, poorly worded and clearly antagonised the Department. The letter:

- Was not clear as to what it was intended to achieve
- Was mistaken in its contention that Trust safeguarding teams had been stood down
- Conveyed the impression that the RQIA Board disagreed with the Direction from the Department to suspend inspections
- Created a lasting impression with the Department that the Board did not understand what its roles and responsibilities were during the Pandemic

and so contributed substantially to the subsequent crisis.

60. The fallout from this letter is evident in subsequent correspondence. For example, in her e-mail to the RQIA Acting Chair on 09 June, the Head of RQIA Sponsor Branch in the Department, states that:

“As you are aware, CMO and the Permanent Secretary have been contacted by the RQIA Board and have concerns regarding the understanding of the roles and responsibilities of the RQIA Board members – RQIA Board have recently on a number of occasions sought clarification on their role”

The e-mail of 09 June from the Department

61. The Review Team is surprised that such a missive (effectively suggesting that a Chair should step down) would be issued by a middle ranking civil servant as opposed to a senior Departmental official (Permanent Secretary or CMO), after consultation with the Minister. Indeed, the Review Team would also question why the ‘clear the air’ meeting of 27 May was not handled by a higher ranking Departmental official.
62. In the Review Team’s opinion, it is difficult to view the e-mail of 09 June as anything other than a threat to remove the Acting Chair and ultimately sack the other Board Members if they did not agree with this course of action. This was effectively putting the RQIA Board into ‘Special Measures’ and was being escalated to the highest level of intervention.
63. One of the phrases used by an ex-Board Member interviewed by the Review Team was that this was *“damage caused on themselves by speaking up”* and to an extent the Review Team agrees with this.

Were the resignations of the RQIA Board Members necessary?

64. It is the opinion of the Review Team that, whilst understandable, these resignations were not necessary or desirable particularly during a time of crisis. It was right that Board Members should have voiced their concerns and grievances, and **threatened to resign** unless the e-mail of 09 June was withdrawn and the Department agreed to address their legitimate concerns.
65. Had the Department responded positively to this threat, and the Review Team believes that it would have, Board Members would have engaged with the Department and set about developing a working relationship which would ensure

that communications and decision-making were placed on a secure footing. This process would respect the relative positions of all concerned and be designed to ensure that this would not happen again.

RECOMMENDATIONS

66. In light of the findings and conclusions set out above, the Review Team has identified a number of lessons to be learned and makes the following recommendations which are submitted to the Minister for his consideration.

Role of the Minister

67. The Minister should play a more central role in the direction and oversight of all of his ALBs by:

- Ensuring that the Department has an up-to-date skills and experience matrix in place for each ALB Board that will produce effective Boards with the level, range and diversity of skills, experience and expertise to deliver the Minister's policies and priorities
- Ensuring that the public appointments process is working effectively, appointments are made on a timely basis and that Board Members, and in particular Chairs, of the highest calibre are appointed
- Ensuring that the terms and conditions of appointment for Chairs and Board Members are appropriate to attract high calibre candidates for the positions
- Signing the letters of appointment for the Chair and individual Board Members
- Meeting with all the ALB Chairs collectively at least every two months

[The Review Team noted that, in May 2020, a first meeting between the Minister and the ALB Chairs was organised for 17 June and the Minister is now having regular meetings with this group]

- Meeting each Chair individually – how often will depend on the risk profile of the ALB, but at least annually. While the Permanent Secretary may be present at part of this meeting, there should be time for the Minister to talk to the Chair on a one-to-one basis
- Being accessible to Chairs for fundamental issues and communications
- Meeting the Board of each ALB annually
- Signing off (or, at least, having sight of and agreeing) the annual appraisal of the Chair

Relationship between the Department and ALBs

68. The Department should consider the status of all of its Arm's Length Bodies as part of the ongoing review of public bodies being led by the Department of Finance. It should consider the pros and cons of having each organisation as an Arm's Length Body with a corporate Board or as an Executive Agency with an Advisory Board. However, the Department should not establish an Arm's Length Body with a substantive Board of Governance and then treat it as if it were an Executive Agency.
69. The Department (and the Minister) should work with the ALB Chairs and Chief Executives to define and ensure a common understanding of the roles and responsibilities of the Board and reporting lines within and outwith the ALB. The role of the Chief Executive as Accounting Officer should be considered as part of this exercise.
70. The Department should use the development process for the new Partnership Agreements with ALBs to review its relationship with each ALB ensuring that the Partnership is a 'two-way street'.

71. The Department should review and update all of its core governance documents to ensure compliance with best practice and to address the deficiencies identified in this Review.
72. The Department should recognise that the Board of an ALB is the employer of its Chief Executive albeit subject to the approval of the Department. The Board needs to be convinced that a secondment or interim CEO appointment from the Department or other organisation is right for the ALB and/or the wider HSC. The Department should review its existing practice in this regard.
73. The Department should ensure a consistent approach to sponsorship across the Department. This should include how, when and at what level the Department communicates with each ALB.
74. In future, any Ministerial or Departmental Directions should be issued to the Chair (and copied to the Chief Executive) so that it is clear that any Direction is to the statutory body and not just to the executives.
75. The Department should consider developing a transparent process on the measures to be applied (on a structured and escalating basis) to ALBs/Boards which require support or, more seriously, may be failing in their statutory duties. This process should be communicated effectively to all ALBs.

Section 1: Introduction

INTRODUCTION AND BACKGROUND

Background

- 1.1 On 17 and 18 June 2020, the Acting Chair and six Non-Executive Board Members of the Regulation and Quality Improvement Authority (RQIA) resigned with immediate effect. These resignations were in addition to the earlier resignations of two Board Members on 9 and 10 June 2020 respectively to take up other posts. This effectively left the RQIA without a Board and without any Board Members.
- 1.2 On 30 June 2020, the Minister of Health, Robin Swann, appointed David Nicholl, Managing Director of On Board Training and Consultancy and a recognised expert in corporate governance, to head up a Review into the Circumstances of the RQIA Board Member resignations.

Purpose of the Review

- 1.3 The Terms of Reference stated that the purpose of the Review was to:
 - Examine the circumstances that gave rise to the nine RQIA Board Member resignations
 - Establish the facts and lessons to be learned from the circumstances that gave rise to the resignations and
 - Make recommendations for the consideration of the Minister

The full Terms of Reference are enclosed at Annex 1 to this Report.

Methodology

1.4 The Terms of Reference stipulated that the Review should include:

- A desktop review of all relevant correspondence between the Department, the RQIA Board Members and the RQIA Executive Team
- Interviews with relevant individuals in the Department, RQIA Board Members and the RQIA Executive Team, including the former Chief Executive

1.5 In undertaking this Review, particular consideration would be given to:

- Current codes of practice and guidance for Boards and the Department, including the Board's Code of Conduct, the Nolan Principles, the Code of Conduct and Code of Accountability for Board Members of HSC Bodies (July 2012) and the Northern Ireland Civil Service Code of Ethics
- The roles and responsibilities of the Department, RQIA Board Members and the RQIA Executive Team
- Agreed working arrangements between the Department and the RQIA (e.g. Management Statement and Financial Memorandum)
- Reporting lines between the Chief Executive, Chair, the Board and the Minister/Department
- Communication between the Department, the RQIA Board and the RQIA Executive Team and
- The impact of the COVID-19 Pandemic on the above

Scope

- 1.6 The Review Team was asked to review and where necessary amend the Terms of Reference to ensure that they were sufficiently comprehensive and flexible to enable a thorough and impartial investigation to be undertaken. The Minister asked the Review Team to formally review and agree the final Terms of Reference, which it did.
- 1.7 The Review Team was given an undertaking that it would be provided with any and all material requested by it in relation to this Review and the HSC response to the Pandemic. This would include all relevant correspondence between Departmental officials and between RQIA officials.
- 1.8 The Minister of Health also gave the Chair of the Review Team, David Nicholl, his personal assurance that the Review Team would be given carte blanche to undertake this Review without any attempt at undue influence from him or Departmental officials.
- 1.9 The Review Team can confirm that all of the undertakings given by the Minister at the outset of this Review were honoured in full – that all information requested was provided to the Review Team and that there was no attempt to influence the Review Team in the reporting of its findings.

Scope limitation

- 1.10 Due to the limitations of conducting this Review during the Pandemic, there were no onsite visits or file reviews of original documentation. Of necessity, the Review Team had to place reliance on e-mails and copies of documents provided by the Department and the RQIA.
- 1.11 At an early stage in the Review, the former Acting Chair of the RQIA informed the Review Team that all nine former Board Members did not want to be interviewed as part of this Review and declined an invitation from the Chair of the Review Team to meet to discuss their concerns. The ex-Board Members had concerns about the Terms of Reference and the thoroughness and independence of the

investigation and issued a Press Statement on 06 July 2020 expressing their concerns.

1.12 However, following correspondence with the Review Team and some changes made to the Terms of Reference by the Minister at the request of the Health Committee, five former Board Members agreed to participate in the Review. In the Review Team's opinion, it is regrettable that the other four Board Members chose not to co-operate and turned down the opportunity to contribute to the process of finding out what went wrong and learning lessons for the future.

1.13 A full list of those persons interviewed as part of this Review is enclosed at Annex 2.

Timeline

1.14 Given the pressing nature of the matter, it was agreed that the Review should be completed and a report brought to the Minister with conclusions and recommendations by the end of September i.e. within three months of the commissioning date.

1.15 Up until 09 September 2020, only one former Board Member had made themselves available for interview. However, following the issue of revised Terms of Reference by the Minister on 09 September, a further four ex-RQIA Board Members agreed to be interviewed by the Review Team. The Minister agreed a short extension to the original deadline to accommodate them.

1.16 Following completion of the draft Report, the Review Team submitted the Report to the Department for fact checking on 10 October.

1.17 At an early stage, the Review Team had been informed by the Department and the RQIA that the Interim Chief Executive of the RQIA was on long term sick leave and would not be available for interview. However, on 16 November, as the fact checking process was nearing completion, the Department informed the Review Team that the Interim Chief Executive was now in a position to engage with the Review and wished to cooperate.

1.18 The sudden and late availability of the Interim Chief Executive and the decision of the Review Team to interview him (in the interests of fairness) led to a further delay and the final Report was submitted to the Minister on 08 December 2020.

The Review Team

1.19 The Review Team consisted of three members:

David Nicholl, Chair of the Review Team and one of the UK's leading experts in corporate governance and ethical standards

Douglas Hutchens, former Vice Chair of Care Inspectorate Scotland and Co-Chair of the Ministerial Task Force on the Future of Residential Care in Scotland and

Professor Frank Clark CBE, former Chair of the Care Commission and the first Chair of the Care Inspectorate in Scotland

More details on each of the Review Team members can be found at Annex 3.

Report

1.20 The rest of this Report is structured as follows:

Section 2: Key roles and relationships

Section 3: How events unfolded during the Pandemic (1) – Five key Departmental Directions/decisions

Section 4: How events unfolded during the Pandemic (2) – Breakdown of relationships

Section 5: Recommendations

Section 2: Key roles and relationships

Part 1: Introduction

Part 2: What does Best Practice look like?

Part 3: How does the RQIA's governance framework compare to best practice?

PART 1: INTRODUCTION

“A fog of perpetual confusion”

- 2.1 The Terms of Reference state that this Review should give *“particular consideration to the roles and responsibilities of the Department, the RQIA Board Members and the RQIA Executive Team”*.
- 2.2 Even from an initial cursory examination of the letters of resignation of the RQIA Board Members, correspondence between the Department and the RQIA before and during the Pandemic and key governance documentation relating to the RQIA, it was clear to the Review Team that there has been a lack of clarity in the roles and responsibilities of the key players in the governance of the RQIA and an inherent conflict in reporting lines and accountability.
- 2.3 In order to be able to understand the circumstances that gave rise to the RQIA Board resignations, the Review Team sought to establish:

(1) What does Best Practice look like?

What are the roles and responsibilities of the Minister, Department, Board, Chair and Executive Team **in a well governed organisation** and how should the relationships between the parties operate in practice?

(2) How does the RQIA’s Governance Framework compare to Best Practice?

How are the roles and responsibilities of the Minister, Department, Board, Chair and Executive Team defined in the governance framework of the RQIA and are there any obvious deficiencies?

(3) What were the root causes of the RQIA Board resignations – systemic or Pandemic or a combination?

How did these key roles and responsibilities play out during the COVID-19 Pandemic? To what extent were the RQIA Board resignations due to factors

unique to the Pandemic and to what extent were they due to existing, systemic flaws in the oversight and governance of the RQIA which were simply magnified in the intense environment of decision-making during the COVID-19 Pandemic?

- 2.4 In this Section, the Review Team answers the first two questions – what does best practice look like (Part 2) and how does the RQIA’s corporate governance framework compare to best practice (Part 3)?
- 2.5 In Sections 3 and 4 of this Report, the Review Team seeks to establish the root causes of the RQIA Board resignations (Question 3 above) and examines the breakdown of relationships within the RQIA and between the RQIA Board and the Department of Health.

PART 2: WHAT DOES BEST PRACTICE LOOK LIKE?

Key roles and responsibilities

2.6 There are five key ‘players’ who have a vital role to play in ensuring the effective performance and governance of the RQIA (and any other ALB). These are:

- (1) The Minister
- (2) The Department (Departmental officials)
- (3) The Chair of the Board
- (4) The Board and
- (5) The Chief Executive (Executive Team)

2.7 In the following paragraphs, the Review Team draws on a range of best practice¹ to set out the roles and responsibilities of these five leadership positions:

(1) The role of the Minister

2.8 Each Minister has a duty to account to, and to be held to account by, the Northern Ireland Assembly for all the policies, decisions and actions of his/her Department and each of its Arm’s Length Bodies (ALBs). This ‘democratic accountability’ takes various forms including Ministerial (Assembly) Questions and scrutiny by the relevant Assembly Committee.

2.9 The term ‘Arm’s Length’ does not mean that an ALB is beyond Ministerial control. The Minister will decide how much independence and flexibility an ALB should have, depending on its size, the nature of the functions it carries out, the risk

¹ Including the On Board Guide for Board Members of Public Bodies (2010); Board Effectiveness – a Good Practice Guide (NIAO - 2016); HSC Board Member Handbook (Department of Health – 2020); The Nolan Principles (1995); NICS Code of Ethics (2019)

associated with these activities and its track record. However, for a regulatory body like the RQIA, both the independence and the perception of independence is essential for public confidence.

2.10 The main responsibilities of the Minister² are:

- Considering and approving the strategic direction of an ALB and the policy and performance framework within which it operates
- Securing and approving an adequate budget for the organisation
- Approving the Corporate Plan and Annual Business Plan (ensuring alignment with the Programme for Government)
- Making appointments to the Board – including the appointment of the Chair – and approving the terms, conditions and remuneration of the Chair and Board Members
- Fulfilling any specific responsibilities set out in legislation etc. and
- Issuing Ministerial Directions and letters of strategic guidance

(2) The role of the Department

2.11 The Department is the day-to-day link between the Minister and each ALB. The role of the Department is to advise the Minister and to ensure that the ALB is adequately briefed about the Minister's policies and priorities and to monitor its activities and performance on behalf of the Minister.

2.12 In particular, the Department prepares a formal document called the Management Statement and Financial Memorandum (MSFM) which sets out the relationship between the ALB and the Minister and his/her officials.

² In respect of an Arm's Length Body

(3) The role of the Chair

2.13 The Chair is appointed by the Minister and is personally and directly accountable to the Minister for:

- Providing effective leadership to the Board and, with the Chief Executive, setting the culture of the organisation
- Leading the Board's approach to strategic planning
- Ensuring that the policies and actions of the ALB support the Minister's strategic priorities
- Ensuring the provision of accurate, timely and clear information to the Board (by the Executive) to enable it to monitor progress effectively and hold the Chief Executive to account
- In consultation with the Board as a whole, recruiting and appointing the Chief Executive and undertaking an annual appraisal of his/her performance
- Ensuring that the Minister is advised of the Board's needs when Board Member vacancies arise
- Undertaking an annual appraisal of individual Board Members
- Representing the Board and ALB in links with Ministers, the Northern Ireland Assembly and the public
- Obtaining professional advice for the Board when needed, in particular when the Board is taking a decision on matters that pose a significant operational or reputational risk
- Ensuring effective communication with the Minister, Department, Board, staff, service users and the public

(4) The role of the Board

2.14 The four main functions of the Board of an ALB are to:

Represent the interests of the Minister and ensure delivery of, or advise upon, his/her policies and priorities

Crucially, the Board should be clear about the Minister's policies and expectations for their organisation and if there is any doubt, the Chair should seek clarification from the Minister or Department

Provide active leadership of the ALB by:

- Agreeing the organisation's strategy within the framework set by the Minister and the Department
- Setting cost effective plans to implement the strategy and being clear about expected outcomes
- Establishing a performance management framework which encourages and supports effective performance and enables under-performance to be addressed quickly
- Establishing the values and standards of the organisation and
- Focusing on the difference that the organisation is making in the outside world, i.e. the effects on citizens and service users

Hold the Chief Executive and senior management team to account

- As the employer, the Board appoints the Chief Executive (subject to the approval of the Minister/Department) and, in consultation with the

Minister/Department, sets and reviews appropriate performance objectives and remuneration terms linked to the objectives of the ALB

Ensure effective governance

- The Board must ensure that the principles of effective governance are reflected in the conduct of the Board; that the organisation complies with Ministerial Directions, Departmental guidance, the MSFM and legislation; and that a framework of prudent and effective controls is in place to enable risks to be assessed and managed
- The Board must establish an Audit and Risk Committee, consisting of Non-Executive Members, which will ensure that effective arrangements are in place to provide assurance on risk management, governance and internal control

(5) The role of the Chief Executive

2.15 The Chief Executive has **dual** accountability: a primary accountability to the Board and a secondary accountability as Accounting Officer to the Permanent Secretary (Principal Accounting Officer) in the Department.

