



Northern Ireland

Public Services
Ombudsman

Investigation Report

Investigation of a complaint against the Regulation and Quality Improvement Agency

NIPSO Reference: 17175

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The Role of the Ombudsman

The Northern Ireland Public Services Ombudsman (NIPSO) provides a free, independent and impartial service for investigating complaints about public service providers in Northern Ireland.

The role of the Ombudsman is set out in the Public Services Ombudsman Act (Northern Ireland) 2016 (the 2016 Act). The Ombudsman can normally only accept a complaint after the complaints process of the public service provider has been exhausted.

The Ombudsman may investigate complaints about maladministration on the part of listed authorities, and on the merits of a decision taken by health and social care bodies, general health care providers and independent providers of health and social care. The purpose of an investigation is to ascertain if the matters alleged in the complaint properly warrant investigation and are in substance true.

Maladministration is not defined in the legislation, but is generally taken to include decisions made following improper consideration, action or inaction; delay; failure to follow procedures or the law; misleading or inaccurate statements; bias; or inadequate record keeping.

The Ombudsman must also consider whether maladministration has resulted in an injustice. Injustice is also not defined in legislation but can include upset, inconvenience, or frustration. A remedy may be recommended where injustice is found as a consequence of the failings identified in a report.

Reporting in the Public Interest

This report is published pursuant to section 44 of the 2016 Act which allows the Ombudsman to publish an investigation report when it is in the public interest to do so.

The Ombudsman has taken into account the interests of the person aggrieved and other persons prior to publishing this report.

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SUMMARY

I received a complaint about the actions of the Regulation and Quality Improvement Authority (RQIA). The complaint concerned the actions of RQIA regarding matters that arose from its inspection of a nursing home (the Home) in December 2015. Concerns were also raised about RQIA's handling of the subsequent complaint.

I established that RQIA's inspection and the subsequent report was completed according to relevant standards and procedures. I also established that RQIA's handling of the subsequent complaint was in accordance with relevant standards. However, the investigation found maladministration in relation to RQIA's failure to provide the complainant with a copy of the inspection report as the Acting Manager of the Home.

I acknowledged that RQIA made efforts to amend its process for emailing and authorising reports and Quality Improvement Plans (QIP). However, I recommended RQIA to undertake a further review of its procedure to ensure that all those affected by virtue of being a registered provider or registered manager (where these are separate persons) are provided with an opportunity to comment on the draft inspection report.

I would also have made a recommendation in relation to RQIA's Complaints Procedure. However, RQIA explained that it extended the time limit to request a Stage 2 Review to 28 days. I welcomed this learning already identified by RQIA.

THE COMPLAINT

1. I received a complaint about the actions of the Regulation and Quality Improvement Authority (RQIA), following an investigation of a care home and the RQIA's subsequent publishing of the report of its inspection.

Background

2. RQIA identified concerns regarding the quality of care provided by a registered nursing home (the Home) during inspections undertaken in 2015. The complainant was appointed as temporary acting manager for the Home following these inspections. The RQIA undertook a further unannounced inspection in December 2015. A Failure to Comply¹ (FTC) meeting occurred with senior management of the Home on 14 December 2015. RQIA subsequently posted two FTC notices (relating to the Home) on its website.
3. A draft inspection report was issued to 'the responsible person'² on 29 December 2015. The report provided a window of 28 days in which the responsible person could provide a response. A Quality Improvement Plan³ (QIP) was returned by the responsible person on 22 January 2016. The Inspection report was published on RQIA's website on 4 February 2016. The report named the complainant as the acting manager of the Home.
4. The complainant considers that the inspection report was inaccurate and misleading. Further, the complainant is aggrieved that the report was widely referenced in the media and that she was specifically named. The complainant is also concerned about how RQIA handled her complaint.

Issues of complaint

5. The issues of complaint accepted for investigation were:

¹ These are issued where RQIA has identified a serious or repeated breach in regulations.

² RQIA guidance states that this is an individual e.g. a director, a manager, a secretary, or other officer of an organisation, who is responsible for supervising the management of an establishment or agency.

³ Quality Improvement Plan is a section within the inspection report that states all areas for compliance with regulations and/or standards.

Issue 1: Whether RQIA's inspection of the nursing home and subsequent inspection report was completed according to relevant standards and procedures.

Issue 2: Whether RQIA's handling of the complaint was appropriate and reasonable.

INVESTIGATION METHODOLOGY

6. In order to investigate the complaint, the Investigating Officer obtained from RQIA all relevant documentation together with RQIA's comments on the issues raised by the complainant. This documentation included information relating to RQIA's handling of the complaint. The Investigating Officer interviewed the two inspectors who inspected the Home.

Relevant Standards

5. In order to investigate complaints, I must establish a clear understanding of the standards, both of general application and those which are specific to the circumstances of the case.

The general standards are the Ombudsman's Principles⁴:

- The Principles of Good Administration
 - The Principles of Good Complaints Handling
 - The Public Services Ombudsmen Principles for Remedy
6. The specific standards are those which applied at the time the events occurred and which governed the exercise of the administrative functions of RQIA staff whose actions are the subject of this complaint.

The specific standards relevant to this complaint are:

- The Nursing Home Regulations (Northern Ireland), 2005 (the Regulations);

⁴ These principles were established through the collective experience of the public services ombudsmen affiliated to the Ombudsman Association.

