

Role of RQIA in Article 86 of the Mental Health (Northern Ireland) Order 1986 Frequently Asked Questions (FAQs)

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This issue is an update to issue 2 published on 20 June 2023 and explains in more detail RQIA's role under Article 86 of the Mental Health (Northern Ireland) Order 1986 (MHO). It aims to answer common questions about our responsibilities under Article 86, how we respond to concerns about care and treatment and what happens during an Article 86 MHO Inquiry

What is RQIA's role in regulating Health and Social Care Trust's Community Mental Health Services?

RQIA is the independent regulator for health and social care in Northern Ireland. We review, inspect, and report on the quality and safety of services provided by Health and Social Care Trusts.

The legislation that established RQIA (The Health and Personal Social Services (Quality, Improvement and Regulation) (Northern Ireland) Order 2003) imposes a Duty of Quality on HSC Trusts; and gives RQIA the functions of reviewing, investigating, inspecting, and reporting on the management, provision, quality, and availability of services which HSC Trusts provide. Community Mental Health Services are provided by HSC Trusts and so are subject to the statutory duty of quality, and to RQIA regulation.

Under the MHO, RQIA also holds a statutory duty to "make inquiry into any case where it appears to RQIA that there may be ill-treatment, deficiency in care or treatment, or improper detention in hospital or reception into guardianship of any patient, or where the property of any patient may, by reason of their mental disorder, be exposed to loss or damage". This duty applies across all settings, including both community-based services and inpatient environments.

Has RQIA reviewed its approach the regulation of community mental health services recently?

Yes. After a judicial review in 2023, we introduced an Interim Policy for Reviewing the Care and Treatment of Patients under Article 86 of The Mental Health (Northern Ireland) Order 1986 (Incorporating 'Make Inquiry'). This policy describes how RQIA will discharge our responsibilities in relation to making inquiry into a patient's care and treatment, where that person is living in a community or in-patient setting.

The Authority has established a Mental Health Committee, chaired by an Authority Member and reporting directly to the full Authority through the Chair. The committee's role is to consider RQIA's duties and functions under the Mental Health (Northern Ireland) Order 1986 and the Mental Capacity Act 2016, as well as any future relevant legislation. It provides recommendations to the Authority on how this legislation should be interpreted, its impact on services, and any resulting policy or operational considerations, including those arising from judicial proceedings.

Does RQIA Inspect Community Mental Health Services on a regular basis?

Unlike services that are required to register with RQIA under [The Health and Personal Social Services \(Quality, Improvement and Regulation\) \(Northern Ireland\) Order 2003](#), HSC Trust statutory services including Community Mental Health Services are not subject to a regular frequency of inspection. RQIA has developed a regular programme of inspections of Mental Health and Learning Disability hospitals. If you would like to review these reports, please consult the RQIA [website](#). Currently, we do not have a similar programme of inspection for community mental health services. However, RQIA has the authority to inspect these services at any time.

To whom does Article 86 apply?

Article 86 (1) of the Mental Health (Northern Ireland) Order 1986 requires RQIA to “keep under review the care and treatment of patients” with a mental disorder and at Article 86 (2) (a) “to make inquiry into any case where it appears to RQIA that there may be ill-treatment, deficiency in care and treatment or improper detention in hospital or reception in guardianship of any patient, or where the property of any patient may, by reason of his mental disorder, be exposed to loss or damage.”

This applies to a person regardless of where they are living: in an inpatient mental health or learning disability hospital, a community setting, or the person’s own home.

To make inquiry in accordance with the powers available to RQIA under the MHO, RQIA has determined that the patient must have been assessed as requiring health and social care (HSC) services or in receipt of HSC services. Where a patient is not known to HSC MHLDS services and appears to be suffering from a mental disorder, the relevant RQIA officer will aim to support this patient through seeking a referral to their GP and/or their relevant HSC Trust.

How does RQIA become aware that a person living with Mental Disorder may have deficiency in their care or treatment?

Information can be received by RQIA through a number of routes, including a concern raised with us by a patient or another person on their behalf. RQIA receives information from multiple sources which includes but not limited to Department of Health; detention information; Deprivation of Liberty Safeguards (DoLS) information, safeguarding, serious adverse incidents and; whistle blowing. We may also identify concerns during an inspection, in any setting, hospital or community.

What does RQIA do if we receive information that a person with a mental health condition might not be getting the right care and treatment?

To enable us to inquire into the care and treatment of a patient, we will first seek to establish whether the patient has the capacity to provide informed consent to a preliminary inquiry. If the patient has capacity, we will seek their consent before requesting and reviewing personal information related to their care. If the patient lacks capacity, we will proceed with our inquiry in line with our statutory functions

and apply the Best Interests principle as outlined in the Mental Capacity Act (Northern Ireland) 2016.