Primary accountability (to the Board)

2.16 As an employee of the Board, the Chief Executive is accountable to the Board for the overall organisation, management and staffing of the ALB.

2.17 The key roles and responsibilities of the Chief Executive are to:

- Assist the Board in developing the strategy for the ALB
- Devise and recommend Corporate and annual Business Plans which will allow for the full implementation of the Board's adopted strategies within the resources available

- Ensure that the ALB has managers and staff with the necessary skills, knowledge, qualifications and experience to be able to implement agreed plans
- Lead and inspire the organisation to fully implement agreed plans on time and within budget to achieve agreed objectives
- Monitor carefully the implementation of plans, taking corrective/remedial action where required
- Implement governance arrangements and sound systems of internal control
- Ensure that the Board is kept adequately informed for it to be able to discharge its duties, including to monitor performance
- Develop and maintain positive relationships with officials in the Department to understand Ministerial aspirations and to ensure that the Department understands the challenges and risks facing the ALB and
- Develop and maintain an effective relationship with the Chair and the Board and to ensure an effective link between senior managers, the Chair and Board Members

Secondary accountability - Chief Executive as Accounting Officer

2.18 The Permanent Secretary of the Department (Principal Accounting Officer) will normally designate the Chief Executive as the Accounting Officer for the ALB. Accounting Officers are personally answerable to the Northern Ireland Assembly for the exercise of their functions, as set out in the NDPB Accounting Officer's Memorandum.

2.19 These Accounting Officer functions include the following:

- Ensuring the propriety and regularity of the organisation's finances and that there are sound and effective arrangements for internal control and risk management
- Ensuring that the resources of the ALB are used economically, efficiently and effectively and that appropriate arrangements are in place to secure value for money
- Ensuring compliance with relevant guidance issued by the Minister, the Department, Department of Finance and in particular with the publication *Managing Public Money Northern Ireland (MPMNI)*
- Signing the annual accounts and associated governance statements and
- Taking action in line with Section 3.8.5 of MPMNI if the Board or its Chair is contemplating a course of action involving a transaction which the Chief Executive considers would infringe the requirements of propriety or regularity, or does not represent prudent or economical administration, efficiency or effectiveness

2.20 It is incumbent on the Chief Executive to combine his/her Accounting Officer responsibilities to the Northern Ireland Assembly with his/her wider responsibilities to the Board. The Board/Chair should be fully aware of, and have regard to, the Accounting Officer responsibilities placed upon the Chief Executive.

2.21 However, the Chief Executive and/or Department should not use the Accounting Officer role as a cover to blindside the Board, fail to provide information, or frustrate implementation of Board decisions. The Accounting Officer role should complement the Board's accountability and assurance function.

Four key relationships

2.22 There are four key relationships which are critical to the success of an ALB and these are between the:

- (1) Minister and Chair
- (2) Chair and Chief Executive
- (3) Board and Executive Team
- (4) Department and Arm's Length Body

(1) The Minister and the Chair

2.23 In most cases, health and social care services will be delivered by ALBs within the Department and not by the Department of Health itself. Ultimately, the primary responsibility for ensuring that an ALB delivers excellent services in a safe and effective manner lies with its Board³ (keeping the Department informed, as required).

2.24 The NIAO publication: *'Board Effectiveness – A Good Practice Guide'* emphasises the critical nature of the relationship between the Minister and the Chair:

"The Chair of the Board needs to build an open and trusting partnership with the Minister. The foundations of such a relationship should start as soon as the new Minister or Chair is appointed.

It is essential that time is taken to establish and develop this relationship. Early engagement and regular scheduled meetings between the Minister and the Chair are of particular importance, with agreed agenda items for such meetings"

³ *"The primary responsibility for the performance of an ALB rests with its Board"* - Arm's Length Bodies – Sponsorship Handbook (Department of Health, April 2018)

2.25 It is therefore vital that the Minister has an excellent and visible relationship with the Chair (and Board) of all of his/her ALBs and this will involve:

- Appointing a high calibre Chair who understands that they are personally responsible to the Minister
- Appointing a Board which collectively has the range of knowledge, skills and experience to ensure effective direction and oversight of the ALB. It is essential that the Board collectively has expert knowledge of the business of the ALB as well as a full and effective knowledge of corporate governance
- Meeting all of the Chairs of his/her ALBs together at least every two months and each Chair on a one-to-one basis periodically (how often will depend on the risk profile of the ALB but at least annually)
- Signing off (or, at least, having sight of and agreeing) the appraisal of the Chair

(2) The Chair and Chief Executive

2.26 The relationship between the Chair and Chief Executive is central to the success of an organisation. Both have distinctive leadership roles as follows:

- The Chair runs the Board and the Chief Executive runs the organisation (overseen and supported by the Board)
- The Chair leads the Board, in conjunction with the Executive Team, in working out the strategic direction of the organisation and the priorities for resources. The Chief Executive then implements the strategy
- The Chair and the Board monitor organisational and executive performance, and ensure accountability to stakeholders including the Minister and Department

- The Chair provides cover for the Chief Executive when the going gets tough
- If the Chief Executive does not deserve that cover, the Chair may need to consider removal

(3) The Board and the Executive

2.27 It is essential that the Board and senior management in an ALB work together as an effective team. This involves having clarity about roles and responsibilities and having an atmosphere of mutual respect for each other's position.

2.28 The Chair and the Board need to ensure that there is clarity in, and demarcation of, the responsibilities of the Board and the Executive Team, and ensure that everyone understands them. The Board will approve a formal Scheme of Delegation and Schedule of Powers Reserved for the Decision of the Board which will act as a guide to the Executive as to what should come to the Board.

2.29 In general, the Board is responsible for strategy and will focus on strategic issues. The Executive Team will be responsible for operational issues, with the Board providing effective oversight of performance. Accordingly, the Board can request information on any operational issues should it so wish. There needs to be clarity and openness as well as a culture of 'no surprises' between Chair and Chief Executive, Board and Executive Team.

(4) The Department and the Arm's Length Body (Chief Executive)

2.30 The role of the Department is to advise the Minister and to ensure that the ALB is adequately briefed about the Minister's policies and priorities as well as monitoring the ALB's activities on behalf of the Minister.

2.31 In undertaking this role on behalf of the Minister, the Department will:

- At the start of the Corporate Planning process, advise the ALB on the Minister's policies and priorities and subsequently ensure that the ALB's

strategic aims and objectives support the Minister's policies and priorities and are clearly aligned with the Programme for Government (PFG)

- Advise the Minister on an appropriate framework of objectives and targets for the ALB in the light of the Department's wider strategic aims and current PFG targets
- Advise the Minister on an appropriate budget for the ALB in the light of the Department's overall public expenditure priorities
- Monitor how well the ALB is achieving its objectives and targets by, inter alia, holding accountability meetings with the Chair and the Chief Executive
- Ensure that any concerns about the activities of the ALB are communicated to the Chair and Board requiring explanations and assurances that appropriate action has been taken
- Escalate significant ALB risks to the Departmental risk register
- Facilitate meetings between the Minister and the Chair
- Agree a skills and experience matrix with the Chair of the ALB and ensure that public appointments are made on a timely basis and deliver the range and diversity of knowledge, skills and experience required

2.32 However, in general terms, the Department should leave the oversight and management of the ALB to the Board.

PART 3: HOW DOES THE RQIA'S GOVERNANCE FRAMEWORK COMPARE TO BEST PRACTICE?

Introduction

2.33 The Review Team reviewed the RQIA's Corporate Governance Framework to assess the extent to which it complied with best practice (as per Part 2 above). The documents reviewed included:

- The legislation establishing the RQIA (primarily the 2003 Order)
- Management Statement and Financial Memorandum (2018)
- Standing Orders of the RQIA (2019)
- Code of Conduct and Code of Accountability for Board Members of Health and Social Care Bodies (2012)
- Department's Arm's Length Bodies Sponsorship Handbook (2018)
- Letters of Appointment of the Chair and Board Members (2014 onwards)

RQIA – founding legislation

Status

- 2.34 The Regulation and Quality Improvement Authority (RQIA) is an independent, executive Non-Departmental Public Body, sponsored by the Department of Health. It was established under Article 3(1) of the Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003:

“There shall be a body corporate to be known as the Regulation and Quality Improvement Authority”

- 2.35 Under Schedule 1, paragraph 4 of the 2003 Order, the RQIA consists of a Chairman and not more than 12⁴ Board Members appointed by the Department.

- 2.36 Schedule 1, paragraph 5 details the appointment and termination process:

“The Department may by regulations make provision as to:

(a) The appointment of the Chairman and other members (including the number, or limits on the number, of members who may be appointed and any conditions to be fulfilled for appointment)

(b) The tenure of office of the Chairman and other members (including the circumstances in which they cease to hold office or may be removed or suspended from office)”

Functions

- 2.37 The RQIA has overall responsibility for monitoring and inspecting the availability and quality of health and social care services in Northern Ireland and encouraging improvements in the quality of those services.

⁴ As amended by The Regulation and Improvement Authority (Appointments and Procedure) Regulations (Northern Ireland) 2004

- 2.38 In delivering on this overall responsibility, the RQIA exercises two main functions. Firstly, it monitors the quality of health and social care services provided by HSC bodies in Northern Ireland. This is undertaken through thematic and Departmental-sponsored reviews of clinical and social care governance arrangements within HSC bodies.
- 2.39 Secondly, the RQIA regulates (registers and inspects) a wide range of health and social care services delivered by HSC bodies and by the independent sector. The regulation of services is based on minimum care standards (set by the Department) in order to ensure that service users know what quality of services they can expect to receive and providers have a benchmark against which to measure the quality of the services that they deliver.
- 2.40 The intention is therefore that registration, inspection and enforcement are carried out to consistent standards across Northern Ireland with the regulated services provided by both the HSC and independent sectors being treated in the same way.

Delegation of functions

- 2.41 Schedule 1, paragraph 9 allows the RQIA to:

“Arrange for the discharge of any of its functions by a committee, sub-committee, [Board] member or member of staff of [RQIA] or any other person”

- 2.42 Paragraph 7(1) allows for the appointment of a Chief Executive:

“There shall be a Chief Executive of the [RQIA] who shall be a member of its staff and shall be responsible to it [the RQIA] for the general exercise of its functions”

The Chief Executive is therefore an employee of the Authority but is not a Board Member or part of the RQIA (corporate body).

- 2.43 Under Schedule 1 of the 2003 Order, the RQIA will appoint its own Chief Executive on such terms and conditions as the Authority may determine (paragraph 7[3]) but the appointment of the Chief Executive requires the approval of the Department (paragraph 7[4]).
- 2.44 Under paragraph 3.4.2 of the MSFM, the RQIA also requires Departmental approval for the remuneration arrangements for the Chief Executive and his/her performance objectives.

Department’s power to issue Directions and make Regulations

- 2.45 Article 6(2) - Regulations and Directions - of the 2003 Order gives the Department the right to issue Directions to the RQIA:

“The Department may give directions to the RQIA with respect to the exercise of its functions and the RQIA must comply with them”

- 2.46 Article 6(1) gives the Department the right to make regulations:

- (a) As to the times at which, the cases in which, the manner in which, the persons in relation to whom or the matters with respect to which, any functions of the RQIA are to be exercised*
- (b) As to the matters to be considered or taken into account in connection with the exercise of any functions of the RQIA*
- (c) As to the persons to whom any advice, information or reports are to be given or made*
- (d) As to the publication of reports and summaries of reports*
- (e) As to the recovery from prescribed persons of amounts in respect of the expenditure incurred by the RQIA in the exercise of its functions*
- (f) For or in connection with the exercise of functions of the RQIA in conjunction with the exercise of functions of other persons*
- (g) Conferring additional functions on the RQIA*

Conclusion – RQIA founding legislation

2.47 The legislation establishing the RQIA makes it clear that:

- The RQIA is a body corporate consisting of the Chair and Board Members – **the RQIA is the Board and the Board is the RQIA**
- Although the RQIA is an ‘independent’, Arm’s Length, Non-Departmental Public Body, the Department has the right to issue Directions and make Regulations

Review of core governance documentation

2.48 The Review Team's analysis of the core governance documentation of the RQIA highlighted a lack of consistency, confusion and poor practice in several areas including:

- (1) A lack of clarity over the role and authority of the Board and an over emphasis on the role of the Chief Executive as Accounting Officer
- (2) No clear and specific role for the Minister in the oversight of the RQIA

(1) The role of the Board

2.49 The Code of Conduct and Code of Accountability for Board Members of HSC Bodies (July 2012) sets out the role of the Board as being, inter alia, to:

- Establish the overall strategic direction of the organisation within the policy and resources framework determined by the Department/Minister
- Oversee the delivery of planned results by monitoring performance against objectives and ensuring corrective action is taken when necessary
- Appoint, appraise and remunerate senior executives

2.50 This is supported by the Assurance and Accountability Principles set out in the Department's ALB Sponsorship Handbook (2018) which states that *"the primary responsibility for ALB performance lies with the Board"* (Principle 4). *"An ALB will be held to account for the delivery of its prescribed functions and its compliance with other statutory functions"* (Principle 5).

2.51 However, much of the governance framework of the RQIA undermines the principle that the Chief Executive is primarily accountable to the Board and appears to elevate the role of the Chief Executive as Accounting Officer to a

position where the Chair and the Board might even be considered to be accountable to the Chief Executive.

- 2.52 For example, the MSFM has a substantial section on the role of the Chief Executive as Accounting Officer (in which he/she is accountable to the Department) but no section at all on the role of the Chief Executive as employee of (and accountable to) the Board.
- 2.53 The list of functions attributed to the Chief Executive as Accounting Officer includes many that are not related to the Accounting Officer role but should fall under the Board's purview including strategy and performance.
- 2.54 In particular, Section 3.6.3 of the MSFM states that:

“As Accounting Officer, the Chief Executive shall exercise the following responsibilities, in particular:

To establish, with approval of the Sponsor Department, the RQIA's Corporate Strategy and Business Plans in support of the Department's wider strategic aims and current Programme for Government objectives and targets...

To ensure that timely forecasts and monitoring information on performance and finance are provided to the Sponsor Department, that the Sponsor Department is notified promptly if overspends or underspends are likely and correct action is taken”

On advising the Board

“The Chief Executive shall advise the RQIA Board on the RQIA's performance compared with its aims and objectives”

- 2.55 The MSFM implies that the Chief Executive is accountable for strategy development and operational performance to the Department and not to the RQIA Board. **The section on “advising the Board” is more appropriate to an**

Advisory Board not a statutory Board of a Corporate Body. The MSFM contains no mention of the Board’s role in holding the Chief Executive to account or its key decision-making role. This disregards two of the most fundamental roles of the Board.

2.56 The Review Team noted several other areas where the MSFM is confusing or deficient, including:

Section 2.2.2 states that the Chief Executive as Accounting Officer (in providing assurance to the Department) can put in place whatever arrangements deemed necessary within the RQIA. This appears to undermine the Board as the governing body within and for the RQIA
Section 2.3 sets out the performance management arrangements for the RQIA which centre on the lines of reporting and accountability between the Department (Sponsor) and the Chief Executive. There is no mention of the Chair or the Board of the RQIA
Section 3.5 clearly states that the Chair is accountable to the Minister and (at 3.5.3) lists the Chair’s leadership responsibilities and the Board’s corporate responsibilities, including strategy formulation, staff, decision-making, representing the views of the Board to the public, etc. However, there is no mention of the Chair’s role in appraising the Chief Executive

2.57 This distortion of roles and general undermining of the Board’s role in the MSFM is further illustrated in the RQIA Chair’s letter of appointment (2014) which states that:

*“The Non-Executive Chair of RQIA reports directly to the Chief Executive of RQIA”
(Section 6.2)*

2.58 This confusion was demonstrated during a Judicial Review taken out against the RQIA during the Pandemic. The Interim Chief Executive of the RQIA stated in his affidavit (developed with the RQIA’s legal advisers) that:

“The RQIA is made up of both an Executive Team and Board of Members. The Executive Team is led by the Chief Executive.....and is responsible for the day-to-day operations and management of the RQIA.