- The Regulation and Quality Improvement Authority's (RQIA) Enforcement Policy, April 2013 (the RQIA 2013 Enforcement Policy);
 - The Regulation and Quality Improvement Authority's (RQIA) Policy and Procedure for the Inspection of Establishments and Agencies within the Regulated Sector, December 2008 (the RQIA Inspection Policy);
 - The Regulation and Quality Improvement Authority's (RQIA) Guidance for Registered Providers – Arrangements for the emailing and authorisation of draft inspection reports and quality improvement plans (QIP), June 2011 (the RQIA guidance for emailing and authorising reports and QIPs); and
 - The Regulation and Quality Improvement Authority's (RQIA) Policy and Procedure on the Management and Handling of Complaints Against RQIA, September 2011 (the Complaints Procedure).
7. I have not included all of the information obtained in the course of the investigation in this report but I am satisfied that everything that I consider to be relevant and important has been taken into account in reaching my findings.
8. A draft copy of this report was shared with the complainant and the RQIA for comment on factual accuracy and the reasonableness of the findings and recommendations.

INVESTIGATION

Issue 1: Whether RQIA's inspection of Kingsway Nursing Home and subsequent inspection report was completed according to relevant standards and procedures.

Detail of Complaint

9. The complainant complained that the FTC notice issued was inaccurate and misleading as it incorrectly referred to Regulation 12 instead of 13.7 of the Regulations (2005). She also complained that the reference to *'the communal use of underwear and tights'* in the notice is inaccurate and misleading. The

complainant believed that the information contained within the FTC led to her being named in the media, which damaged her reputation and career.

10. The complainant identified the following inaccuracies in the draft inspection report:
 - i. The reference to '*laundered incontinence pants*' on page 17 is inaccurate and misleading. The complainant explained that these do not exist as incontinence pads are disposable and cannot be laundered. Furthermore, only one resident actually used them and stored them in his room. The report states that this issue had been addressed by the responsible person at the FTC meeting on 14 December. Therefore, this reference should not have appeared in the report;
 - ii. The statement is also contradicted by the reference on page 7 to incontinence pads in cardboard boxes, which had not been stacked on the shelves. The complainant said this was because a delivery had arrived that morning and this shows there was no '*laundered incontinence pads*';
 - iii. The reference on page 17 to a resident partially undressed on the commode is inaccurate and misleading. The complainant explained that the inspectors ought not to have been present to maintain the patient's dignity. Furthermore, the report states that one armrest of the commode was missing. However, the commode is not listed as an item of defective equipment in the report; and
 - iv. The complainant said that the draft inspection report was not shared with her. According to the complainant, a member of staff from RQIA telephoned her the day before the report was issued to give her the password. However, the report was emailed to the registered provider for the Home only.

Evidence Considered

Legislation/Policies/Guidance

11. The relevant legislation, policies and guidance were considered as part of investigation enquiries.

RQIA Records

12. The records belonging to the RQIA were carefully considered.

RQIA's response to investigation enquiries

13. The RQIA explained that every nursing home in Northern Ireland is subject to a minimum of two inspections each year⁵. However, where the RQIA identifies concerns, it may increase the number of inspections of a service. It further explained that *'During 2015-16, [the] home was subject to five inspections by RQIA. As a result of the serious concerns identified in the inspection [in] December 2015, RQIA issued two notices of failure to comply with regulations to the responsible person (the registered provider)...In line with RQIA's enforcement procedures, a responsible person may make representation to RQIA should they wish to dispute the notices, however, in this case [the registered provider] did not raise any concerns in relation to RQIA's actions. Following an inspection, RQIA issues a report of its findings and plan identifying actions required by the service provider (the quality improvement plan (QIP)) to the registered person for the service within 28 days of the date of inspection. The registered person then has 28 days to provide any comment on the factual accuracy of the report and its response to the QIP. It is an operational matter for the responsible person to determine who has an opportunity to check the factual accuracy or make comment on a draft inspection report. In the case of Kingsway, none of the findings of this report were challenged by [the] responsible person. A response to the QIP was provided to RQIA from [the] acting manager of the service, countersigned by [the registered provider].'*

The FTC notices dated 15 December 2015

14. The RQIA explained that it wishes to note the seriousness of the concerns it identified in relation to the delivery of care during its inspection on 7 December 2015. As a result of these serious concerns, it issued two FTCs to the registered provider, which were published on the RQIA website. In line with its enforcement procedures, a registered provider may make representation to the RQIA should they wish to dispute the notices. However, no such concerns were

⁵ The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2002

raised by the registered provider of the Home. The RQIA explained that the complainant was not named or identifiable from the FTCs. However, as she was the temporary acting manager at the time of the inspection, this was stated in the inspection report.

15. The RQIA explained that it did not agree with the complainant's view that the FTC incorrectly referred to Regulation 12 instead of 13.7⁶. It explained that it referred to its Stage 1 Investigation report dated 26 July 2016. This stated, *'The determination of which regulations are most appropriate to apply in a FTC notice rests exclusively with the regulator. The failings identified as part of the inspection were grouped under the most appropriate regulations i.e. patients' needs not being met. The incontinence pants were laundered and infection control regulations were not considered appropriate. The primary issue was one of patient's dignity.'* The RQIA explained that the stage one complaints investigator concluded that the regulations were cited appropriately in the FTC.
16. The RQIA refuted the complainant's view that the reference to *'communal use of underwear and tights'* is inaccurate and misleading. It explained that it was acknowledged during the complaints process, by the Supporting Inspector, that the RQIA used different terms within the FTC and inspection report to describe 'net pants'. For example, laundered net pants, laundered incontinence pants and underwear. The RQIA explained that it now refers to these as 'net pants' in its inspections.

The draft inspection report issued 29 December 2015

17. The RQIA explained that it rejects the complainant's assertion that the reference to 'laundered incontinence pants' on page 17 of the report was inaccurate and misleading. It referred to the stage one investigation report, dated 26 July 2016. This states, *'The inspection report refers to "incontinence pads" as having been found in the linen room which formed part of a fire risk,*

⁶ 'Regulation 12 (1) The registered person shall provide treatment, and any other services to patients in accordance with the statement of purpose, and shall ensure that the treatment and other services provided to each patient –

(a) meet his individual needs

(b) reflect current best practice

(c) care (where necessary) provided by means of appropriate aids or equipment.'