Where RQIA identifies concerns about the care and treatment of a patient, RQIA will require the service provider in the first instance to address those concerns. RQIA will contact the service provider specifying the particular identified issues and require the service provider to tell us what they have done or plan to do about them.

If RQIA continues to have concerns, we may decide to carry out a Structured Patient Inquiry. This decision to undertake a Structured Patient Inquiry is taken by a dedicated panel made up of senior RQIA staff, including directors, assistant directors and senior inspectors, who have not been involved in managing the original concerns. This ensures the process is independent, impartial and focused on safeguarding the patient's wellbeing.

What is a “Structured” Patient Inquiry?

A structured patient inquiry is a comprehensive review of the patient's care and treatment over an agreed and appropriate timeframe.

How does RQIA undertake a structured patient inquiry?

We inform the service provider of our intention to undertake a structured patient inquiry and seek consent from the patient. If the patient does not have capacity to consent, and RQIA believes the grounds within Art 86 (2) (a) are met, the review of the patient's care and treatment can proceed in the patient's best interests.

We will always seek to involve the patient and if appropriate their representative(s). We aim to ensure there is good communication throughout the process including informing the patient of how RQIA will store and use their information. We undertake an in-depth review of the patient's relevant care and treatment records and talk to staff involved in the patient's care and treatment. We may also visit the setting where the patient resides. When necessary we may seek support from independent expert/s.

Before we commence the structured patient inquiry, we will find out if the patient or their representative is involved in other processes, like complaints, safeguarding investigations, or legal cases, and consider how this may affect our work.

What are the outcomes of a “Structured” Patient Inquiry?

At the conclusion of a structured patient inquiry, the inquiry may conclude;

1. there were deficiencies in care and treatment in the past, but these have since been resolved or action is being taken to appropriately address;
2. there are current, ongoing deficiencies in the person's care and treatment, which have not been addressed;
3. or no deficiencies have been identified in the person's care and treatment, past or present.

Following the conclusion of the inquiry, RQIA will take appropriate steps based on the findings and in line with our duties as specified in Article 86. RQIA will write a patient inquiry report, which summarises the findings and makes clear whether improvements are required. Where deficiencies are identified, RQIA will inform the service provider responsible for providing the care and treatment. These improvements may include patient specific and/or service level improvements. The outcome from the patient inquiry will be shared with the patient and where appropriate their representative.

Where serious concerns remain, RQIA may consider escalation or enforcement actions in line with our statutory powers. RQIA may also inform the Department of Health.

Structured patient inquiry reports are confidential as they contain personal identifiable information and are therefore not published. However, learning and areas for improvements identified through these inquiries may be considered by RQIA to inform our wider regulatory work, policy development and inspection planning.

What does RQIA do if deficiencies in care and treatment have not been addressed during a Structured Patient Inquiry?

If we find that problems with a patient's care or treatment are still happening, we will tell the service provider what needs to happen to improve the patient's care and treatment, we may ask the service provider to provide us with regular up to date action plans. We will monitor the service provider's response to make sure improvements are made.

Where RQIA identifies that a care provider is failing to comply with regulations or failing to comply with any statement of minimum standards or quality standards, we will consider the various options to enable that provider to secure compliance. Depending on the circumstances and an assessment of the associated risks and the response from the service, RQIA will consider a range of actions. This is detailed in the RQIA Enforcement Policy.

Enforcement

There is a range of enforcement options to ensure compliance with regulations and minimum standards, to effect improvements, and to afford protection to service users/patients. RQIA will normally adopt a stepped approach to enforcement. Enforcement action will be proportionate and related to the level of risk to service users/patients and the severity of the breach of regulation/standard. If the issues are serious or put service/users patients at risk, we can issue Improvement Notices, and in registered services, we can issue Failure to Comply Notices, impose conditions on registration, or ultimately cancel the registration of a service.

Escalation/Sharing Outcomes

Under Article 86, RQIA must ensure that when appropriate, the Secretary of State, Department, Trusts, and/or Registered Person of a service are informed of the outcome of the patient inquiry to enable them to prevent any ill-treatment, remedy any deficiency in care and treatment, terminate an improper detention in hospital or reception into guardianship and/or prevent or redress loss or damage to property.

Safeguarding

Through the patient inquiry process, if necessary RQIA will engage with the HSC Trusts' Adult or Children's Safeguarding Teams.

How can I contact RQIA if I have a concern about care and treatment for a person living with Mental Disorder?

You can contact RQIA by telephone: 028 9536 1990 or email: info@rqia.org.uk

How can I find out more about RQIA's regulatory role in Community Mental Health Services?

Contact us: by telephone: 028 9536 1990 or email: info@rqia.org.uk