In terms of governance, the RQIA Board has corporate responsibility for ensuring that the RQIA fulfils the aims and objectives set by the DOH sponsor branch, approved by the Minister, as well as promoting the efficient, economic and effective use of staff and other resources by the RQIA.”

2.59 This suggests that there are two distinct entities within the RQIA – the Chief Executive who is wholly responsible for operational (and strategic) matters and performance reporting to the Department, and the Board which has a vague ‘governance’ and advisory role.

2.60 This is fundamentally wrong. As per the 2003 Order, the RQIA is **the** corporate body consisting of the Chair and its Board Members – the Board is responsible and accountable for all the actions of the RQIA and its staff. The Code of Accountability for Board Members of HSC Bodies states clearly that:

“The Chief Executive is directly accountable to the Chair and non-executive members of the Board for the operation of the organisation and for implementing the Board’s decisions”

*“The Chief Executive is accountable to the Chair and Board Members for ensuring that Board decisions are implemented, that the organisation works effectively... and for the maintenance of proper financial stewardship. The Chief Executive should be allowed full scope, **within clearly defined delegated powers**, for action fulfilling the decisions of the Board”*

(2) The role of the Minister

2.61 Section 3.1 of the MSFM sets out the governance responsibilities of the Minister in relation to the RQIA as follows:

- Approving the strategic objectives of the RQIA and the policy and performance framework within which it will operate
- Keeping the Assembly informed about the performance of the RQIA as part of the HSC system
- Carrying out responsibilities specified in the founding legislation including appointments to the RQIA Board (including its Chairman) and laying of the annual report and accounts before the Assembly
- Approving the remuneration scheme for RQIA Board Members and setting the annual pay settlement each year under these arrangements

2.62 However, the RQIA's governance framework (including the MSFM) does not give the Minister any clear and specific role in the oversight of the RQIA. Many of the oversight functions that should be performed by a Minister are either not being performed at all or are being undertaken by civil servants. For example, (as per the RQIA's governance documentation):

- The Minister does not meet the Chair of the RQIA individually
- The Minister does not meet the Chairs of the ALBs collectively⁵
- The Minister does not meet the Board periodically (at least annually)
- The Minister does not sign off (or at least agree) the appraisal of the Chair

⁵ However, the Review Team noted that, in May 2020, a first meeting between the Minister and the ALB Chairs was organised for 17 June and the Minister is now having regular meetings with this group

According to 7.10 of the Sponsorship Handbook:

“The Chair of the Board of the RQIA completes a self-assessment which must then be sent to the appropriate senior official in the Department who completes the appraisal. The appraisal is then countersigned by the Permanent Secretary.”

Section 3.3.1 of the MSFM states that the Departmental Executive Board Member (EBM) *“undertakes an end-year appraisal for the RQIA Chair”*. Section 7.10 of the Sponsorship Handbook for ALBs also makes no mention of the role of the Minister in the Chair’s appraisal process.

At the very least, the Minister should be content that the appraisal of the Chair is an accurate reflection of his views

- The letters of appointment for the Chair and Board Members are signed by either the Director of Human Resources or Director of Workforce Planning in the Department of Health although the letter acknowledges that these are Ministerial Appointments. The Minister should sign the appointment letter as the person responsible

2.63 The Review Team was informed by the Department that the absence of any reference to an ongoing relationship between the Minister and the Chair in the RQIA’s governance documentation may be due in part to the absence of a Devolved Administration and local Ministers. [A Minister has only been in place since January 2020].

2.64 However, the Review Team noted that this deficiency has been evident since the onset of Devolution in Northern Ireland and during periods when there has been a Devolved Administration and local Ministers in place.

(3) Other observations

Appointments

2.65 Under Section 4.1 of the RQIA's Standing Orders, if the Chair:

“Has ceased to hold office or is unable to perform his/her duties owing to illness, absence from Northern Ireland or any other cause, the Members of the Board may appoint one of their number as Acting Chair... for a period until the Chair is able to resume his/her duties or a new Chair is appointed.”

2.66 The Review Team noted that, following the departure of the previous Chair (Dr Alan Lennon), Professor Mary McColgan was appointed as the Acting Chair of the RQIA by her fellow Board Members in March 2017 in accordance with these Standing Orders. However, when she resigned in June 2020, she was still the Acting Chair. The Department's Public Appointments Unit informed the Review Team that there were legal constraints on civil servants making public appointments during this period when no Minister was in post.

2.67 The Review Team further observed that Olive Macleod was appointed as Chief Executive of the RQIA in July 2016 on secondment from the Northern Health and Social Care Trust. She was still on secondment when she moved to the Public Health Agency (PHA) as Interim Chief Executive on 27 March 2020⁶. The PHA, in turn, has not had a substantive Chief Executive for nearly four years.

Acting Chair and Board Members – length of service

2.68 The Public Appointments process aims to ensure that, at any given time, a Board has a mix of continuity and renewal with the knowledge and experience of existing Board Members balanced by the ideas and energy of newly appointed Board Members. The maximum length of service for any Board Member is

⁶ There was, however, a recruitment exercise to make a permanent Chief Executive appointment in June 2019 but this was abandoned as a result of flaws in the process

normally eight years (two terms of four years) unless, in exceptional circumstances, an extension is granted.

Board of the RQIA at date of resignations (June 2020)

Board Member	Date of appointment	Length of service
Professor Mary McColgan OBE (Acting Chair since 2017)	April 2013	7 years
Sarah Havlin	09 December 2011	8½ years
Seamus Magee OBE	21 April 2014	6 years
Gerard McCurdy	14 July 2014	6 years
Dr Norman Morrow OBE	14 May 2014	6 years
Robin Mullan	14 May 2014	6 years
Patricia O’Callaghan	18 April 2013	7 years
Denis Power	09 December 2011	8½ years
Lindsey Smith	09 December 2011	8½ years

2.69 The Review Team noted that this was a very experienced Board with an average length of service of more than seven years – all Board Members were in their second term with three serving extensions at the end of their second term.

Conclusion – Review of core governance documentation

- 2.70 The current governance framework of the RQIA is confused and contradictory, and does not comply with best practice.
- 2.71 The Code of Conduct and Code of Accountability for Board Members of HSC Bodies (July 2012) sets out the role of the Board clearly, succinctly and accurately. This document is fully in line with legislation and best practice, including the On Board guidance.
- 2.72 However, the MSFM and the ALB Sponsorship Handbook are substantially flawed – in particular, they fail to reflect the primary accountability of a Chief Executive to his/her own Board and place the emphasis on the secondary accountability of the Chief Executive to the Department (as Accounting Officer).
- 2.73 The RQIA's governance framework gives the Minister no clear and specific role in the oversight of the RQIA and this leaves a significant democratic deficit.
- 2.74 Most of the governance documents for the RQIA (see 2.33 above) were developed when there was no Northern Ireland Assembly or local Ministers in place and need to be developed to take account of the role of the Minister.
- 2.75 In many instances, the deficiencies in the governance framework of the RQIA flow from core governance documentation which emanated from the Department of Finance (e.g. MSFM and ALB Sponsorship Handbook). This suggests that these structural governance weaknesses may be more widespread and deep-seated than just the RQIA and the Department of Health.
- 2.76 Section 2.22 sets out the key relationships which are critical to the success of an ALB. The Review Team's analysis of the governance framework of the RQIA strongly indicates that these key relationships are either dysfunctional or non-existent:

The Minister and the Chair

This relationship does not exist in any formal or structured manner

The RQIA Board and Chief Executive

The Board's role, as described in much of the RQIA's core governance documentation, is more akin to that of an Executive Agency or a Departmental Board (i.e. advisory in nature) rather than the pivotal governance role of the Board of an Executive NDPB and ALB (as described in the Code of Conduct and Code of Accountability for Board Members of HSC Bodies)

The primary line of reporting and accountability appears to be between the Chief Executive and the Department

The Department and the RQIA (Chief Executive)

In the absence of a substantive relationship between the RQIA Chair/Board and the Minister, and the apparent primacy of the Chief Executive's role as Accounting Officer, most of the actual power and authority as well as decision-making seems to reside with the Department working directly with the Chief Executive of the RQIA.

Section 3: How events unfolded during the Pandemic (1)

Part 1: Introduction

Part 2: The five Departmental 'Directions'/decisions

- Departmental Direction to reduce the minimum frequency of inspections in care homes
- Departmental Letter to take a pragmatic approach to care provider inquiries
- Departmental Decision to repurpose the RQIA into a single point of contact and support for providers
- Departmental Decision to redeploy four members of the RQIA's senior team (including the Chief Executive)
- Departmental Request to ask RQIA to make inspection staff available to work in the care home sector

Part 3: Overall conclusions

PART 1: INTRODUCTION

Reasons for resigning

3.1 In their letters of resignation to the Minister of Health on 17 and 18 June, the ex-Board Members of the RQIA outlined their reasons for stepping down. To a large extent, these letters contained a number of common themes as follows:

- An appreciation of the emergency situation that prevailed and the fast-moving pace of decision-making. Ex-Board Members did not expect normal consultation processes to apply
- A recognition that the Department had the legal authority under Article 6(2) to issue Directions to the RQIA
- An acceptance that most of the ‘Directions’ were necessary in responding to this unprecedented crisis
- Concern at the lack of effort made by the Department to consult or engage with the Board prior to making these key decisions
- Particular concern over the decision by the Department to (1) redeploy the Chief Executive and three other members of the RQIA Executive Team and (2) appoint (and extend the appointment of) an Interim Chief Executive without any communication with or involvement of the Board
- By excluding the Board from involvement in any of these key decisions, the belief that the role of the Board had been diluted and compromised
- Dismay at the failure of the Department to communicate even at a basic level with the Board and finding out about decisions and directions after the event and occasionally through the Press
- The actions of Departmental officials in seeking to ‘remove’ the Acting Chair in June

3.2 With the exception of the last bullet point above (which will be addressed in Section 4), these concerns primarily relate to five key decisions taken by the Department in March and April 2020 in response to the emergency situation. These five decisions were as follows:

- (1) A Departmental Direction to reduce the minimum frequency of inspections in care homes as part of the response to COVID-19 (CMO, 20 March)
- (2) Departmental letter – asking the RQIA to take a pragmatic approach to care provider inquiries (CMO, 23 March)
- (3) Repurposing the RQIA into a single point of contact and support for providers (Chief Social Worker, 25 March)
- (4) Redeploying four senior members of the RQIA’s Executive Team including the Chief Executive and appointing an Interim Chief Executive (Permanent Secretary, 27 March and 30 March)
- (5) Asking the RQIA to make inspection staff available to work in the care home sector (CMO, 23 April)

3.3 In a Press Statement issued at the time of their resignation, the ex-Board Members stated that:

“These decisions were made without prior warning or input from the Board and no information was made available in advance to explain the rationale for them. Board Members could not stand over significant decisions taken in the name of the RQIA when they played no part in the actual decision-making process and were not informed about them”

3.4 In the rest of this Section, the Review Team examines each of the five Directions/decisions – how they were developed and the involvement of the RQIA Executive Team and Board in the process.

PART 2: THE FIVE KEY DEPARTMENTAL DIRECTIONS/DECISIONS

(1) DEPARTMENTAL DIRECTION TO REDUCE THE MINIMUM FREQUENCY OF INSPECTIONS IN CARE HOMES

Timeline

- 3.5 On 13 March, Conrad Kirkwood, Head of the Quality Regulation and Improvement Unit in the Department, e-mailed Olive Macleod, Chief Executive of the RQIA, stating that the Department was:

“Minded to suspend unannounced inspections (by the RQIA) for a period of time. It could be that you are doing this already as part of business continuity planning but that Departmental coverage formally would be useful and could also form a part of the Departmental response.

From your perspective, can you confirm that this would be proportionate at present and that key risk can be managed based on the normal inspection programme?

Obviously, whilst we are pausing the unannounced inspections it would not preclude RQIA from dealing with serious concerns which are brought to them such as whistleblowing.”

- 3.6 In response to this e-mail, the Chief Executive of the RQIA replied (same day, 13 March):

“I agree that a pause of routine unannounced inspections is prudent, we will need Ministerial cover please. We will continue to respond to intelligence where we believe there is an unacceptable risk. Once we have the cover we will communicate with the sector, and will share proposed communication with you”

- 3.7 On the back of this response, Departmental officials drafted a submission to stop routine, unannounced inspections as agreed with RQIA staff:

“[The submission] needs to quote the legislation and have a letter issuing a Direction. CMO and Permanent Secretary will need to see it and it will need to be approved by the Permanent Secretary”

3.8 A draft Departmental Direction letter was e-mailed to the RQIA by the Department. The Chief Executive of the RQIA confirmed to the Department that RQIA *“was content”* with the Direction.

3.9 On 13 March 2020, the Chief Executive of the RQIA copied the draft Departmental Direction to the Acting Chair in an e-mail with the following message:

“Attached is draft, I have asked for some more clarity, we expect to receive this formally on Monday, please do not share”

3.10 On 20 March 2020, the CMO issued a Departmental Direction *“directing the RQIA to reduce the frequency of its statutory inspection activity ... and cease its non-statutory inspection activity and review programme with immediate effect until otherwise directed”*.

3.11 The rationale for this Direction was to *“enable valuable RQIA resources to be directed into other areas where they were needed in order to deal with issues arising from the Pandemic and to relieve pressure on care homes.”*

“As well as minimising the risk of spreading infection to the most vulnerable people in society” (RQIA Press Release of 08 April 2020)

3.12 The Direction was formally issued to the Chief Executive of the RQIA on 20 March and was copied to the Acting Chair of the RQIA. The Acting Chair then circulated the Direction to Board Members.

Other jurisdictions

3.13 This Direction brought Northern Ireland into line with regulatory practice in the rest of the United Kingdom and the Republic of Ireland:

- 12 March: Health Information and Quality Authority (HIQA) in the Republic of Ireland - *“all routine inspections of designated centres have been cancelled until further notice”*
- 13 March: Care Inspectorate (Scotland) - *“we have taken the decision to cease our inspections of care services at this time”*
- 16 March: Care Inspectorate Wales - *“we have decided to pause all routine inspections from 5pm today”*
- 16 March: Care Quality Commission (England) – *“we will be stopping all routine inspections from today”*

RQIA Board meeting of 19 March 2020

- 3.14 The minutes of the RQIA Board meeting of 19 March (held by teleconference) show that the Chief Executive briefed the Board on the impending *“letter from the CMO directing us to stop non-statutory inspection and review activity during the Coronavirus Pandemic”*.
- 3.15 However, the minutes demonstrate that the Board did not ask any questions or raise any concerns on this matter following the briefing from the Chief Executive but *“agreed a message from the Board to be circulated to all staff for their hard work and commitment during the Coronavirus Pandemic”*.
- 3.16 RQIA Senior Managers told the Review Team that the focus of Board Members at the 19 March meeting had been on the review of the RQIA Complaints Policy and the ongoing CPEA Review but the Board had shown little interest when informed of the impending Departmental Direction:

“Olive [Chief Executive] was entirely upfront at that meeting – she explained that our Pandemic plan assumed far fewer inspections but we had to have a formal direction from the Department before we could formalise that decision. She advised that we were better placed to support services during this period rather

than burden them with inspection and put them at risk with additional footfall in the premises.

At that meeting, the Board was far more interested in the Complaints Policy (and the CPEA report) rather than the Direction. I vividly recall my frustration at the time spent on these two issues to the detriment of the Pandemic planning.

I genuinely do not believe that the Acting Chair or the Board fully appreciated the importance of the impending Direction from the Department”

3.17 However, several former Board Members informed the Review Team that this was the first Board meeting held by teleconference – in addition to the inherent practical problems, there were technical issues which caused difficulties during the meeting.

3.18 The Review Team reviewed the minutes of the Board meetings of the HIQA and Care Inspectorate Scotland on 11 March and 26 March respectively and noted that issues relating to COVID-19 featured prominently both in the Chief Executive’s Report to the Board and subsequent Board discussions.