'Regulation 13 (7) The registered person shall make suitable arrangements to minimise the risk of infection and toxic conditions and the spread of infection between patients and staff.'

whereas on page 17 “laundered incontinence pants and ladies’ hosiery” are reference as being found stacked on trolleys on the first floor as well as the linen store. On the same page slightly different terminology is used ie “...laundered net pants...” However, it is clear that the inspectors were referring to disposable net incontinence pants, not pads. The stack of pants found not labelled on the trolley and in the linen store during the inspection represented a risk as they could potentially be washed and then be used by different residents. The complainant appears to have mistakenly interpreted references in the inspection report to disposable net incontinence pants as pads.’

18. The RQIA explained that incontinence pants are washable and pants hold incontinence pads in place. However, if a nursing home is not labelling the pants for each patient, these should be disposed of after each use. The RQIA also rejected the complainant’s view that this reference should not have appeared in the FTC as it was addressed by the responsible person at the meeting on 14 December 2015. It explained that the responsible person accepted the inspection findings and did not raise any issue on the matter. During the meeting on 14 December 2015, the responsible person explained that the used net pants had been disposed of and patients’ clothes will either be labelled or placed in individual zipped net bags. In relation to the reference on p7 of the report, the RQIA explained that the issue was with cardboard boxes blocking the fire exit, rather than the content of these boxes. This issue was raised as a requirement in the QIP included in the inspection report. The RQIA explained that incontinence pads differ from laundered incontinence pants, which were referenced in the FTC notice.
19. In relation to the complainant’s concern regarding the reference on p17 of a resident partially undressed person on the commode, the RQIA explained that both of the inspectors who attended are registered nurses. They were therefore acting in accordance with the expectation/requirement of their professional registration with the Nursing and Midwifery Council (NMC). The RQIA explained that Article 41 of the 2003 Order makes provision for a registered nurse to examine a resident of a nursing home in private where there is reasonable cause to believe that a resident is not receiving proper care or

treatment. The RQIA explained that the stage one complaints investigation documented that the inspectors acted reasonably and with compassion, whilst highlighting failings regarding the delivery of personal care in the Home. In relation to the armrest of the commode, the RQIA explained that this matter was addressed during the inspection. It was not required to form part of QIP, as other issues took precedence.

20. In relation to the sharing of the draft report, the RQIA explained that the report was issued to the registered provider who operated the Home at that time. Although the email included the complainant's name, the RQIA explained that it only sends the draft inspection report to a single email address. It held contact details for the registered provider only who was responsible for returning the QIP. The RQIA explained that the complainant was the temporary acting manager and was referenced in that correspondence out of courtesy. It further explained that it is the responsibility of the registered provider to share the report within their organisation as they wish.
21. The RQIA was referred to the guidance which states that the report ought to be emailed to the registered manager. The RQIA explained that the complainant was not the registered manager for the Home as she was the temporary acting manager. The report was therefore sent to the email address of the registered provider. The RQIA added that there is a typographical error in the RQIA Enforcement procedure footnote which should read: *'in line with legislation the registered person means the registered provider or registered manager.'*
22. In relation to whether the complainant raised concerns regarding the content of the report, the RQIA explained that the complainant wrote to the Director of Nursing on 4 January 2016 who responded the following day. The RQIA further explained that in accordance with procedure, it liaised with the registered provider regarding the factual accuracy of the report. The registered provider *'approved the report'* and returned the QIP on 22 January 2016. The RQIA was asked to confirm who was registered on its website as 'registered manager' at the time of the inspection on 7 December 2015. It explained that the complainant was listed on RQIA's register as acting manager for the period 2 September 2015 until 27 January 2016. Her name would therefore have been

listed on the website as the manager of the service.

Response from the registered provider to investigation enquiries

23. The registered provider of the Home provided an account of his interaction with the complainant following receipt of the draft inspection report on 29 December 2015. The registered provider explained that the report was sent to him when he was absent for the Christmas holidays and he did not see it until he returned on 2 January 2016. He further explained that there was no need to go through the report with the complainant as she had left her post at the Home by that time. The registered provider explained that the complainant asked him for a copy of the report. He explained that he forwarded a copy of the report to the complainant's son's email address on 4 January 2016. The following day (5 January 2016) he sent a copy of the report to the complainant's email address.

The complainant's response to a draft copy of this report

24. In response to the draft report, the complainant referred to RQIA's use of the phrase '*potential to be shared*' in its FTC Notice. The complainant believed that this was the personal opinion of the Lead Inspector and ought not to have been included in the published notice, especially as this led to her name being published in media articles.

RQIA's response to a draft copy of this report

25. In its response to a draft copy of this report, RQIA explained that it reviewed its guidance for emailing and authorising reports and QIPS in October 2017. RQIA explained that these documents are shared via its online web portal. Access to these documents is now granted to the responsible person who then sets permissions for relevant staff to access the documents. RQIA believe that this will ensure that reports and QIPs are shared with relevant persons.

Analysis and Findings

Content of the FTC notice

26. The complainant stated that the FTC notice ought to have referred to Regulation 12 instead of 13.7. I note that RQIA disagreed with the

complainant's view and explained that this decision rested with the regulator. I also note that RQIA explained that as the incontinence pants were laundered, infection control regulations were not considered appropriate. The Lead Inspector explained that the decision to use the particular regulation was made at the enforcement decision meeting on 8 December 2016. I note that this is recorded in the notes of this meeting. I note that in relation to FTC notices, the Regulations (2005) state *'in what respect in its [RQIA's] opinion [my emphasis] the registered person has contravened the requirements of any of the regulations'*. I consider that the decision to refer to Regulation 12 is a discretionary decision, which is for the regulator to determine. I note that it was communicated to the Home the following day in a letter from RQIA dated 9 December 2016 and was not challenged prior to publication of the FTC. It is not for the role of NIPSO to question the merits of a discretionary decision taken without evidence of maladministration. I see no evidence of maladministration by RQIA leading to its decision to refer to Regulation 12 in the FTC notice, in relation to the use of incontinence pants. I therefore have no role in questioning its decision.