“The Board explored in detail the implications associated with HIQA’s inspection programme”

“The main focus of the Chief Executive’s update to the Board was on the rapidly changing situation in relation to Covid-19. This covered:

- *the required changes to the Care Inspectorate’s regulatory scrutiny activity*
- *the establishment of command groups at strategic and operational levels, and an Intelligence Development Group to look at the systematic collation of intelligence*
- *the close monitoring of the situation around quality of care, protection and other regulatory duties*
- *re-directing the capability and capacity of the organisation in making direct contact with services and enabling the gathering of real time information*

- *the use of intelligence to build a 'heat map' across the country to help identify early warnings, pre-empt and respond, in partnership working with other agencies, and to help support services as much as possible*

The Board discussed the issues in relation to COVID-19 at length..."

Communication with the Board

- 3.19 The former Chief Executive of the RQIA, Olive Macleod, told the Review Team that she had discussed this Direction and all four of the March Directions/requests from the Department, including her own move to the PHA, with the Acting Chair. She believed at the time that the Board was fully supportive of all of these decisions and was surprised that they have subsequently claimed that they were not 'in the loop'.

Conclusions

- 3.20 It is clear to the Review Team that:

- The Department has authority to issue Directions to the RQIA under Article 6(2) of the 2003 Order
- The decision to issue the Direction was not imposed on the RQIA but was taken in consultation with, and with the full agreement of, the Chief Executive (and the Executive Team) of the RQIA
- The decision to scale back much of the RQIA's inspection activity and review programme had the effect of aligning RQIA's regulatory practice with that of other social care regulators in England, Scotland, Wales and the Republic of Ireland
- The rationale for the decision was reasonable and reflected the scaling back of many ALB activities during the Pandemic. Ex-Board Members, collectively, do not appear to be disputing the merits of the Direction, but rather the lack of consultation and communication around the decision

- The Acting Chair was notified (and e-mailed a copy) of the impending Direction by the Chief Executive at an early stage (13 March), but was asked *'not to share it'* and consequently did not inform her Board. This was of such importance that it should have been shared with the Board immediately
- The response by the Board to the Chief Executive's briefing on the impending Departmental Direction at the Board meeting of 19 March was inadequate. The minutes record that no questions were asked and no concerns were expressed by Board Members

(2) DEPARTMENTAL LETTER - TO TAKE A PRAGMATIC APPROACH TO CARE PROVIDER INQUIRIES

3.21 On 23 March 2020, the CMO issued a follow-up letter in response to concerns raised by the Chief Executive of the RQIA about how the RQIA would deal with service provider queries during the Pandemic.

“Further to our conversation today, I am now writing to confirm that, as your Executive Sponsor, I am content that RQIA may work with providers to take a pragmatic approach to provider queries where a solution may be outwith the letter of standards and regulations but where inspectors are satisfied that all risks have been considered and mitigated in order to support a service to continue in these extraordinary times.

This will be for a temporary period and I expect that RQIA will have a robust system of internal control in order to assure you, your executive and Board that all aspects of decisions have been considered.

I trust you will find this helpful.”

3.22 On 25 March 2020, Jennifer Lamont, RQIA Head of Business Support, e-mailed Conrad Kirkwood in the Department to express the gratitude of the RQIA for the CMO’s letter of 23 March *“confirming that RQIA could support our regulated providers to take a risk-based approach to their services”*.

Conclusion

3.23 This letter was issued in good faith by the CMO in response to a request from the RQIA Executive Team. In the view of the Review Team, the rationale behind the letter was sound.

(3) DEPARTMENTAL DECISION - TO REPURPOSE THE RQIA INTO A SINGLE POINT OF CONTACT (SERVICE SUPPORT TEAM)

- 3.24 As the crisis developed, there was an influx of requests from care homes, nursing homes and other independent care providers for guidance and support.
- 3.25 On 19 March 2020, a multi-agency conference was held involving RQIA executives, the Department, Health and Social Care Board and representatives from each of the Trusts. A consensus emerged that a single agency should act as a conduit through which all of the official guidance and information should be channelled and that a single point of contact telephone service and application (App) would be created.
- 3.26 Olive Macleod told the Review Team that *“the RQIA had elbowed its way to the front”* as the Executive Team knew that RQIA was the most suitable of all HSC organisations to provide this service given the intelligence and data on care providers which it had built up over the years.
- 3.27 This telephone service and App developed by the RQIA was referred to as the Service Support Team (SST). On 23 March 2020, Sean Holland (Chief Social Worker in the Department) wrote to the Chief Executives of all HSC Trusts and other bodies announcing the impending launch of the SST.
- 3.28 In the letter, he explained that the purpose of the CMO’s Direction of 20 March was to reduce inspections to *“allow RQIA staff to be freed up to provide professional support to the HSC.”* He also paid tribute to the RQIA:

“By introducing this approach, we envisage that because of the close relationships and trust the RQIA have built up over many years with the independent provider sector, that they will add value to the work being progressed by using their professional expertise and support to take some of the pressure off Trusts”

- 3.29 On 25 March 2020, Sean Holland issued a letter to all independent health and care providers announcing the launch of the SST on 26 March (the next day):

“I am now writing to confirm that RQIA has now set up a Service Support Team to act as the point of contact for providers of adult residential and nursing homes,

domiciliary care and supported living services who have questions and issues arising from the current Pandemic.

The main objective of this exercise is to ensure that providers have a single point of contact to raise issues and receive the most up to date advice, guidance and support from RQIA's expert teams of inspectors who – for those supporting this function – are all registered nurses, social workers or AHPs....

As of tomorrow, RQIA will launch an App designed to capture issues. Providers will be contacted with instructions on how to download and use this very simple application. RQIA is also working to establish a call centre function to further support providers at this time”

Sean Holland, Chief Social Worker, Department of Health, 25 March 2020

- 3.30 The Chief Executive of the RQIA was kept fully briefed on developments and signed off both letters issued by Sean Holland on 23 and 25 March prior to them being issued.
- 3.31 Although there was no Board discussion or involvement in the decision to set up the SST, the Acting Chair of RQIA was fully briefed on developments. On 19 March 2020, the Department forwarded a draft of the Sean Holland letter (of 23 March) to the Chief Executive of the RQIA for review and comment. The Chief Executive copied the draft letter to the RQIA Acting Chair on 20 March 2020 with the covering note “FYI”.
- 3.32 The Acting Chair responded the same day as follows:

“Many thanks Olive, I am glad that this approach has been set up and RQIA's positive role in having established relationships with sector acknowledged. I will not forward to Board at this stage until you receive formal communication. You and colleagues have worked very hard to achieve this recognition and in the context of complex relationships about how the sector should be supported I wanted (on behalf of the Board) to recognise how your leadership has influenced this new approach, warm regards, Mary”

3.33 In an e-mail to RQIA staff dated 20 March, sent on behalf of the Board, the Acting Chair stated:

“You are probably aware that we are awaiting confirmation of RQIA’s role in providing support to the independent sector; in effect becoming the core centre for providing advice and support”

3.34 However, it was not until 23 March, when the Acting Chair forwarded the letter from Sean Holland to them, that Board Members of the RQIA were formally made aware of this significant development:

“Colleagues, please see attached letter confirming the key role RQIA will play in supporting the HSC sector during the COVID 19 crisis. We know RQIA colleagues are ready and willing to step up to the challenges posed. We extend our appreciation to Olive and Dermot for negotiating these arrangements. Regards, Mary”

The Review Team could find no evidence of any communication with the Board before this point.

Conclusions

3.35 There was an identified need for this service and the Department, Independent Health and Care Providers and Trusts appear to have appreciated the RQIA’s efforts as part of the HSC response to the Pandemic.

3.36 However, this decision to make the RQIA into a single point of contact and support for providers fundamentally altered the ‘purpose’ of the RQIA. This was fundamental and strategic, and clearly a Board matter. It should not have been the subject of a private agreement between the Department and the RQIA Executive Team.

3.37 Although Board Members are right to feel aggrieved at being left out of discussions and deliberations on this decision, the Review Team noted with

concern that the RQIA Acting Chair had been fully briefed about this matter well in advance and chose not to inform the Board.

- 3.38 In the Review Team's opinion, the Acting Chair should have made the Executive Team clear about the Board's expectations and not to take the support of the RQIA Board for granted just because of the unique nature of the Pandemic.

(4) DEPARTMENTAL DECISION – TO REDEPLOY KEY MEMBERS OF THE RQIA’S SENIOR TEAM (INCLUDING THE CHIEF EXECUTIVE)

The redeployment of RQIA senior executives

3.39 The Permanent Secretary and Health and Social Care Chief Executive, Richard Pengelly, wrote to the Chief Executives of all ALBs on 26 March 2020, in a letter entitled *‘COVID-19: Preparations for Surge’*, setting out some of the emergency changes being developed.

3.40 In this letter, the Permanent Secretary talks about redeployment of staff:

“Trusts have plans in place to request the redeployment of staff within Trust boundaries if required. In addition, if required, and working with staff and their representatives, it may be necessary to ask some staff if they would be prepared to work in different Trust areas to ensure that patient care is not compromised.”

3.41 At the end of March/beginning of April, four of RQIA’s senior managers were redeployed out of RQIA into other areas to assist with fighting the Pandemic:

- Olive Macleod, RQIA Chief Executive, seconded to the PHA (27 March)
- Jennifer Lamont, Head of Business Support, seconded to the Department (27 March)
- [REDACTED], Head of Information and Intelligence, seconded to the Department (06 April)
- [REDACTED], a specialist inspector, seconded to the Northern Ireland Ambulance Service (30 March)

Dr Lourda Geoghegan, Director of Improvement and Medical Director, had already been seconded to the Department on 09 March.

Redeployment of the RQIA Chief Executive to the Public Health Agency (PHA)

- 3.42 In March 2016, the then Minister of Health Simon Hamilton announced the closure of the Health and Social Care Board with its commissioning powers to be taken over by the Department and the remainder of its functions transferred to the PHA. It was decided by the Department that, in the interim period, the Chief Executive of the HSC Board would also act as the Chief Executive of the PHA.
- 3.43 Senior officials in the Department told the Review Team that the lack of strong executive leadership in the PHA became apparent from the early stages of the Pandemic. The Permanent Secretary informed the Review Team that the PHA had been struggling with a number of issues during the Pandemic, including testing and the recording of deaths. In this context, he believed the RQIA Chief Executive could play an important role given her track record within the RQIA.
- 3.44 In a letter dated 27 March 2020, the Permanent Secretary wrote to all HSC staff announcing that he had *“asked Olive Macleod to step into the role of interim Chief Executive of the Public Health Agency....This change will take place with immediate effect.”*
- 3.45 The Chief Executive of the RQIA told the Review Team that this move had happened very quickly. She had received a telephone call from the Permanent Secretary on 26 March asking her to take up the position as Chief Executive of the PHA, and was in post the next day.

Communication

- 3.46 The Board of the RQIA was not consulted on this decision and only became aware of it after it happened.
- 3.47 The Permanent Secretary told the Review Team that this move had taken place at the peak of the Pandemic when the Department was in firefighting mode and major decisions were being taken at a hectic pace. He acknowledged that he had not contacted the Acting Chair of the RQIA to inform her about Olive Macleod’s move to the PHA and this had been an oversight on his part.

3.48 However, the Chief Executive told the Review Team that she had discussed her impending move to the PHA in a telephone conversation with the Acting Chair immediately after her telephone call with the Permanent Secretary on 26 March. She assumed that the Acting Chair would have briefed the Board.

3.49 These moves happened so quickly that even the Business Services Organisation, which provides the HR function for most of the smaller ALBs including the RQIA, knew nothing about it.

“Broadly it has been agreed regionally that redeployments to external organisations will happen, where this has been the case managers have discussed with those staff, agreed this with them and worked with the external organisation to make this happen.

With some of the RQIA secondments / redeployments at senior level, these decisions were taken by the Department, I had little involvement in these and it was only once they had happened that [we] became aware they had happened”

Peter Laverty, Senior Human Resources Manager, BSO

The appointment of a new RQIA Chief Executive

3.50 On 30 March 2020, Richard Pengelly, Permanent Secretary of the Department, wrote to Dermot Parsons appointing him as Accounting Officer (and, de facto, Interim Chief Executive⁷) of the RQIA. On 03 June 2020, the Permanent Secretary confirmed to Dermot Parsons that his appointment as Interim Chief Executive was being extended until August 2021.

3.51 The Board was not involved in either the decision to appoint or extend the appointment and was only informed after the event.

⁷ This is the conclusion of the Review Team based on our assessment of all the evidence. However, the Permanent Secretary told the Review Team that, although he appointed the Chief Executive as Accounting Officer, he did **not** appoint him as Interim Chief Executive and did not know who had – see Annex 4 for more details

3.52 The Board subsequently expressed concerns that the appointment of the Interim Chief Executive, and in particular, the subsequent extension of his position until August, was in breach of Employment Law. On 04 June, Sarah Havlin, a Board Member of the RQIA and solicitor, shared her concerns with the Board that the RQIA was:

“On shaky legal ground in terms of, what is in real terms the act of granting an internal promotion without fair competition”.

“Regardless of how the Department might wish to frame it, I suspect that an Employment Tribunal would interpret it as a promotion, particularly the extension until August 2021.”

Support for the new Interim Chief Executive

3.53 The Interim Chief Executive told the Review Team that he had not sought this promotion or wanted it. He was told that there was no alternative to him becoming the new Interim Chief Executive and he was not given a choice in the matter. He was not provided with any training or formal support to equip him for his new role, although both the former RQIA Chief Executive and Head of RQIA Sponsor Branch made themselves available to provide advice.

3.54 Both the Acting Chair and former Chief Executive of the RQIA told the Review Team that the latter had a ‘watching brief’ over the new Interim Chief Executive to assist him in his transition into this role.

3.55 Before commencing her secondment (see 3.41 above), Jennifer Lamont (Head of Business Support) realised that the RQIA still needed a Head of Business Support. She immediately informed the new Interim Chief Executive that she would be prepared to continue as Head of Business Support in the RQIA on a part time basis to support the Business Manager and Interim Chief Executive.

3.56 However, she told the Review Team that, in a telephone call, the Interim Chief Executive turned the offer down implying that it would be too difficult for her to undertake the two roles in the time available. The Interim Chief Executive

confirmed to the Review Team that he had turned down the offer of support as he needed someone full time who was able to respond *“promptly and flexibly in the fastmoving fluidity of the Pandemic and with the responsiveness that would be required”*.

- 3.57 Several senior current and former RQIA managers told the Review Team that they were surprised by this decision especially in light of later developments. Jennifer Lamont told the Review Team:

“The new Interim Chief Executive had never demonstrated experience in the governance side of the work. He had previously been unable to fully answer even basic questions about finance and tended to defer to inspectors on issues such as complaints, corporate risk, information governance and engagement. These were part of my role and I could see my exit would leave a significant gap.

A key part of my role was updating the RQIA Board on these matters and I (not Dermot in his substantive role as Director of Assurance) was part of the Audit and Risk Committee. He lacked experience in these issues and even whilst I was still there and he was in the Interim Chief Executive role, he was entirely focused on the operational aspects of the role. This is understandable given the Pandemic response, but I felt it was vital to maintain oversight of the other aspects of the business which is why I offered to remain in post.”

Conclusions

- 3.58 The Board of the RQIA is the employer of the Chief Executive and the Chief Executive’s Contract of Employment was with the RQIA. It is not clear to the Review Team that the Department had the legal authority to redeploy RQIA senior staff without prior consultation with, and approval of, the Board. Even if it had, the manner in which this was handled by the Department showed a lack of respect to the RQIA and its Board.
- 3.59 Nevertheless, the Review Team recognises that the redeployment of the RQIA Chief Executive took place at the height of the Pandemic when the PHA was struggling to cope and decisive action was necessary to address the situation. The

Review Team is not questioning the merits of the decision, just the way in which it was carried out.

- 3.60 Under the 2003 Order, the RQIA as a corporate body appoints its own Chief Executive subject to the appointment being approved by the Department. The decision by the Department to appoint a new Interim Chief Executive without the involvement of the RQIA Board was wrong and contributed significantly to the breakdown of Board/CEO relationships shortly afterwards.

(5) DEPARTMENTAL REQUEST – TO ASK RQIA TO MAKE INSPECTION STAFF AVAILABLE TO WORK IN THE CARE HOME SECTOR

3.61 On 23 April 2020, the CMO wrote to the new Interim Chief Executive of the RQIA:

“Asking RQIA to make inspection staff available to independent sector nursing homes, residential care homes and supported living services where the stability of services is threatened through staff shortages. I am also asking that arrangements are put in place immediately to provide relevant training that would enable RQIA inspectors to be deployed to work in the services highlighted...

There will be other key principles to be considered, including how RQIA will ensure there is no conflict of interest between this support and its regulatory role, and by way of this letter I am requesting that you work with the HSC Board to develop these principles as soon as possible and work together to implement the system.

I am grateful for RQIA’s ongoing commitment to support the independent sector during this Pandemic in particular the dedicated work of the Service Support Team in both supporting the sector and the collation of information for the Department and Trusts. ...Over the past few weeks RQIA has effectively repurposed itself to assist in the collective response to managing the Pandemic, it is evident that this is extremely valuable and valued by the sector and the Department.”

3.62 To all intents and purposes, this looks like a Department-driven initiative but in fact:

- It was the RQIA Executive Team who first raised the idea of deploying RQIA inspectors to independent nursing homes, residential care homes etc. during a regular SST update conference call between the RQIA, Health and Social Care Board, Trusts and the Department
- It was the RQIA Executive Team who asked for a letter from the CMO ‘directing’ the RQIA to proceed with this initiative

- It was the CMO who balked at the approach advocated by the RQIA to ‘direct the RQIA’ and softened the wording to ‘ask the RQIA’ and insisted on including the last paragraph commending the contribution that the RQIA was making in the collective response to the Pandemic
- The Interim Chief Executive of the RQIA had a substantial input into the drafting of the letter for the CMO to issue on the subject
- In his communication with the RQIA Acting Chair on 15 and 26 April, the Interim Chief Executive of the RQIA implies that this initiative was a Departmental initiative with no acknowledgement of the RQIA’s Executive Team’s involvement:

“Colleagues, in a ‘touching base’ conversation with Dermot this afternoon, he has advised me that a new issue is emerging in relation to some residential and nursing homes where they are experiencing difficult situations regarding staffing resources and there is an indication that the Department is talking about deploying support teams to go into the units to provide direct support to the managers and develop solutions to maintain the quality of care.

RQIA is expecting to receive communication from CMO imminently outlining this change of direction and directing RQIA about this.

As soon as this communication is received, I will forward it to you.”

Mary McColgan (Acting Chair), 15 April 2020

Internal opposition

3.63 The minutes of a meeting of the Executive Manager Team within the RQIA on 16 April show that there was considerable internal opposition to the proposal with several managers expressing concerns:

“With staff working in nursing, residential homes, and domiciliary care agencies relating to being de-skilled. Inspectors are no longer ‘professional nurses’ or ‘social workers’ and their skills now lie in regulation. They gave examples such as inability to carry out medication administration and expressed that this would cause reputational damage for RQIA”

Board involvement

3.64 At a hastily convened Board meeting on 27 April, there was an in-depth discussion about this request. The Board clearly recognised that it had a responsibility to understand the implications and the risks for the RQIA in complying with this request from the Department.

3.65 However, by the end of the meeting on 27 April, there was a clear disagreement between the Board and the Interim Chief Executive as to the way forward, thus creating serious tensions which ultimately led to a breakdown in the relationship between the two. [This is explored further in Section 4]

Finale

3.66 The RQIA informed the Review Team that this deployment never happened, mainly as a result of the objections of inspectors. However, the RQIA did offer 'onsite support visits' - where inspectors visited a home (in person or remotely) to see how it was faring during the Pandemic. The RQIA confirmed that, during the Pandemic, 13 support visits took place, nine on site and four via Zoom for an enhanced support discussion.

Conclusions

- 3.67 The former Chief Executive of the RQIA told the Review Team that she would have had significant concerns about any redeployment of RQIA staff to care homes and would have resisted such a move, had she been in post at that time. Whilst recognising the urgency of the situation in care homes, the Review Team would share her concerns.
- 3.68 As an independent regulator, it could be problematic for the RQIA to inspect care homes in future if its own inspectors had been responsible for some of the decisions and actions that they are likely to be inspecting. Decisions on closure can be appealed to the Care Tribunal and the High Court and if there has been RQIA staff involvement at any stage, this could be construed as condoning and, potentially, contributing to some of the failings in the care service.
- 3.69 The Board did subject this request to appropriate scrutiny at its Board meeting on 27 April. However, this created significant tensions and contributed to the subsequent breakdown of the Board's relationship with the Interim Chief Executive.

PART 3: OVERALL CONCLUSIONS

Context

- 3.70 It is important to recognise that these were unique circumstances without precedence for all concerned. The pace of decision-making was frenetic during this period and it is not surprising that there were weaknesses in communication and some of the processes and procedures were different than in normal times.
- 3.71 The Review Team noted that the ex-Board Members collectively do not appear to have an issue with the Department's Directive/decisions, just the process by which they were arrived at and the way in which they were communicated (or not):

“There has been a perception that the RQIA Board were not supportive of the Department's Directives, issued in March 2020, in response to the COVID-19 crisis. Through the good offices of our Acting Chair and Board colleagues, it has been made clear that the RQIA Board are in full support of the Department's Directives...” Chair of the RQIA Audit and Risk Committee on 07 June 2020

RQIA Executive Team

- 3.72 In a letter to the CMO on 29 April 2020, the Interim Chief Executive of the RQIA, Dermot Parsons stated:

*“Directions to develop these new functions, and to step down some aspects of our inspection activity, have been issued variously by the Chief Medical Officer (20 March 2020; 23 March 2020; 23 April 2020) and the Chief Social Worker (25 March 2020). **Each of these Directions has followed engagement with members of RQIA's Executive Team**”*

- 3.73 In this letter, the Interim Chief Executive unwittingly gets to the heart of the problem in that the Board has been excluded by its own Executive Team from some major decisions affecting its core purpose and statutory remit.

RQIA Acting Chair

- 3.74 There were several occasions when the Acting Chair could and should have formally brought matters to the Board but did not. For example, when she was informed by the RQIA Chief Executive on 13 March of the impending Departmental Direction (issued on 20 March), she should have called an urgent meeting of the Board, not just to make the Board aware of the Direction but to enable it to have the opportunity to consider and advise on the associated risks.
- 3.75 Any examination of governance includes a critical review of the relationship between the Chair and Chief Executive – arguably the most important relationship in an organisation. The evidence suggests that, during this period, the relationship between the Chief Executive and Acting Chair of the RQIA was too close.
- 3.76 As a minimum, the Acting Chair should have insisted that the Chief Executive test all key issues in the first instance with her and the Board so that the Department could be clear that what it had was not simply an ‘Executive’ agreement but a ‘Body Corporate’ one, which had the full backing of the Board.

RQIA Board

- 3.77 It should be standard practice within the RQIA (as it should be within any public body) that communication of any significance from the Department on any issue impacting on the organisation’s operating parameters should receive consideration by the Board. These communications from the Department were, by any standard, **significant issues**.
- 3.78 From the outset, the Board should have set out and agreed (with the Executive Team) a common understanding of how business would be conducted during the unique circumstances of the Pandemic. This may have involved daily/weekly updates from the Chief Executive to Acting Chair, regular briefings (at least weekly) from the Acting Chair to Board Members to ensure that they were kept informed and ad hoc meetings of the Board when significant issues arose.

3.79 In March and most of April, the Board was passive and almost reactive in how it was operating. If it had set out more clearly how it wanted to conduct business during the Pandemic and, as part of effective governance, defined the relationship between Acting Chair and Chief Executive, then this crisis might not have occurred.

The Department

3.80 The Department cannot escape its share of responsibility for this situation. In particular, the decision to redeploy the Chief Executive and then appoint an Interim Chief Executive to the RQIA without any consultation or communication with the Board – which is legally the employer of these staff – was high handed and disrespectful.

3.81 The absence of any meaningful engagement or communication with the Acting Chair or the Board throughout the Pandemic suggests that the Department did not understand or value the role of the Board (or Acting Chair).

3.82 Departmental officials did not satisfy themselves that the communication with the RQIA had full Board backing – rather they assumed that this was the case and they went on assuming. In that regard, officials let the Minister down.

3.83 While the Department clearly has the right under legislation to issue Directions to the RQIA, these Directions should be issued to the Chair (and copied to the Chief Executive) so that it is clear that this is not simply a Direction to executives but a Direction to a statutory body.

Section 4: How events unfolded during the Pandemic (2)

Part 1: Breakdown in the relationship between the
Board and Interim Chief Executive in RQIA

Part 2: Breakdown in the relationship between the
Department and the Acting Chair/Board

Part 3: Conclusions

PART 1: BREAKDOWN IN THE RELATIONSHIP BETWEEN THE BOARD AND INTERIM CHIEF EXECUTIVE IN THE RQIA

Introduction

4.1 In the period from 27 April to 12 May 2020, the relationship between the RQIA Board and its new Interim Chief Executive disintegrated. It was clear from an early stage that there was a fundamental disagreement between the Board and the Interim Chief Executive about their respective roles and responsibilities.

4.2 In an e-mail to the Interim Chief Executive dated 12 May 2020, the Acting Chair stated the Board's position that:

“RQIA is a separate body corporate which makes collective decisions through a Board and not autonomous decisions by an individual, thus a CEO, particularly at times of heightened risk and public scrutiny, must regularly collaborate with the Board to ensure there is evidence of collective responsibility for decisions made”

4.3 In response to this point, the Interim Chief Executive stated in an e-mail to the CMO dated 12 May 2020:

“RQIA Board's perception of their role, and description of decision-making in the Acting Chair's e-mail [4.2 above], is at variance with the position set out in the MSFM and in recent correspondence from you.”

The issues

4.4 There were three issues which brought the disagreement to a head:

- The letter from the CMO on 23 April 2020 asking the RQIA to redeploy its inspectors into care homes
- A Judicial Review against the decision to 'step down' inspections of care homes brought by a private party against the RQIA (and the Department)

- The level of Board scrutiny including the Board’s proposal to hold short weekly Zoom meetings to be able to respond adequately to the crisis and its insistence on seeing the Interim Chief Executive’s Opening Statement to the Health Committee (meeting on 14 May 2020)

(1) Letter from CMO dated 23 April 2020

4.5 On 23 April 2020, the Interim Chief Executive of the RQIA circulated the letter from the CMO asking the RQIA to redeploy its inspectors into care homes. The Acting Chair responded in an e-mail on 24 April indicating that the Board had called an unscheduled Board meeting on the following Monday (27 April) specifically to discuss this matter:

“We want to gain a clear understanding of the implications for RQIA of the request and the rationale for this. As we discussed, the Board are concerned that RQIA is receiving directions from the Department which have not been discussed with the Board and this raises important governance issues for us.”

4.6 At the Board meeting on 27 April, there was an in-depth discussion about this ‘Direction’ and the Board clearly recognised its responsibility to understand the implications and/or consequences for the RQIA. However, by the end of the meeting, there was a divergence of opinion between the Board and the Interim Chief Executive as to the way forward. The Board:

“Acknowledged the information shared by the Interim Chief Executive, welcomed the opportunity for discussion and clarification of issues and the opportunity to have oversight of the ‘onsite proposal’. The Acting Chair advised that the Board would discuss a response to the CMO’s letter outlining the concerns discussed at this meeting”

(Para 2.22 of minutes of Board Meeting of 27 April 2020)

4.7 However, the Interim Chief Executive:

“Advised that he felt concerned that the Board are not supporting RQIA in the decision made due to the reservations the Board have. The Acting Chair advised that the Board are supportive however there are a number of concerns identified

that need time to reflect and discuss as a Board. The Acting Chair advised that there has been no consultation or discussion with the Acting Chair or Board members in relation to any decision being taken”

(Para 2.23 of minutes of Board Meeting of 27 April 2020)

4.8 The Interim Chief Executive clearly regarded the implementation of the ‘Direction’ as an operational matter for which he was accountable to Sponsor Branch and the Board did not have a meaningful role to play in the matter. [He also appears to see the Board as separate from the RQIA.]

4.9 In the aftermath of the Board meeting of 04 May, at which the Interim Chief Executive was not present, the Acting Chair e-mailed the Interim Chief Executive setting out the Board’s requirements:

“The Board needs to ensure that governance processes relating to decision making within RQIA are fully adhered to so that the Board supports you in the work that you and colleagues are currently engaged in.

We have concerns that the proposals for the deployment of RQIA staff (in line with CMO’s letter of 23rd April 2020) have not been agreed by the Board, in particular, based on the information we currently have, the proposed decision about sending RQIA staff into care homes to work in support roles contradicts the defence raised in the JR and the original directive from the Department for reduction in our inspection regime.

The Board regard this as a matter of critical importance and urgency and we require you to agree the proposal with the Board before any implementation is enacted. We would encourage you to use existing governance structures to support and endorse the decision making which RQIA is engaged in and ultimately the RQIA Board will be accountable for.”

- 4.10 On 05 May, the Interim Chief Executive e-mailed the Acting Chair (copied to Donna Ruddy, Head of RQIA Sponsor Branch⁸) to the effect that the implementation of this request from the CMO was none of the Board’s business:

“...Referring to your suggestion that the Board should agree the operational proposal to deploy staff in compliance with the CMO Direction of 23 April, this is an operational matter.

Neither RQIA Standing Orders, nor the MSFM, set out a role for the Board in this operational decision. I have taken advice from Sponsor Branch and I am advised this is entirely an operational matter for me as Interim Chief Executive. I will, of course, report on this matter to the Board at the next public Board Meeting in accordance with section 3.6 of the MSFM.....

I have discussed RQIA’s response to the Departmental Directions carefully with Sponsor Branch and can confirm that Sponsor Branch are content with actions taken and proposed in response to Directions”

- 4.11 It is clear that this response completely undermined the credibility of the Interim Chief Executive in the eyes of the RQIA Board Members and brought to the fore their growing concern at his extremely close relationship with Sponsor Branch. Sarah Havlin, an RQIA Board Member, summed up the general view as follows:

“I disagree entirely with the assessment that the issues at hand are operational. The implementation of the matters in hand are certainly operational, but the taking of the decision in the first place is organisational and MUST be a matter for Board approval.

The fact that a person currently holding the position of CEO and Accounting Officer of a significant public body corporate does not know the difference is highly

⁸ Full job title is Head of Quality Regulation, Policy and Legislation Branch – one of the roles of this post is Sponsor of the RQIA – referred to as Head of RQIA Sponsor Branch throughout this Report

alarming. It is also even more alarming to read that the CEO regards himself as reporting to and being supported by Sponsor Branch.

*It won't be Sponsor Branch named as the legal decision maker of RQIA in subsequent litigation. Unless the Sponsor Branch stand us down, they must be notified of our refusal to stand over the taking of these decisions. **I am not criticising the merits of the direction taken, but the process of deciding on actions and strategies in the name of RQIA.***

For example, the decision on staff going into nursing homes is loaded with risk on so many levels - personal risk to staff, corporate risks on conflict of interest and legal risk regarding the current ongoing legal challenge about inspectors not going into care homes to inspect.

Taking a risk, certainly putting others at risk, requires caution and a cost/benefit analysis. The cost in this scenario is not financial I must add...

After applying some scrutiny of this type of information, I might well feel inclined to endorse the CEO's view on RQIA's role and activity, but without the information I can only say that I have no confidence in the CEO to act in accordance with the reasonable conduct expected of a CEO reporting to a Board of a body corporate. I am being asked to stand over the decisions of others in a retrospective, rubber stamping kind of way. I cannot do that.

The individual litmus tests of a Board Member or Company Director:

Is it the right thing for the organisation?

Is it consistent with the organisation's core values?

Is it legal?

Is it something I am willing to be accountable for?

I ask myself these questions for every collective decision I am asked to make. I can't answer any of them in terms of RQIA activity at present.

We must urgently consider our position."

4.12 The Chair of RQIA's Audit and Risk Committee (ARC) was just as blunt:

"I keep reminding myself that [the Interim Chief Executive] is an appointment made by the Department, without consultation with the RQIA Board, and in his first month he has clearly resisted engagement with his Board.

As Chair of RQIA's ARC, I have repeatedly highlighted the risk environment in which we find ourselves as a consequence of COVID-19. [He] does not appear to analyse the impact of his decision-making and carry out a risk analysis. It is very apparent that he is being guided by Sponsor Branch and they will not protect the body corporate when questions are asked about RQIA Board accountability in decision making and our knowledge and support of such decisions. The Judicial Review is a case in point.

.... As a Board Member of nine years standing, I regret that I have currently little confidence in [the Interim Chief Executive's] ability to lead RQIA in this demanding and critical period"

(2) Judicial Review

4.13 At the Board meeting of 21 April, the Interim Chief Executive advised Board Members of a pre-action letter received from KRW Law seeking a Judicial Review into the RQIA's 'cessation of care home inspections'. He stated that this was being dealt with by the RQIA's legal advisers (BSO Directorate of Legal Services) and an update would be provided to Board Members on the situation.