27. The complainant also stated that the reference in the FTC to *'the communal use of underwear and tights'* was inaccurate and misleading. Although the contemporaneous notes of the inspection do not use the word 'communal' or 'underwear'; they state *'shared net pants'* and *'shared tights'*. I consider the language used in the FTC is consistent with the enforcement decision meeting on 8 December 2015 which stated *'communal underwear/tights'* and the letter dated 9 December 2015 which stated *'the communal use of underwear and tights'*. I acknowledge that the use of this phrase is not consistent with the language used in the subsequent draft inspection report. I note the Lead Inspector's view that the FTC does not contain as much detail as the inspection report. Therefore, there is less scope in the FTC for further explanation.
28. I note that the inspectors found the lack of labelling on these occasions resulted in the *'potential to be shared'*. I also note the complainant's comments in response to a draft copy of this report regarding the use of this wording. I

consider that given the FTC notice is published online without prior consultation, the inspectors could have taken more care and used language that more accurately depicted their findings. However, it is not within my remit to make a finding on specific wording a body used in a FTC Notice.

29. The complainant also believed that this finding should not have appeared in the FTC because the Home's registered manager outlined in the meeting on 14 December 2015 that the issue had been addressed. I accept the Lead Inspector's explanation that as it was a new process being introduced, they wanted to ensure it had been implemented.
30. I note that the FTC Notice was served on the registered provider only. However, I note that the complainant attended the meeting held on 14 December 2015 to discuss the content of the FTC Notice. I consider that the complainant had the opportunity to raise any objections she had with the wording used, or with the FTC findings, at this meeting. I reviewed the minutes of this meeting and there is no evidence to suggest that the complainant commented on either of her concerns. I note that the inspectors acknowledged the wording in the RQIA's response to the complaint and in its response to enquiries from this office. I also note that the Lead Inspector explained that learning has been taken from this issue and now the term '*net pants*' is used to avoid any confusion.
31. I note that the complainant believed that information contained within the FTC led to her being named in the media. She believed that this resulted in damage of her reputation and career. I am unable to comment on the media articles referred to, as it is outside the scope of this investigation. I do not consider that the inspectors would reasonably have foreseen that the use of such terminology would result in the media coverage experienced. I note that the complainant was not named in the FTC or personally criticised in her role as acting manager for the failings identified.

Content of the draft inspection report issued 29 December 2015

32. The complainant was also concerned about the reference to '*laundered incontinence pants*' on page 17 of the report. She believed that this was

inaccurate, as incontinence pads are disposable and are not laundered. I note that the RQIA explained that it was their view that the complainant mistakenly interpreted references in the inspection report to disposable net incontinence pants as pads. I also note that the RQIA referred to the reference to incontinence pads on page seven of the report. It explained that this was related to a fire risk and the content of the boxes was irrelevant. I accept the explanation provided by RQIA in relation to these findings in the draft inspection report. I consider that the diagram provided by RQIA (Appendix four) further explains the distinction between incontinence pads and pants. I note that the reference on page seven did not use the term '*laundered*' as it was referring to incontinence pads, not pants. These are clearly two different items. I also consider these findings are supported by the contemporaneous notes of the inspection on 7 December 2015. I therefore do not consider that the use of this phrase was inaccurate, erroneous or contradicted the finding on page seven of the report. I also consider that the inclusion of this finding in the draft inspection report was reasonable, as it reflected the findings of the inspection.

33. In relation to the reference in the report to the resident on the commode, I consider that this is supported by the contemporaneous notes taken during the inspection. I have no reason to question the inclusion of this description in the draft inspection report. I accept the explanation provided by RQIA that there is legislative provision for a registered nurse to examine a resident of a nursing home in private where there is reasonable cause to believe that a resident is not receiving proper care or treatment.

Sharing of the draft inspection report

34. This investigation has established that the report was emailed to the registered provider on 29 December 2015. However, I note that the body of the email addressed both the registered provider and the complainant (as the acting manager). I also note that RQIA contacted the complainant to inform her of the password for the report.
35. I have considered the RQIA guidance on the sharing of the inspection report. I note that RQIA's Inspection Policy states that '*the draft report along with*

*covering letter for inspection reports should be forwarded to the **Provider/Registered Manager** [my emphasis] indicating the date of return of the QIP, addressing the areas of improvement/action...* I further note that the RQIA guidance for emailing and authorising reports and QIPs states, *'When the draft inspection report has been completed, RQIA will contact the registered manager to advise of the unique password of the report. The draft report and QIP will then be emailed to **the registered manager** [my emphasis]. The registered manager will then be able to remove the password from the documents so they can be sent freely to all interested parties within the organisation as they wish.'* I am therefore satisfied that RQIA ought to have emailed the draft report and QIP to the registered manager.

36. I note that RQIA explained that it did not consider the complainant as the registered manager for the Home as she was temporary acting manager. It also explained that the report was therefore sent to the email address of the registered provider who had the responsibility to share the report within his organisation. However, I note that the complainant was listed on RQIA's register as acting manager. Therefore, she would have been listed on the website as the manager of the service. I am satisfied that in her role of acting manager at the time the report was issued, the complainant was fulfilling the role of 'registered manager'. I do not accept the RQIA's explanation that she was referenced in the email enclosing the report as a courtesy. I consider the RQIA ought to have taken reasonable steps to provide the complainant, as the 'registered manager' with a copy of the report in order for her to provide any comments on its factual accuracy.