4.14 This was a 'light bulb' moment for the Board as it highlighted the fact that the RQIA Board was accountable for decisions which it had not taken, been consulted on or necessarily agreed with. It was now being challenged in court over the validity of one of these decisions.

4.15 At an early stage, there was a sharp divergence of opinion between the Board and the Interim Chief Executive (and RQIA's legal advisers - BSO) as to the role that the Board should play in the preparation for the Judicial Review.

4.16 The Board was adamant that as the Judicial Review was being taken against the Board - the legal embodiment of the RQIA - the Board should be involved in overseeing the submission being made in defence of the action. It also requested that RQIA's Counsel should take instruction from the Acting Chair as well as the Interim Chief Executive to ensure that the Board was fully sighted on, and in full agreement with, what was being submitted in its name.

4.17 The Interim Chief Executive (and the RQIA's legal advisers - BSO) considered that this was an operational matter and that the Board's involvement should be restricted to 'corporate governance arrangements':

"As RQIA's interim Chief Executive, I will be contacting [BSO legal adviser] to give her instruction in relation to the operational interpretation and implementation of the Direction. I appreciate that the Board may well wish to give [her] instruction in relation to the corporate governance arrangements in place around the implementation of the Direction and I will advise her to expect that contact from you."

4.18 However, there was also a fundamental disagreement over the approach to defending the Judicial Review. The Board's approach was that RQIA should put some distance between itself and the Department's Direction to stand down inspections:

"RQIA was not the decision maker in March 2020 but was instead executing clear orders made by the Department and placed upon RQIA without options"

4.19 However, the RQIA Executive Team's approach as set out in the Pre-Action report was that the RQIA actively endorsed the Department in its decision/Direction and its 'repurposing' of RQIA. In a letter to the CMO on 29 April 2020, the Interim Chief Executive expressed his concern at the Board's approach as follows:

"A challenge ... was articulated in a pre-action letter dated 17 April 2020 from KRW Law. RQIA's position, agreed by me on the basis of previous engagement

with Department and RQIA colleagues, included clear statements that our support to the sector complemented our readiness to inspect represented the best approach to safeguarding service users at this time....

Both internally and externally, Executive Team members have consistently held that the stepping down of the regular inspection programme was necessary to reduce infection risk for service users and staff, and that RQIA's temporary support activities were the best way of increasing protection for adults residing in residential care or nursing homes, or supported by domiciliary care services.

I am now aware that there is an appearance of a fundamental difference of approach between that promoted by the Chief Medical Officer, Chief Social Worker and RQIA Executive Team members, and that upheld by RQIA Board."

- 4.20 Tensions increased on both sides in the run-up to the Hearing and, on 06 May, the Acting Chair sent an e-mail to the RQIA's legal adviser (BSO) expressing the Board's concern and disappointment:

"Whilst it is helpful to have this update, I remain very concerned that I have not been briefed on RQIA's defence or had sight of the report lodged with the court. From a governance perspective, I have repeatedly requested access to this information as Acting Chair of the RQIA Board and I would have expected to receive this and been involved in the consultations as outlined in previous emails.

My concern is that this exclusion from any consultation means that the RQIA Board is unaware of the arguments being posed and will not be advised of them until a judgement is reached; this effective debarring is unacceptable. On behalf of RQIA's Board I wish to record my disappointment that our efforts to engage with you over this important Judicial Review have been side lined without any consideration of the Board's role or confirming instructions with myself as Chair of the body corporate of RQIA"

- 4.21 The RQIA's legal adviser responded to this criticism in an e-mail to the Interim Chief Executive as follows:

“The issues in this case, which I have previously stated are a matter pertaining to the operational out-workings by RQIA following a Direction which has issued from the Department.....

*So far as I have understood my role and responsibility with regard to providing legal assistance to RQIA. If I require instructions in a matter, these come from the Executive Team. **It would, and indeed has been unworkable, to suggest that in any legal matters I am required to account and report to two separate bodies within the organisation.***

I am completely satisfied that to date, I have to keep you as Acting Chief Executive fully apprised of developments and have provided necessary advices to enable you to make the decisions on behalf of RQIA which have been required whilst working through this challenge.

Given that I understand you have in turn provided appropriate updates to the Board, I do not feel it is a matter for me nor indeed Counsel, at this stage to engage in additional work to ensure that the Board are also fully apprised of the situation as it progresses or to seek instruction.”

- 4.22 On 12 May 2020, the Acting Chair sent an e-mail to the Interim Chief Executive setting out a range of concerns raised by Board Members including:

“The effective exclusion of the Board from the preparation for the Judicial Review process and the lack of information provided to us about its progress. Board members have a range of skills in managing and dealing with the consequences of legal actions issued against RQIA. We do need to be fully informed of developments in this Judicial Review and do understand the nature of Judicial Review actions can result in fast moving responses and informed decisions”

(3) Level of Board scrutiny

Additional meetings of the Board

4.23 After the Board meeting on 27 April, the Acting Chair sent an e-mail to the Interim Chief Executive which included a 'suggestion' from the Board that there should be a short weekly Zoom meeting (on Mondays at 0930) with him in attendance for part of it. The Board was keen to have a regular communication forum to keep on top of developments and have a meaningful input to key decisions.

4.24 On 28 April, the Interim Chief Executive replied to the effect that he was so busy that he could not afford the time to attend these meetings:

"While I appreciate that such meetings could be shorter than recent engagements ... I simply do not have the personal capacity to cover this task in addition. I would be grateful if this proposal could be reconsidered, with a view to reducing the frequency of this meeting, or even reinstating normal [monthly] Board meetings."

4.25 On 01 May, the Interim Chief Executive followed up with another e-mail stating that:

"We (Interim CEO and Acting Director of Improvement) simply do not have the capacity to incorporate attending additional meetings with the Board so we are not able to attend the meeting of Board Members on Monday (4 May)"

4.26 On 15 May, in a further e-mail to the Acting Chair, the Interim Chief Executive went further:

"I hope this is helpful, but there were comments in your e-mail that were a surprise to me. Firstly, the repeated suggestion that I should attend a weekly Zoom meeting with Board members: I have described to you my excessive working hours. [REDACTED]

[REDACTED]. My hope was that the Board, in consideration of my description of my working experience and the Board's consideration of its duty of care towards me as a staff member, would consider some easement around my working arrangements.

This has not occurred and, rather than easing my working experience as I hoped when I highlighted concerns about my wellbeing at the Board meeting of 27 April and put in an email to you on 1 May, the Board has sought to increase my workload by requiring additional reporting, seeking to engage me in additional meetings, and diminish the staffing resources available to support me by requiring [REDACTED] to support weekly Board meetings.

*I fully recognise that communication would be easier if I had time for this and would like to take part in such meetings. The reality is that I am in meetings virtually without cease most days, often dealing with correspondence at the same time. [REDACTED]
[REDACTED].”*

Attendance of Interim Chief Executive at Health Committee meeting

4.27 On 07 May, the Health Committee of the Northern Ireland Assembly invited the Interim Chief Executive to attend a Committee meeting on the morning of 14 May to *“brief the Committee on the work of the RQIA during the COVID-19 Pandemic particularly in respect to residential nursing and care homes”*.

4.28 In an e-mail to the Interim Chief Executive on 11 May, the Acting Chair stated that:

“The Board acknowledges that this is an important watershed moment for RQIA; it places RQIA in an arena where the public will learn about the RQIA’s response to COVID-19, the nature of our work, the ‘repurposed’ focus and the specific directives issued by the Department. In the context of the Health Committee it is anticipated that RQIA will face scrutiny and challenge in relation to its contribution to the protection of the vulnerable adults in the nursing and residential care sector. When we set this scrutiny against the ongoing JR, the appearance before the Health Committee is challenging for the organisation.

For these reasons, RQIA’s Board would require sight of your opening statement to the Committee as well as clarity about the ‘messages’ and media communication associated with this. RQIA’s role is increasingly under inspection and the Board is concerned about the ongoing support for you and colleagues during this time.

I reiterate the Board's wish to support you and RQIA colleagues; we want to assist you in any way we can, regards, Mary"

4.29 The Interim Chief Executive told the Review Team that:

"On the basis of advice received that this was an operational matter, I initially worked on the preparation of my Opening Statement to the Health Committee with operational colleagues and without engagement with the Acting Chair or Board. Subsequently, I did intend to involve the Acting Chair but the pressures of time that I was under made this impossible"

Complete breakdown

4.30 On 11 May, the Interim Chief Executive sent an e-mail to the Head of RQIA Sponsor Branch in the Department outlining his concerns at the behaviour of the Board in getting involved in what he regarded as operational matters.

"You will be aware that the pressure at this point of conflicting demands is significant, although I feel capable of undertaking these tasks with even a modicum of support. However, I feel both undermined and threatened by RQIA Board's continual failure to recognise their role and my capability, instead, intervene in the complex and time-challenged part of the operational management arrangements.

Part of this, bluntly, is because the achievement of our endeavours is threatened by the time involved in dealing with the consequences of Board interventions. Simple examples of this: the Board's requirement for oversight of operational documentation has meant it has taken longer to deploy staff into services; attempting to finalise an operational document for provision to RQIA Acting Chair in advance of RQIA Board's unofficial meeting today meant I did not have time to finalise a paper for DoH on profiling care homes with Covid-19. This paper may be a resource for the sector in targeting inputs and such delay is significant.

Clearly the preparation for the Committee for Health opening statement will be intense and the statement likely to be finished only at the last moment – and the resulting media is likely to require a nimble response. [REDACTED]

[REDACTED]

[REDACTED]

[REDACTED]

Equally, the preparation for a successful outcome to the Judicial Review is complicated by having to take into account the impact of the communications from RQIA Board to me and to the Department.

To repeat my first point, while the support of senior department colleagues has been encouraging, RQIA as an organisation under pressure is now experiencing continual challenge in operational management from its own Board. I, personally, do not find it possible to continue to operate in this role and am concerned that, already, I am letting down my team because I am distracted from key tasks due to Board interference during this Pandemic.

On a personal level, all Board members are mannerly and pleasant and our exchanges are good-humoured, but the Board operation at this time is hard to cope with. **It is now time for clarity – the senior operational management of this organisation at this time can either be done by me, or by RQIA Board, but not by both. In relation to two key challenges, the JR and the Committee for Health session, RQIA Board intervention is significant.**

I, personally, cannot continue to deliver in this situation and I must ask for immediate clarification of this situation as someone needs to have both the authority, and relevant support, to successfully complete these two urgent key tasks in the next two days.”

- 4.31 On 15 May, the Interim Chief Executive sent an e-mail to the Acting Chair setting out his ‘operational concerns’.

“At the Board meeting of 27 April, I advised that I believed I would need to take advice from Sponsor Branch as I was concerned that Board direction, and indeed

Board views discussed in the meeting, differed from both Executive Team understanding and that of our substantive Chief Executive....

I believe that a number of recent communications on behalf of RQIA Board do not reflect [the] distinction of roles [between the Board's oversight/governance role and the Chief Executive's operational role as per paragraphs 3.4 and 3.6 of the MSFM], as clarified also by the CMO to me on 4 May.

Indeed, the increase in Board meetings to weekly during a Pandemic and close questioning of me on 27 April which, in my view, went well beyond the constructive support and challenge described in the MSFM, reflect both an extremely high level of scrutiny of my performance and significant Board engagement in operational matters.

I have confirmed in discussion with our substantive [former] Chief Executive that such scrutiny is new. At the same time, I am clear that Sponsor Branch is supportive of me in my role."

PART 2: BREAKDOWN IN THE RELATIONSHIP BETWEEN THE DEPARTMENT AND THE RQIA ACTING CHAIR/BOARD

4.32 While the relationship between the Department and the RQIA Executive Team was strong and dialogue was frequent, there was minimal communication between the Department and the RQIA Acting Chair/Board. In the words of a senior Departmental official interviewed by the Review Team:

“The RQIA Acting Chair and Board were invisible to us”

4.33 So much so that, on 24 April, the Head of RQIA Sponsor Branch e-mailed the Acting Chair to apologise for a Departmental oversight in not copying her into several of the letters issued by the CMO (including the key letters dated 23 March and 23 April).

Letter from Acting Chair to CMO on 28 April

4.34 The first significant communication between the RQIA Board and the Department during this period was on 28 April when the Acting Chair wrote a letter to the CMO (copied to the Permanent Secretary) raising a number of issues on behalf of the Board as follows:

- The Board acknowledged that it is lawfully required to ensure that the RQIA complies with the decisions taken by the Department concerning RQIA functions
- The RQIA Board had no role in the taking of these decisions and the Board accepted that these were matters entirely for decision-making at Departmental level
- The RQIA Board had concerns over:
 - The impact of the Department’s decision-making (the recent five Directions/requests) on its Governance role in a situation where the

Board was given no prior indication or clarification of the role the Board would play in a 'repurposed RQIA' and

- The inherent risks associated with the 'stepping down' of Trust Safeguarding teams and the associated reduction in Statutory Inspections
- The process had impacted on the importance and validity of the Board's statutory role because it had diluted its critical function as a regulator to maintain the protection of vulnerable adults in residential and nursing homes and children in care settings

4.35 The letter ended by seeking clarification of the Board's role "*at this time*".

4.36 In his response on 05 May, the Permanent Secretary:

- Apologised for not copying the RQIA Board in on "*a number of Departmental correspondence*"
- Acknowledged that the fast moving and challenging circumstances had not allowed for the usual consultative approach in the decision-making process and that there had not been the engagement with the Boards of HSC organisations that the Department would have wished for
- Confirmed that both adult and children's safeguarding teams had **not** been stood down contrary to what had been erroneously understood by the Board and stated in the Acting Chair's letter
- Clarified that the fundamental function of the Board - to ensure that the RQIA has effective governance arrangements in place - had not changed albeit "*the way in which the Board seeks and receives its assurances will undoubtedly have changed from the processes used under normal business, to one that takes account of the emergency situation the HSC Care is responding to*" and

- Strongly refuted the statement in the Acting Chair’s letter that the decision-making process (and, in particular, in relation to the CMO’s Direction of 20 March) had diluted the RQIA’s critical function as a regulator

4.37 In formulating its response, the Department had been ‘encouraged’ by a letter from the RQIA Interim Chief Executive to the CMO on 29 April contradicting key elements of the letter from his Acting Chair and Board. In his letter, he stated that the RQIA Board’s view:

“Represents a position contrary to the position that has been upheld by the RQIA Executive Team since before 19 March 2020. Both internally and externally, Executive Team members have consistently held that the stepping down of the regular inspection programme was necessary to reduce infection risk for service users and staff, and that RQIA’s temporary support activities were the best way of increasing protection for adults residing in residential care or nursing homes, or supported by domiciliary care services”

4.38 It is clear to the Review Team that, although the intention of the Board had been to convey its concerns over how it had been ignored by the Department in the decision-making process during March and April and some of the consequences of that process (including the Judicial Review), the Department had been left with the distinct impression from the Acting Chair’s letter of 28 April that:

- The Board was becoming a nuisance and an obstacle to the HSC response to the Pandemic and
- The RQIA Board did not understand its roles and responsibilities otherwise why would it keep asking about it!

4.39 This impression was reinforced in subsequent e-mail correspondence between the RQIA Acting Chair and the Head of RQIA Sponsor Branch in the Department:

(1) “RQIA Board would welcome clarification of its governance role and Department’s requirements during the exceptional COVID-19 Pandemic” (15 May)

(2) *“The Board is keen to discuss:*

1. Department’s understanding and expectation of RQIA’s role and its position as an independent Regulator

2. Department’s expectation of the RQIA Board in terms of governance”
(21 May)

The Department’s decision on who to support

4.40 The Review Team noted that whenever the Acting Chair of the RQIA raised issues or concerns with the Interim Chief Executive, the latter immediately turned to the Department for advice and support.

4.41 On each occasion, the Department supported the position of the Interim Chief Executive without obtaining an understanding of the position of the Board. In particular, the Department confirmed him in his belief that he was fully responsible for all operational matters (to the Department) and by implication that the Board was exceeding its authority in the areas set out in subsections (1) to (3) above, namely:

- The request from the CMO dated 23 April that RQIA deploy its inspectors into the independent sector (care homes etc.)
- The RQIA’s response to the Judicial Review
- The level of Board scrutiny including a request to attend additional (weekly) meetings and the Board asking to have sight of the Interim Chief Executive’s opening statement to the Health Committee at the meeting of 14 May

4.42 For example, on 04 May 2020, the CMO e-mailed the Interim Chief Executive:

“I can confirm that you have responsibility for operational matters”

On 05 May 2020, the Permanent Secretary wrote to the Interim Chief Executive stating that:

“You have stated that, in the current situation, you are unclear how paragraphs 3.4 and 3.6 of the Management Statement and Financial Memorandum for the RQIA (October 2018) apply and have sought advice as you believe that your position as Interim Chief Executive in RQIA may be untenable....

The content of the paragraphs you cite sets the parameters within which the RQIA Board and Chief Executive carry out their roles and distinguishes the differences between the Board’s oversight/governance role and the Chief Executive’s operational role. The recent Departmental direction and requests do not impact on the content of the MSFM and paragraphs 3.4 and 3.6 are still applicable under the current MSFM”

Denouement

Teleconference between CMO and Acting Chair on 13 May

- 4.43 On 04 May 2020, the Interim Chief Executive sent an emotive e-mail to the CMO highlighting the impact of the Board’s ‘unreasonable demands’ on his personal wellbeing and on the efforts of the RQIA Executive Team to try and save lives of *“vulnerable people who live in care homes”*:

“I have advised the Acting Chair that [the Interim Director of Improvement] and I are both working in excess of 70 hours a week and illustrated this by pointing out that on Friday I dealt with 157 e-mails, 38 phone calls and 3 protracted conference calls. Separate to the email below, I have received a request for information from RQIA Board today that will take more than an hour to address.

It is clear that RQIA Board does not have confidence in my performance in this role, in addition to the earlier clarity of their opposition to elements of Departmental Directions. I was not appointed to this role by RQIA Board, so I am unsure as to with whom I should discuss resignation....unfortunately I now believe my position is untenable.

At the request of RQIA Board, I have had no alternative but to pause the process for deploying our staff in care homes, which would have seen the first 2-3 inspectors onsite on Thursday. My main concern is that the distraction caused by this apparent conflict between RQIA Board and the executive team, mainly in the person of me, is taking away from time that should be spent working on partial solutions to the challenges posed by COVID-19 and, ultimately, contributing to saving lives of vulnerable people who live in care homes”

- 4.44 On 11 May, on receipt of another e-mail from the Interim Chief Executive highlighting the complete breakdown of his relationship with the RQIA Board and in effect threatening to resign, the Head of RQIA Sponsor Branch sent an e-mail to the Director of Corporate Management in the Department seeking advice:

“This matter is of great urgency as it seems the letter from the Permanent Secretary issued last week to the RQIA Chair has had no impact on the actions of the Board and as you can see... the Interim CEO is at the end of his tether”

- 4.45 Subsequently, on 13 May, there was a teleconference between the CMO and the Acting Chair (with the Head of RQIA Sponsor Branch also present) at which the CMO expressed his concerns about the wellbeing of the Interim Chief Executive and the unreasonable demands that the Board was placing on him. The CMO emphasised the duty of care that the Board had to its senior team and in effect asked the Board to reduce its demands on the Interim Chief Executive both for information and to attend short weekly Zoom meetings.

- 4.46 The Acting Chair informed the CMO that there were challenges in getting information from the Interim Chief Executive. She also confirmed that the Board understood the reasons for the Department’s Directives and that it was required to support them.

- 4.47 According to personal notes of the telephone call submitted to the Review Team by the Head of RQIA Sponsor Branch, *“the CMO raised the issue of the Department having to consider putting in place extraordinary sponsorship arrangements to support the Chair and would have to consider further misunderstanding on the*

part of the Board of its roles/responsibilities. The Acting Chair stated that she would welcome support and clarification on the role of the Board – but the CMO responded that there was nothing more to clarify, the question is are they understood?”

4.48 The Acting Chair was taken aback by the tenor and tone of this teleconference with the CMO and told the Review Team that the *“emphasis of the meeting was not dialogue about issues, but rather it was an ‘admonishment’ to me for both my behaviours and those of the Board. There was no desire to discuss the Board’s concerns”*.

4.49 [However, the Acting Chair and former RQIA Board Members were unaware of the highly charged e-mails that had been sent by the Interim Chief Executive to the CMO and the Head of RQIA Sponsor Branch]

4.50 The CMO strongly disagreed with the contention that this teleconference had been an ‘admonishment’ of the Acting Chair. He acknowledged that he had been ‘direct’ at this teleconference such were his concerns for the wellbeing of the Interim Chief Executive and the apparent lack of acknowledgement by the Board of the significant pressures on him and the RQIA senior team.

4.51 However, with the benefit of hindsight, he now wonders if he had only been hearing one side of the story and whether he should have made more of an effort to obtain a more balanced assessment of the situation.

Meeting between the Head of RQIA Sponsor Branch and the Board on 27 May

4.52 In an attempt to resolve matters, the Head of RQIA Sponsor Branch (now Acting Grade 5) agreed to meet with the RQIA Board on 27 May, in a Zoom meeting, to:

“Offer explanation and rationale for the Departmental Directives, to acknowledge the difficult context faced by the Board at the end of March and to hear the Board’s concerns.”

4.53 According to Board Members interviewed, this meeting got off to a bad start as the Head of RQIA Sponsor Branch was *“rude, condescending and abrupt in her approach”*. After several sharp exchanges between the Head of RQIA Sponsor Branch and some Board Members, the Acting Chair had to intervene to remind her that the purpose of the meeting was to listen to the Board’s concerns.

4.54 According to the ex-Chair of the RQIA Audit and Risk Committee, the meeting then settled down and the Head of RQIA Sponsor Branch acknowledged that there had been a problem with poor communication from the Department. Following the meeting, which was not minuted, the Board was awaiting her proposals to resolve these issues going forward.

4.55 This view was confirmed by the Acting Chair in a written submission to the Review Team:

“[The Head of RQIA Sponsor Branch] conceded that there ‘seemed to be a breakdown in communication’, she explained that she would be speaking to the Interim Chief Executive, RQIA senior staff and Senior Department Officials and would come back to the Board when she had done so.”

E-mail from the Head of RQIA Sponsor Branch to the Acting Chair on 09 June

4.56 The Acting Chair informed the Review Team that she had telephoned the Head of RQIA Sponsor Branch on 09 June as a follow up to the Board meeting of 27 May. The Acting Chair provided a written summary of this conversation to the Review Team which included the following:

“Having attended Zoom meeting with members of the Board on 27 May 2020, [the Head of RQIA Sponsor Branch] felt some Board members were not clear about RQIA’s role and the Board’s role, despite clarification from the CMO and Permanent Secretary. She reminded me that, in the teleconference of 13 May, the

CMO had raised concerns about the Board's effectiveness and the fact that the Board had sought clarification on its role from the CMO and Permanent Secretary.

[The Head of RQIA Sponsor Branch] expressed a view that the Board needed support at this time and the Department's preference was to replace her as Acting Chair and for her to return to being an ordinary Non-Executive Board Member. None of the other Board Members would be eligible to replace her.

If the Acting Chair and Board did not accept this Option, then there was a fallback option that she was reluctant to consider at this stage, namely that as Board members had continually sought clarification of their role, [the Head of RQIA Sponsor Branch] felt these raised issues about their performance and competence individually and reflected on the competence and capability of the Board as a whole."

4.57 Later that day (09 June), the Head of RQIA Sponsor Branch sent an e-mail to the Acting Chair of the RQIA stating that:

- *"As you are aware the CMO and the Permanent Secretary have been contacted by the RQIA Board and have concerns regarding the understanding of the roles and responsibilities of the RQIA Board members – RQIA Board have recently on a number of occasions sought clarification on their role*
- *As the CMO discussed with you, the Department would like to offer help and support to the RQIA Board during this time*
- *After much consideration, the Department sees this help being in the form of an Interim Chair that could provide support and guidance to you and the other non-executive members*
- *This would result in you returning to your non-executive role [and no other NED putting themselves forward for Acting Chair]*

- *The intention would be to recruit a permanent Chair as soon as is possible, likely to be 12-18 months*
- *The Department recognises that the COVID 19 Pandemic has placed a great strain on the HSC, and that the redistribution of staff and resources has impacted severely on our ‘normal business’. The Department will endeavour to provide support in the best way we can*
- *If the RQIA Board do not agree it requires this support, the Department will have to consider other options to address the problems that have been highlighted to us*
- *I would appreciate it if you would discuss this with Board members this week and let me know the outcome of the discussion”*

4.58 The RQIA Board Members were outraged at this move to replace (or, in their eyes, sack) their Acting Chair and they resigned en masse on 19 June⁹. In a Press Statement accompanying their resignation, the ex-Board Members stated that:

“In an attempt to get the Board to retract its concerns the Department sought to replace the Acting Chair of RQIA and impose an interim Chair. Board members were not prepared to countenance this as they had full confidence in the Acting Chair of RQIA who is held in the highest esteem for her professionalism and integrity. In the circumstances the entire Board of RQIA was left with no option but to resign”

4.59 One of the phrases used by an ex-Board Member interviewed by the Review Team was that this was *“damage caused on themselves by speaking up”*.

4.60 However, the Head of RQIA Sponsor Branch and other Departmental officials told the Review Team that this e-mail was merely a suggested way forward, an opening gambit in an exchange which would hopefully lead to counter proposals

⁹ Two RQIA Board Members had resigned the previous week for other reasons

and an agreed way forward for both parties. However, the Board took the sentence:

“If the RQIA Board do not agree it requires this support, the Department will have to consider other options to address the problems that have been highlighted to us”

as a veiled threat to terminate the public appointment of Board Members unless they acquiesced with the Department’s proposed course of action.

- 4.61 The Permanent Secretary and CMO confirmed to the Review Team that the Head of RQIA Sponsor Branch was acting unilaterally in issuing this e-mail and that it was not cleared or authorised by the Minister, Permanent Secretary or her line Manager, the CMO. Indeed, they were both unaware of the severity of the situation at that point and the action which was being taken.
- 4.62 Although the former RQIA Board Members interviewed as part of this Review were sceptical of this claim, the Review Team found no evidence on file of the development of the e-mail, any sign off process or briefing notes to the Permanent Secretary or CMO in advance of issue.
- 4.63 The Permanent Secretary and CMO also confirmed that although they understood that the intention of the e-mail had been to offer support to the Acting Chair and the Board, the e-mail had been badly drafted and could easily be open to misinterpretation.
- 4.64 However, the CMO told the Review Team that, even though he had not drafted or cleared it, he was not seeking to distance himself from the e-mail. He accepted that he was ultimately responsible for the actions of all of his staff, including the Head of RQIA Sponsor Branch.
- 4.65 Although initially taken aback by the resignations, the Department now recognises that the Board was angry and frustrated by the way that it had been treated throughout the Pandemic and that this e-mail was just the straw that broke the camel’s back.

PART 3: CONCLUSIONS

Clarity of roles

- 4.66 The Interim Chief Executive was inexperienced¹⁰ and was thrown in at the deep end in the middle of a crisis. He was provided with no proper induction training or any other preparation for the role. It is the opinion of the Review Team, and several others interviewed during this Review, that he failed to understand the roles and responsibilities of a Chief Executive and his accountability to his own Board.
- 4.67 Nevertheless, the Review Team notes that Departmental officials must have believed that he was of sufficient calibre and had adequate experience to perform this role fully and effectively as they appointed him to the position.
- 4.68 Some Departmental officials acknowledged that, with the benefit of hindsight, its decision to redeploy several senior members of the RQIA's Executive Team at the end of March had left the Interim Chief Executive with very limited management support.
- 4.69 However, the Interim Chief Executive did not seek to use the extensive experience and expertise of his Board to help him understand his role and perform his functions. This was especially important during the Pandemic when he most needed the support and backing of his Board.
- 4.70 There were several occasions when the Interim Chief Executive sought to exclude or override his Board:
- The request from the CMO on 23 April to deploy RQIA inspectors into care homes and the Board's desire to consider the risks around this
 - The preparation (defence) for the Judicial Review

¹⁰ He had been promoted from Deputy Director to Director only three months previously

- The request from the Board to hold more frequent meetings and/or briefings during the Pandemic
- His objections to the level of scrutiny from Board Members and their efforts to hold him to account
- The request from the Board to have sight of his opening statement to the Health Committee meeting on 14 May

On each of these occasions, the Interim Chief Executive was wrong.

4.71 However, the Review Team noted that the Interim Chief Executive regularly sought the advice and support of the Department prior to taking key actions in respect of these matters.

4.72 In the view of the Review Team, these matters were not purely operational. [Indeed, several were entirely strategic and critical to the workings of the RQIA and the impact on the people it serves.] It is also important to note that the Board has the right to access **any** information and papers that it deems necessary to discharge its role.

4.73 While the Board normally delegates operational matters to the Chief Executive, the Chief Executive is primarily accountable to the Board for these matters (and not to the Sponsor Department). The role of the Chief Executive as Accounting Officer has been used in this case to circumvent his primary line of accountability to the Board.

4.74 While it is understandable that an inexperienced Chief Executive would be mistaken on his roles and responsibilities, especially given the confusing messages in the MSFM (see Section 2), it is difficult to understand how the Department could have been - but it was.

Relationships

4.75 All of the key governance relationships set out in Section 2 of this Report were clearly dysfunctional as far as the RQIA was concerned:

Department and Acting Chair/Board – non-existent

- 4.76 The communication between the Department and the RQIA Board was weak and the Department has acknowledged this - even to the extent that it forgot to copy in the Acting Chair on several of the Directions/requests that it issued to the RQIA. By not copying in the Board on critical correspondence, there has been a clear systemic failure within the Department.

Department and the RQIA Executive Team – too close

- 4.77 The lack of any real relationship between the Minister/Department and the Acting Chair/Board of the RQIA meant that it was only the Interim Chief Executive that had the ear of Sponsor Branch and senior Departmental officials.
- 4.78 With an Acting Chair and Board that was, in the mind of the Department, invisible and an RQIA Interim Chief Executive who was eager to please, the Department was persuaded that the RQIA Board was a nuisance and 'getting in the way'.
- 4.79 The Department appears to have been comfortable with the dysfunctional, one-sided relationship with the RQIA Executive Team and supported the Interim Chief Executive in his disagreements with the RQIA Board even when he was clearly in the wrong or was not giving a full and accurate account to the officials in the Department.

RQIA Acting Chair/Board and the Interim Chief Executive – completely broken

- 4.80 The relationship between the RQIA Board and Interim Chief Executive broke down at an early stage due to a lack of understanding and appreciation of the roles and responsibilities of a Chief Executive on the part of the post holder in the RQIA. The fact that the Department appointed the Interim Chief Executive in the first place without involvement or consultation with the RQIA Board (the employer) only served to make matters worse.

The letter of 28 April from the Acting Chair to the CMO

4.81 While the Review Team has a degree of sympathy for the Acting Chair and Board and the manner in which they were treated by the Department and their own Interim Chief Executive, the letter from the Acting Chair to the CMO of 28 April was unfocused, poorly worded and clearly antagonised the Department. The letter:

- Was not clear as to what it was intended to achieve
- Was mistaken in its contention that Trust safeguarding teams had been stood down
- Conveyed the impression that the RQIA Board disagreed with the Direction from the Department to suspend inspections
- Created a lasting impression with the Department that the Board did not understand what its roles and responsibilities were during the Pandemic

and so contributed substantially to the subsequent crisis.

4.82 The fallout from this letter is evident in subsequent correspondence. For example, in her e-mail to the Acting Chair on 09 June, the Head of RQIA Sponsor Branch states that:

“As you are aware, CMO and the Permanent Secretary have been contacted by the RQIA Board and have concerns regarding the understanding of the roles and responsibilities of the RQIA Board members – RQIA Board have recently on a number of occasions sought clarification on their role”

E-mail of 09 June from Head of RQIA Sponsor Branch to Acting Chair

4.83 The Review Team is surprised that such a missive (effectively suggesting that a Chair should step down) would be issued by a middle ranking civil servant as opposed to a senior Departmental official (Permanent Secretary or CMO), after consultation with the Minister. Indeed, the Review Team would also question

why the 'clear the air' meeting of 27 May was not handled by a higher ranking Departmental official.

4.84 In the Review Team's opinion, it is difficult to view the e-mail of 09 June as anything other than a threat to remove the Acting Chair and ultimately sack the other Board Members if they did not agree with this course of action. This was effectively putting the RQIA Board into 'Special Measures' and was being escalated to the highest level of intervention.

4.85 One of the phrases used by an ex-Board Member interviewed by the Review Team was that this was "*damage caused on themselves by speaking up*" and to an extent the Review Team agrees with this.

Were the resignations of the RQIA Board Members necessary?

4.86 It is the opinion of the Review Team that, whilst understandable, these resignations were not necessary or desirable particularly during a time of crisis. It was right that Board Members should have voiced their concerns and grievances, and **threatened to resign** unless the e-mail of 09 June was withdrawn and the Department agreed to address their legitimate concerns.