37. The First Principle of Good Administration, 'getting it right', requires bodies to act in accordance with its own policy and guidance. The Third Principle of Good Administration requires public bodies to be 'open and accountable' and to be transparent in their dealings with the public. I consider that in circumstances where a person is adversely affected by a decision, fairness and good administrative practice requires that they are informed in advance as to how the decision affecting them will operate. I also consider that they ought to be provided with the opportunity to effectively participate in the process. I conclude

therefore that the complainant, as the registered manager of the Home, had a right to be provided with a copy of the draft inspection report and with the opportunity to comment.

38. The Fourth Principle of Good Administration requires public bodies to treat people fairly and with respect. Furthermore, when taking decisions, public bodies sought to behave reasonably and ensure that the measures taken are proportionate to the objectives pursued, appropriate in the circumstances and fair to the individuals concerned. I consider that the RQIA's failure to provide the complainant with a copy of the draft report does not meet the Third and Fourth Principles of Good Administration. I consider that this constitutes maladministration.
39. I have considered the impact this maladministration had on the complainant. This investigation has established that the registered provider provided the complainant with a copy of the report on 4 January 2016 at her request. I note that the registered provider was required to provide a response to RQIA prior to 27 January 2016. Although I am critical that RQIA did not provide the complainant with a copy, I am satisfied that the Home's registered provider did so within a few days of his receipt of the report. I consider the complainant had sufficient opportunity to comment on the factual accuracy of the report. However, there is no evidence to suggest that she did so. Therefore, I do not consider that the complainant experienced an injustice arising from this failure.
40. I note that in its response to a draft copy of this report, RQIA explained that it reviewed its guidance for emailing and authorising reports and QIPS in October 2017. RQIA explained that these documents are shared via its online web portal. Access to these documents is now granted to the responsible person who then sets permissions for relevant staff to access the documents. RQIA believe that this will ensure that reports and QIPs are shared with relevant persons. I acknowledge RQIA's efforts to address this issue. However, RQIA's guidance states, '*the draft report along with covering letter for inspection reports should be forwarded to the **Provider/Registered Manager** [my emphasis]*'. I do not consider that the amended process reflects this guidance as access to the report is only granted to the 'responsible person' and

not the 'registered manager'. I will address this further in the Recommendations section of this report.

Issue 2: Whether RQIA's handling of the complaint was appropriate and reasonable.

Detail of complaint

41. The complainant was concerned that the complaints process took over a year and a half to complete. She also complained that she was asked to sign a legal declaration to confirm that she would not take legal action prior to the RQIA considering her complaint. The complainant further complained that she was not provided with the full report detailing the findings of the investigation into her complaint.

Evidence considered

Legislation/Policies/Guidance

42. I referred to the RQIA Complaints Policy as part of investigation enquiries. Relevant extracts of the policy are enclosed at Appendix six to this report

RQIA's records

43. Records relating to Stage 1 of the complaint were carefully considered. A chronology of the complaints process for Stage 1 was prepared and is enclosed at Appendix seven to this report.
44. I also considered the minutes of the meeting between RQIA and The complainant that occurred on 20 April 2016. The minutes document '*1. Point Raised: Legal Action...[the investigating officer] asked the complainant if she could confirm whether she was taking legal action in line with 1.7.4 of the complaints policy and procedure. [The complainant's son] advised that they don't know yet as they don't know what has been 'brought up' but they have not begun legal action to date...[the investigating officer] also explained that the notes of this meeting would be sent to the complainant for a factual accuracy check and also the proforma which distils [details] key aspects of the complaint. [The complainant's son] said he thought something else would have been done*

prior to the meeting but [the investigating officer] explained that first the meeting is set up in line with policy and procedure and then the meeting takes place to listen to the complainant and fill out the proforma before he begins the investigation and meets with relevant people. [The investigating officer] explained there had been difficulty organising the meeting with the complainant and this delayed the investigation from being able to begin. [The investigating officer] discussed the complaints agreement proforma and that he wished to understand the key elements of the complaint. [The complainant's son] said that everything was in the letter of complaint and he should just write it in the details of complaint the letters dated 1 and 29 March 2016....[the investigating officer] said that he would draw the key aspects from the letter in order to enable him to investigate the complaint. [The complainant's son] advised that he would wish to add to the letter of complaint...'

45. The minutes of the meeting also document, '*[the investigating officer] asked... [the complainant] if they could write out the detail of what they were raising today and send to [the Complaints Manager] so that he can use it as part of his investigation. [The complainant's son] agreed to do this'*. The minutes further document, '*[The investigating officer] asked that they send in the further information as soon as possible to allow him to begin his investigation. [The investigating officer] advised that with the difficulty in organising this meeting the complaint would not be investigated within 20 working days but he would try and complete as soon as possible after interview with staff take place'*.
46. Records relating to the complainant's Stage 2 review were carefully considered. A chronology of the Stage 2 review was prepared.

RQIA's response to investigation enquiries

Stage 1

47. In relation to the delay in completing the Stage 1 investigation, the RQIA explained that this was '*due to the arrangements of getting a first meeting set up between [the complainant] and the Stage 1 investigating officer. Letters were sent by [the complainant] on 4 January 2016 and 1 March 2016, raising a*

number of different issues, and acknowledgements were sent to the complainant on 5 January 2016 and 5 March 2016, respectively. The correspondence was lengthy and raised several issues, some of which were not matters for the complaints process’.

48. The RQIA explained that *‘on 16 March 2016, the Complaints and Representations Manager wrote to the complainant advising that the concerns raised would be taken forward as a single complaint under RQIA’s Policy and Procedure on the Management and Handling of Complaints against RQIA, and asking the complainant to contact her to arrange a meeting in line with the complaints process. However, further detailed letters were then received on 29 March 2016 and 7 April 2016’.* The RQIA further explained that *‘this was not ideal, but there is evidence that RQIA was consistently dealing with the complaint and making efforts to process the matter under its applicable stated policy, and RQIA was in regular contact with the complainant during this time’.*
49. The RQIA explained that *‘there was evidence of continued efforts by RQIA to allow [the complainant] to submit the further information to which she referred’.* It further explained that *‘the potential for risk was greater had he [the investigating officer for the Stage 1 process] chosen to proceed to conclude the investigation without giving the opportunity to [the complainant] to gather and submit any further evidence or information she may have had in relation to her complaint’.* The RQIA explained that *‘whilst there were delays in the timelines as specified in the Complaints Policy and Procedure, these delays were not material to the outcome and were not prejudicial to the interests of the complainant and therefore it has no recommendations to make in this context’.*

Stage 2

50. The RQIA explained that *‘the findings of the Stage 1 formal investigation were issued to [the complainant] on 26 July 2016. [The complainant] was advised that she could request a Stage 2 Review by 4 August 2016. However, RQIA did not receive a request within the timescale and therefore considered the complaint closed’.* It further explained that *‘on 14 February 2017, RQIA*

received a request from the NIPSO to undertake a Stage 2 Review of [the complainant's] complaint. RQIA wrote to [the complainant] on 21 February 2017, advising that we would undertake a Stage 2 Review of her complaint'.

51. In relation to the Stage 2 Review, the RQIA explained that *'in line with our complaints policy and procedure, a Stage 2 review of a complaint should be completed within 40 working days. RQIA wrote to [the complainant] on 21 February 2017 to advise that a Stage 2 review would be conducted. When taking into account weekends and public holidays (St Patrick's Day and Easter), a response was due on 21 April 2017'.* It further explained that the Complaints and Representation Manager *'spoke to [the complainant] on the telephone on 21 April 2017, to advise of a delay in the stage 2 process. In order to provide independent assurance, a Stage 2 review of a complaint is conducted by two members of RQIA's Board as well as a Director not involved in the Stage 1 process. Whilst RQIA always endeavour to conduct all stages of the complaints process within the timescales, there can be delays in the Stage 2 process to facilitate the diaries of Board members and their availability – including RQIA's Chairperson, who provides the response to the complainant'.*
52. The RQIA explained that *'during the course of the Stage 2 review, RQIA received and responded to several further pieces of correspondence from [the complainant]...on 8 March 2017, RQIA received a letter from [the complainant], dated 6 March 2017. RQIA responded to this letter on 13 March 2017, outlining that a Stage 2 review was underway and would be conducted in line with our policy and procedure, and a letter would be issued to [the complainant] at the end of this process'.* It further explained that *'[the complainant] wrote further letters...dated 13 and 27 March 2017 (both received by RQIA on 28 March 2017) and 14 April 2017. RQIA acknowledged receipt of the letters received in March on 29 March 2017, and issued a further response on 25 April 2017'.* The RQIA explained that *'our findings were issued to [the complainant] on 5 May 2017'.*
53. The RQIA explained that *'following the Stage 2 Review of [the complainant's] complaint a recommendation was made that the requirement of the current 7*

day time limit to request a Stage 2 Review should be reviewed, with a view to consideration of a longer period for making such a request. This timeframe has now been extended to 28 days’.

Legal declaration

54. In relation to the complainant’s view that she was asked to sign a legal declaration at the outset of the meeting, the RQIA explained that this was ‘*incorrect*’. It explained that ‘*in line with 1.7.4 of RQIA’s Complaints Policy and Procedure [the investigating officer] asked the complainant if she could confirm whether she was taking legal action*’. The RQIA further explained that the complainant was advised that ‘*the meeting was in line with the RQIA’s Complaints Policy and Procedure, and discussed completing the complaints agreement proforma to clarify the main areas of complaint during their initial meeting. This gives the complainant an opportunity to discuss how the organisation’s actions have affected them. They can then discuss what their desired outcome is from the complaint*’. However, the RQIA explained that the complainant refused to sign and complete this proforma.

Copy of investigation report

55. In relation to why the complainant was not provided with a copy of the report into the investigation of its complaint, the RQIA referred to 2.6.2 of its Complaints Procedure. It explained that ‘*the investigating officer will draft a letter of findings for the Chief Executive’s consideration...and the letter of findings is then sent from the Chief Executive to the complainant*’. The RQIA explained that a letter of findings was issued to the complainant on 26 July 2016. This letter outlined the seven headings of the complaint and concluded the inspection in December 2015 was conducted appropriately. It further advised that ‘*no aspect of your complaint was upheld and no recommendations have been made as a result of this investigation.*’

Analysis and findings

56. The complainant complained that the full complaints process was unreasonably delayed and that it took over a year and half to complete. I note that the complainant initially complained to this office following completion of the Stage 1 investigation. Following intervention from this office, RQIA agreed to conduct

a Stage 2 Review on 21 February 2017, which it concluded on 5 May 2017. As the complainant initially submitted her Stage 1 complaint on 1 March 2016, it is acknowledged that the total overall time for completion of both stages took 14 months. In considering the issue of delay, I will consider each stage of the complaints process separately in the context of the actual period when RQIA was dealing with the complaint.