4.87 Had the Department responded positively to this threat, and the Review Team believes that it would have, Board Members would have engaged with the Department and set about developing a working relationship which would ensure that communications and decision-making were placed on a secure footing. This process would respect the relative positions of all concerned and be designed to ensure that this would not happen again.

4.88 All parties to this Review have shown failings to differing degrees and while this matter remains ongoing and unresolved, there is an even greater risk to the health and wellbeing of care users which in the final analysis is what the Department and the RQIA should be focusing on.

Section 5: Recommendations

RECOMMENDATIONS

Introduction

5.1 In the Terms of Reference, it states that:

“The Review should establish the facts and lessons to be learned from the circumstances that gave rise to the resignations and make recommendations for the consideration of the Minister”

5.2 In light of the findings and conclusions set out in Sections 2 to 4 above, the Review Team has identified a number of lessons to be learned and makes the following recommendations which are being submitted to the Minister for his consideration.

Recommendations: Role of the Minister

5.3 The Minister should play a more central role in the direction and oversight of all of his ALBs by:

- Ensuring that the Department has an up-to-date skills and experience matrix in place for each ALB Board that will produce effective Boards with the level, range and diversity of skills, experience and expertise to deliver the Minister’s policies and priorities
- Ensuring that the public appointments process is working effectively, appointments are made on a timely basis and that Board Members, and in particular Chairs, of the highest calibre are appointed
- Ensuring that the terms and conditions of appointment for Chairs and Board Members are appropriate to attract high calibre candidates for the positions
- Signing the letters of appointment for the Chair and individual Board Members

- Meeting with all the ALB Chairs collectively at least every two months

[The Review Team noted that, in May 2020, a first meeting between the Minister and the ALB Chairs was organised for 17 June and the Minister is now having regular meetings with this group]

- Meeting each Chair individually – how often will depend on the risk profile of the ALB, but at least annually. While the Permanent Secretary may be present at part of this meeting, there should be time for the Minister to talk to the Chair on a one-to-one basis
- Being accessible to Chairs for fundamental issues and communications
- Meeting the Board of each ALB annually
- Signing off (or, at least, having sight of and agreeing) the annual appraisal of the Chair

Recommendations: Relationship between the Department and ALBs

- 5.4 The Department should consider the status of all of its Arm's Length Bodies as part of the ongoing review of public bodies being led by the Department of Finance. It should consider the pros and cons of having each organisation as an Arm's Length Body with a corporate Board or as an Executive Agency with an Advisory Board. However, the Department should not establish an Arm's Length Body with a substantive Board of Governance and then treat it as if it were an Executive Agency.
- 5.5 The Department (and the Minister) should work with the ALB Chairs and Chief Executives to define and ensure a common understanding of the roles and responsibilities of the Board and reporting lines within and outwith the ALB. The role of the Chief Executive as Accounting Officer should be considered as part of this exercise.

- 5.6 The Department should use the development process for the new Partnership Agreements with ALBs to review its relationship with each ALB ensuring that the Partnership is a 'two-way street'.
- 5.7 The Department should review and update all of its core governance documents to ensure compliance with best practice and to address the deficiencies identified in this Review.
- 5.8 The Department should recognise that the Board of an ALB is the employer of its Chief Executive albeit subject to the approval of the Department. The Board needs to be convinced that a secondment or interim CEO appointment from the Department or other organisation is right for the ALB and/or the wider HSC. The Department should review its existing practice in this regard.
- 5.9 The Department should ensure a consistent approach to sponsorship across the Department. This should include how, when and at what level the Department communicates with each ALB.
- 5.10 In future, any Ministerial or Departmental Directions should be issued to the Chair (and copied to the Chief Executive) so that it is clear that any Direction is to the statutory body and not just to the executives.
- 5.11 The Department should consider developing a transparent process on the measures to be applied (on a structured and escalating basis) to ALBs/Boards which require support or, more seriously, may be failing in their statutory duties. This process should be communicated effectively to all ALBs.

ANNEX 1: TERMS OF REFERENCE

INDEPENDENT REVIEW INTO RQIA BOARD RESIGNATIONS – UPDATED TERMS OF REFERENCE (SEPTEMBER 2020)

Introduction

On 17th and 18th June 2020, the acting Non-Executive Chair and six Non-Executive Members of the Board of the Regulation and Quality Improvement Authority (RQIA) resigned with immediate effect. These resignations were in addition to further resignations from two Non-Executive Members on the 9th and 10th June 2020 to take up alternative posts. This effectively left the RQIA Board with 11 vacancies, the complete non-executive Board membership.

Scope of the Review

The review will examine the circumstances that gave rise to the nine RQIA Board Member resignations and will include:

- A desktop review of all relevant correspondence, between the Department, the RQIA non-executive Board Members and the RQIA Executive Team, including any and all material requested by the review panel as required in relation to the review and the HSC response to the COVID-19 Pandemic. This shall include all relevant correspondence between Departmental officials and also between RQIA officials pertaining to this matter
- Interviews with the relevant individuals in the Department, the RQIA non-executive Board Members and the RQIA Executive Team, including the former Chief Executive

Particular consideration should be given to:

- Current codes of practice and guidance for Boards and the Department, including the Board's Code of Conduct, the Nolan Principles, the Code of Conduct and Code

of Accountability for Board Members of Health and Social Care Bodies (July 2012) and the Civil Service Code of Ethics

- The roles and responsibilities of the Department, the RQIA non-executive Board Members and the RQIA Executive Team
- Agreed working arrangements between the Department and the RQIA (Framework / Partnership Agreement)
- Reporting lines between the Chief Executive, Chair, the Board and the Minister/Department
- Communication between the Department, the RQIA non-executive Board and the RQIA Executive Team and
- The impact of the COVID-19 Pandemic on the above

The review should establish the facts and lessons to be learned from the circumstances that gave rise to the resignations and make recommendations for the consideration of the Minister.

Timing

The review should be completed and a report with conclusions and recommendations brought to the Minister within three months.

ANNEX 2: PERSONS INTERVIEWED AS PART OF THIS REVIEW

PERSONS INTERVIEWED AS PART OF THIS REVIEW

Name	Position	Organisation
Professor Mary McColgan OBE	Former Acting Chair	RQIA
Denis Power	Former Board Member and Chair of the Audit and Risk Committee	RQIA
Sarah Havlin	Former Board Member	RQIA
Seamus Magee OBE	Former Board Member	RQIA
Patricia O'Callaghan	Former Board Member	RQIA
Olive Macleod	Former Chief Executive	RQIA
Dermot Parsons	(Former) Interim Chief Executive	RQIA
Jennifer Lamont	Former Head of Business Support	RQIA
<div style="background-color: black; width: 100px; height: 15px; display: inline-block;"></div>	Business Manager	RQIA
Andrew Dougal	Chair	Public Health Agency
Richard Pengelly	Permanent Secretary	Department of Health

Dr Michael McBride	Chief Medical Officer	Department of Health
Sean Holland	Chief Social Worker	Department of Health
Donna Ruddy	Acting IHRD Implementation Director (referred to in this Report as Head of RQIA Sponsor Branch)	Department of Health
Linda Greenlees	Head of IHRD Bill Team	Department of Health
Conrad Kirkwood	Former Head of Quality Regulation and Improvement Unit	Department of Health
Peter Lavery	Senior Human Resources Manager	HSC Business Support Organisation
Paula Smyth	Assistant Director, Human Resources	HSC Business Support Organisation

ANNEX 3: REVIEW TEAM MEMBERS

David Nicholl, LLB, FCPFA

David Nicholl began his career as an auditor in the Exchequer and Audit Department (Northern Ireland Audit Office). He then joined the Northern Ireland Office of the Chartered Institute of Public Finance and Accountancy (CIPFA) and became Head of CIPFA Northern Ireland. Since 2009, he has been the Managing Director of On Board Training and Consultancy, a dedicated provider of advisory services and training to Governments, public and third sector bodies.

David is the author of the On Board Guide for Board Members of Public Bodies in Northern Ireland and Scotland. The On Board Guide is regarded as the benchmark for good governance in the public services.

He has advised more than 100 organisations on governance issues including developing and improving their governance frameworks, developing Board and Board Member appraisal systems, conflict resolution, the discipline and removal of Board Members for misconduct etc.

In addition, he has trained more than 700 Boards of public bodies, being widely recognised as one of the UK's leading experts in corporate governance. He has trained the Boards of bodies as diverse as nationalised industries and public corporations to NDPBs, health bodies, housing associations, local authorities, colleges, trade associations, voluntary organisations and many charities.

David has undertaken many highly sensitive governance reviews, serious and significant investigations into governance failures and breaches of Codes of Conduct and is a recognised authority on the handling of conflicts of interests. He also acts as an expert witness in cases involving corporate governance issues.

David served for ten years as an independent member on the Audit and Risk Committee of the former South Eastern Education and Library Board. He currently chairs a charity that works with at-risk young people in disadvantaged areas of Belfast and is the Chair of Trustees of a Pension Scheme of a not-for-profit organisation.

Douglas Hutchens

Douglas Hutchens built his experience and knowledge through his career in NHS management and planning, and latterly as Director of Planning and Corporate Affairs of a national (Scottish) NHS Board. He has run a small consultancy organisation for the public sector in Scotland and England (NHS) and has had a number of non-executive roles, including Vice Chair of the Scottish Association for Mental Health and Vice Chair of the Care Commission and the Care Inspectorate of Scotland.

He is a Member of the UK Judiciary Appeals Tribunal (Social Security) and the Scottish Judiciary Appeals Tribunal, a Non-Executive Board Member of NHS Education Scotland, a Non-Executive Board Member of Disclosure Scotland and a Non-Executive Board Member of the new Social Security Scotland Government agency.

Until recently, he was a Non-Executive Director of the Scottish Government - Chair of the Health and Wellbeing Audit and Risk Committee (ARC), Chair of Crown Office & Procurator Fiscal Service ARC, Member of Learning and Justice ARC and Member of Resources and Justice Boards - and is an adviser to the Scottish Government on a number of areas and projects.

Douglas also co-chaired the Ministerial Task Force on the Future of Residential Care in Scotland, which will shape residential care for older people for the next 20 to 30 years.

Being passionate about the quality of services offered to the public, particularly the more disadvantaged within society, he advises a range of public and third sector organisations on governance and planning.

Professor Frank Clark CBE

Professor Frank Clark CBE has an outstanding track record as a Chief Executive, Chair, Board Member and governance troubleshooter in the Scottish NHS over 35 years.

In 1985, Frank was appointed as the Chief Executive of Lanarkshire NHS Board – the first such appointment in the NHS in Scotland - and in 1996, he took up a position as the Director of Strathcarron Hospice. During this time, he was also tasked by Ministers with sorting out two of the biggest governance failures in the history of the NHS in Scotland.

In 1991, he was seconded into NHS Lothian as Chief Executive for a period of nine months to deal with a £25m deficit and, in 2000, he was appointed by the Minister for Health and Community Care to Head a Task Force set up to assist the NHS Bodies in Tayside in the resolution of serious financial and other governance difficulties.

Following his successful nine months secondment to NHS Lothian, he was appointed Commander of the Order of the British Empire in the Queen's Birthday Honours List for services to the NHS in Scotland. In the same year, he was appointed as Visiting Professor to the newly formed Glasgow Caledonian University.

In 1996, he was appointed as an Honorary Professor in the Department of Nursing and Midwifery in the University of Stirling.

In 2001, he was appointed as Chairman of Forth Valley NHS Board, a position which he vacated in 2002 when he was appointed to a Ministerial Advisory Panel preparing for the Scottish Government's White Paper on Health.

Following his retirement from Strathcarron Hospice in 2006, he was appointed by Scottish Ministers to the post of Chairman of the Care Commission and Non-Executive Board Member of the Scottish Social Services Council.

In 2010, he was appointed as the first Chair of the newly formed national care regulator, Social Care and Social Work Improvement Scotland (later to become Care

Inspectorate Scotland), as well as a Non-Executive Member of the Boards of the Scottish Social Services Council and Healthcare Improvement Scotland.

In 2010, he was part of a group of three experts set up by the then Permanent Secretary to examine and report on the effectiveness of the Scottish Government.

Since 2010, Professor Clark has worked with On Board Training and Consultancy delivering governance training to Boards of public bodies; providing support to public bodies in improving their governance arrangements; advising on governance and ethical issues; undertaking Board evaluations and effectiveness reviews; as well as carrying out several high profile investigations into cases of governance failure in public bodies in Northern Ireland and across the UK.

ANNEX 4: WHO APPOINTED THE
INTERIM CHIEF EXECUTIVE
OF THE RQIA?

WHO APPOINTED THE INTERIM CHIEF EXECUTIVE OF THE RQIA?

Upon receipt of the draft Report, the Permanent Secretary informed the Review Team that although he had designated the Interim Chief Executive as the Accounting Officer for the RQIA (as per his letter of 30 March 2020), he did not appoint him as the Interim Chief Executive. However, he could not tell the Review Team who had so appointed him.

The Review Team's conclusion that the Permanent Secretary had, by his letter of 30 March, de facto appointed Dermot Parsons as Interim Chief Executive was based on the following evidence:

- The letter of 30 March 2020 states *“your appointment as Chief Executive of the RQIA carries with it the responsibility of Accounting Officer of that body. I am therefore writing to formally designate you as Accounting Officer..”*

This letter, in line with the requirements of Managing Public Money Northern Ireland, makes it clear that it is the *‘Permanent Head’* (Chief Executive) of an ALB who is appointed as Accounting Officer and appointment as Chief Executive is an essential precursor to appointment as Accounting Officer

The Permanent Secretary either appointed the Interim Chief Executive or needed to have been presented with evidence of his appointment as such prior to designating him as Accounting Officer

If he did neither, as he is apparently arguing, this would mean that he has breached the provisions of Managing Public Money by appointing someone into the role of Accounting Officer without ensuring that he was the Chief Executive and therefore proper person to hold the position

- Both the Department and the RQIA confirmed to the Review Team that no other letter of appointment was issued to the Interim Chief Executive. The Review Team found that, throughout this whole period, there was a clear understanding on the part of Departmental officials, the RQIA Acting Chair and Board Members, and RQIA officials that the letter of 30 March constituted the de facto letter of appointment as Interim Chief Executive

Indeed, there was no comment or response to the RQIA Board when it complained to the Department that it (the Department) had appointed the Interim Chief Executive without its knowledge or involvement in the process

- The Interim Chief Executive informed the Review Team that he had been clearly led to believe that the letter of 30 March was his letter of appointment to the role of Interim Chief Executive (as well as his designation as Accounting Officer). The former Chief Executive of the RQIA also told the Review Team that she understood that the Department had appointed Dermot Parsons as Interim Chief Executive of the RQIA
- The Review Team noted the Permanent Secretary's letter of 27 March to all HSC staff which stated that *"I have asked Olive Macleod to step into the role of Interim Chief Executive of the Public Health Agency"*. In the view of the Review Team, this is not dissimilar to the appointment of the Interim Chief Executive of the RQIA
- At no point subsequent to the letter of 30 March, did Departmental officials draw the attention of the RQIA Board to any deficiency in the appointment of the Interim Chief Executive. On the contrary, they consistently referred to him as the Interim Chief Executive and actively encouraged the RQIA Board to support him in this role
- In May 2020, the Permanent Secretary wrote to the Acting Chair of the RQIA *"confirming that Dermot Parson's position as Interim Chief Executive of RQIA has been extended.... This will provide important continuity in these*

challenging times and I am sure that RQIA's Board will continue to support him in his role"

In this letter, the Permanent Secretary is clearly stating that he has extended his position as Interim Chief Executive not just as Accounting Officer

- During interviews, no Departmental official, including the Permanent Secretary, raised this issue with the Review Team, despite discussions on the Board's concerns regarding the appointment of the Interim Chief Executive and the process – it was only brought up as an issue after the Department had sight of the draft Report and its conclusions
- There is no reasonable alternative – the Board of the RQIA did not appoint the Interim Chief Executive and nobody else had the authority to do so – the Permanent Secretary is in effect arguing that Dermot Parsons was never appointed as Interim Chief Executive despite everyone involved (Department, the RQIA and the Interim Chief Executive himself) operating in the belief that he was

At Section 3.69 of this Report, the Review Team acknowledges that:

"The pace of decision-making was frenetic during this period and it is not surprising that some of the processes and procedures were different than in normal times"

In the Review Team's opinion, this was one of these occasions and there were clearly deficiencies in the process by which the Interim Chief Executive was 'appointed'. Notwithstanding, it is our view that the letter from the Permanent Secretary of 30 March 2020 designating Dermot Parsons as Accounting Officer of the RQIA was also de facto his Letter of Appointment as Interim Chief Executive.