Stage 1: Local Resolution

57. I note that RQIA received the complaint on 2 March 2016. I also note that RQIA responded to the complaint by letter, dated 26 July 2016. This was more than 100 working days after RQIA received the complaint on 2 March 2016. This was significantly out with the timescale stipulated in the RQIA Complaints Procedure for a Stage 1 complaint (*'normally within 20 working days of receipt of a complaint received by RQIA'*). I have carefully considered the records contained within the complaints file that relate to this significant delay.
58. I note that following her initial complaint received by the RQIA on 2 March 2016, it contacted the complainant on 16 March 2016 to arrange a meeting to discuss her complaint. However, the complainant did not respond until 29 March 2016 when she provided further details of her complaint in a letter to RQIA. I note that subsequent to this, both parties agreed to meet on 20 April 2016. I note from the minutes of this meeting that the complainant wished to provide further information to be considered as part of the investigation into her complaint.
59. I note that both the investigating officer and the Complaints Manager made unsuccessful attempts (up until 16 May 2016) to contact the complainant to obtain this additional information. I also note from her correspondence, dated 16 May 2016, that the complainant believed the RQIA investigation into her complaint to be *'concluded, exhausted and complete'*. However, she was informed by the Acting Chief Executive by letter on 3 June 2016 that the investigation process remained ongoing. I note that the complainant provided further information to the RQIA regarding her complaint on 20 June 2016 and again on 30 June 2016. I consider that the delay in this stage of the process

was due to the time taken for the complainant to provide this information. I also consider that RQIA made significant efforts during this time to obtain the additional information that the complainant requested to be considered as part of the investigation into her complaint.

60. I note that the investigating officer commenced his investigation interviews on 1 July 2016 following receipt of the complainant's further letters. I also note that the findings of the investigation were provided to the complainant by letter, dated 26 July 2016. This was 16 working days after the RQIA received the final correspondence from the complainant on 30 June 2016. I consider that once the investigating officer received all of the relevant information from the complainant, he completed the investigation in accordance with the timescale stipulated in RQIA's Complaints Procedure (20 working days).

Stage 2 Review

61. I note that RQIA received the complainant's request for a Stage 2 Review of her complaint on 9 August 2016. However, it was not accepted as it was not submitted within the seven day timeframe allowed for such a request. I note that the complainant then took her complaint to this office. I acknowledge that the decision not to accept the complaint was made in accordance with RQIA's Complaints Procedure. However, I considered that the seven day timeframe stipulated in the procedure at that time was unreasonable. Therefore, this office returned the complaint to RQIA for local resolution. I note that subsequently, RQIA amended its Complaints Procedure so that the time limit to request a Stage 2 Review was extended to 28 days. I welcome this learning already identified by RQIA.
62. I note that RQIA commenced the Stage 2 Review process on 21 February 2017. I also note that the RQIA provided the outcome of its review to the complainant 50 working days after it initiated the process (5 May 2017). This was out with the timescale stipulated in the RQIA Complaints Procedure for a Stage 2 review (*'normally within 40 working days from when the request for a Review was first received'*).
63. I note that RQIA explained that *'there can be delays in the Stage 2 process to*

facilitate the diaries of Board members and their availability – including RQIA’s Chairperson, who provides the response to the complainant’. I accept that it may not always be possible for RQIA to fully respond to a complainant within the stated 40 working day timeframe. In these cases, I expect bodies to inform the complainant of the expected delay. I note that the Complaints Manager informed the complainant by telephone on 21 April 2017 that she would receive the outcome of the review within 10 working days. I also note that this was followed by a letter, dated 25 April 2017, in which RQIA explained that it expected to provide its outcome the following week. I note that RQIA met this revised timescale (in its letter, dated 5 May 2017). I consider that the delay experienced in the Stage 2 process was not significant nor unreasonable. I also consider that RQIA informed the complainant of the delay and provided her with a revised timeframe for its response.

64. In relation to the complaints process as a whole, I consider that the Stage 1 investigation experienced a significant delay. However, I do not consider that RQIA was responsible for causing this delay. I also consider that RQIA corresponded appropriately with the complainant throughout the entire process. Therefore, I do not uphold this element of the complainant’s complaint.

Request to sign legal declaration

65. The complainant complained that she was asked to sign a legal declaration to confirm that she would not pursue litigation prior to RQIA considering her complaint. I understand that she believed that this discussion occurred during the meeting to discuss her complaint on 20 April 2016.
66. I note from the minutes of the meeting on 20 April 2016 that the complainant was asked if she intended to take legal action against the RQIA. I consider that this was in accordance with paragraph 1.7.4 of the Complaints Procedure, which states *‘complainants will be asked to confirm if litigation is pending against RQIA or due to be initiated. In such circumstances, the complaint investigation should cease under the RQIA’s Complaints Policy and Procedure’.*
67. I also note from the minutes that the investigating officer informed the

complainant that she would be asked to complete a proforma document. This would detail the key issues of her complaint and her preferred outcome. I have reviewed this proforma and am content that there is no reference to litigation within the document. Having reviewed the minutes of the meeting and the proforma, I am unable to find any evidence to suggest that the complainant was asked to sign a document to confirm that she would not pursue litigation.

Provision of investigation report

68. The complainant also complained that she was not provided with the full report detailing the findings of the investigation into her complaint. I understand that this complaint relates to the findings of the investigation undertaken in accordance with Stage 1 of the Complaints Procedure. Paragraph 2.6.2 of the Complaints Procedure states that *'the Director/Head of Programme will draft a letter to the complainant for consideration by the Chief Executive, outlining any findings from the investigation and outcomes'*. I note that RQIA issued a letter to the complainant, dated 26 July 2016, which informed her that none of her issues of complaint were upheld. I consider that the RQIA's actions in providing the complainant with a letter in response to her complaint was in accordance with its Complaints Procedure.
69. In relation to issuing a copy of the investigation report, I note that paragraph 2.6.1 of the RQIA Complaints Procedure states that the *'Director/Head of Programme should produce a report...demonstrating that conclusions are based on clearly stated evidence and differentiating between fact and opinion'*. I note that the Complaints Procedure does not make clear who ought to receive a copy of this report. Therefore, I consider that the Complaints Procedure does not prevent RQIA from providing complainants with a copy of the report. However, nor does it require it to do so.
70. I note that paragraph 2.6.3 of the Complaints Procedure states that *'the draft letter of response to the complainant must make explicit the findings to each aspect of the complaint and indicate if the complaint...is upheld or not upheld'*. I have considered the content of the letter sent to the complainant on 26 July 2016. It is clear from having received RQIA's response, the complainant did

not understand the reasons for its decision not to uphold her complaint. I consider that RQIA could have set out more clearly the findings of each aspect of the complaint rather than stating an overall finding. I consider that this would have been achieved by providing the complainant with a copy of the investigation report. However, as RQIA declined to do so, it ought to have explicitly detailed the findings of its investigation in its letter to the complainant. I would ask the RQIA to consider the points raised regarding the clarity of its response and ensure that it complies with its procedure when responding to future complaints.

CONCLUSION

71. The complaint concerned the actions of RQIA regarding matters that arose from its inspection of a nursing home in December 2015. Concerns were also raised about RQIA's handling of the subsequent complaint.
72. The investigation of the complaint found that RQIA's inspection and the subsequent report was completed according to relevant standards and procedures. It also found that RQIA's handling of the complainant's subsequent complaint was in accordance with relevant standards.
73. The investigation of the complaint to this office found maladministration in relation to the following matters:
 - i. RQIA's failure to provide the complainant with a copy of the inspection report as the Acting Manager of the Home.
74. I do not consider that the complainant experienced injustice arising from the maladministration identified.

Recommendations

75. I note that RQIA extended the time limit to request a Stage 2 Review to 28 days following the complainant's complaint. I welcome this learning already identified by RQIA.

76. I acknowledge that RQIA made efforts to amend its process for emailing and authorising reports and QIPs. However, I recommend that RQIA review its guidance to ensure that all those affected by virtue of being a registered provider or registered manager (where these are separate persons) are provided with an opportunity to comment on the draft inspection report. RQIA should provide me with an update on this action within **six months** of the date of my final report. This is to be supported by evidence to confirm that appropriate action has been taken (including, where appropriate, records of any relevant meetings).



PAUL MCFADDEN
Acting Ombudsman

May 2020

PRINCIPLES OF GOOD ADMINISTRATION

Good administration by public service providers means:

1. Getting it right

- Acting in accordance with the law and with regard for the rights of those concerned.
- Acting in accordance with the public body's policy and guidance (published or internal).
- Taking proper account of established good practice.
- Providing effective services, using appropriately trained and competent staff.
- Taking reasonable decisions, based on all relevant considerations.

2. Being customer focused

- Ensuring people can access services easily.
- Informing customers what they can expect and what the public body expects of them.
- Keeping to its commitments, including any published service standards.
- Dealing with people helpfully, promptly and sensitively, bearing in mind their individual circumstances
- Responding to customers' needs flexibly, including, where appropriate, co-ordinating a response with other service providers.

3. Being open and accountable

- Being open and clear about policies and procedures and ensuring that information, and any advice provided, is clear, accurate and complete.
- Stating its criteria for decision making and giving reasons for decisions
- Handling information properly and appropriately.
- Keeping proper and appropriate records.
- Taking responsibility for its actions.

4. Acting fairly and proportionately

- Treating people impartially, with respect and courtesy.
- Treating people without unlawful discrimination or prejudice, and ensuring no conflict of interests.
- Dealing with people and issues objectively and consistently.
- Ensuring that decisions and actions are proportionate, appropriate and fair.

5. Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Putting mistakes right quickly and effectively.
- Providing clear and timely information on how and when to appeal or complain.
- Operating an effective complaints procedure, which includes offering a fair and appropriate remedy when a complaint is upheld.

6. Seeking continuous improvement

- Reviewing policies and procedures regularly to ensure they are effective.
- Asking for feedback and using it to improve services and performance.
- Ensuring that the public body learns lessons from complaints and uses these to improve services and performance.

PRINCIPLES OF GOOD COMPLAINT HANDLING

Good complaint handling by public bodies means:

Getting it right

- Acting in accordance with the law and relevant guidance, and with regard for the rights of those concerned.
- Ensuring that those at the top of the public body provide leadership to support good complaint management and develop an organisational culture that values complaints.
- Having clear governance arrangements, which set out roles and responsibilities, and ensure lessons are learnt from complaints.
- Including complaint management as an integral part of service design.
- Ensuring that staff are equipped and empowered to act decisively to resolve complaints.
- Focusing on the outcomes for the complainant and the public body.
- Signposting to the next stage of the complaints procedure, in the right way and at the right time.

Being Customer focused

- Having clear and simple procedures.
- Ensuring that complainants can easily access the service dealing with complaints, and informing them about advice and advocacy services where appropriate.
- Dealing with complainants promptly and sensitively, bearing in mind their individual circumstances.
- Listening to complainants to understand the complaint and the outcome they are seeking.
- Responding flexibly, including co-ordinating responses with any other bodies involved in the same complaint, where appropriate.

Being open and accountable

- Publishing clear, accurate and complete information about how to complain, and how and when to take complaints further.
- Publishing service standards for handling complaints.
- Providing honest, evidence-based explanations and giving reasons for decisions.
- Keeping full and accurate records.

Acting fairly and proportionately

- Treating the complainant impartially, and without unlawful discrimination or prejudice.
- Ensuring that complaints are investigated thoroughly and fairly to establish the facts of the case.
- Ensuring that decisions are proportionate, appropriate and fair.
- Ensuring that complaints are reviewed by someone not involved in the events leading to the complaint.
- Acting fairly towards staff complained about as well as towards complainants.

Putting things right

- Acknowledging mistakes and apologising where appropriate.
- Providing prompt, appropriate and proportionate remedies.
- Considering all the relevant factors of the case when offering remedies.
- Taking account of any injustice or hardship that results from pursuing the complaint as well as from the original dispute.

Seeking continuous improvement

- Using all feedback and the lessons learnt from complaints to improve service design and delivery.
- Having systems in place to record, analyse and report on the learning from complaints.
- Regularly reviewing the lessons to be learnt from complaints.
- Where appropriate, telling the complainant about the lessons learnt and changes made to services, guidance or policy.