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DATE: 03 August 2009

David Behan  
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Partnerships  
Department of Health  
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Dear David

Many thanks for your letter dated 30<sup>th</sup> July 2009 regarding the publication of the report on the consultation on the review of No Secrets.

Firstly, I am pleased that you have acknowledged the relationship between the Department and AEA and described it as an important one. We feel equally strongly about this relationship and remain committed to actively participate and work with the Department on both the No Secrets review and also the personalisation agenda, as well as the many other areas that fall within your remit. I do hope, as the core funding for the charity is shortly due for renewal, that this unique relationship will continue to be practically and financially supported by the Government through the Section 64 programme.

You have raised a number of important points in your letter in response to our general publicity email sent to members of parliament and peers and I will address these, and the points of query that you have raised, in a similar sequence.

- a) You have indicated that it is unclear as to how we consider the analysis to depart from the Government's Code of Practice on consultations.

As you are aware, the consultation document referred people to the code of practice published in 2004 (which was the second version produced) but I believe this was superseded by the version published by John Hutton in 2008. I will draw your attention to both documents in my explanation.

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on elder abuse

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The 2004 document states that,

*'Particular attention may need to be given to representative bodies, such as business associations, trade unions, voluntary and consumer groups and other organisations representing groups especially affected. In order to ensure that responses are analysed correctly, it is important to understand whom different bodies represent, and the methodology used to gain members' input into the response. ... The summary should give an analysis of the responses to questions asked: for each question there should be a summary of responses to that question and then an explanation of how it is proposed to change the proposal in light of the responses received. There should also be information provided on themes that came out of the consultation which were not covered by the questions.'*

I think you will accept that it is self-evident that the report does not give an analysis by question, but is instead grouped into thematic responses. I have also indicated that it does not fully reflect the range of responses received (particularly from the Third Sector) and I will address that point shortly. It also makes no reference to additional themes that came out of the consultation that were not covered by the questions, (and for example I would direct you toward responses from advocacy groups, from care provider organizations (particularly in terms of employment law), and from child protection agencies (particularly in terms of those children who may be at the cusp of adulthood).

The 2008 guidance is even more explicit on these matters, *'The focus should be on the evidence given by consultees to back up their arguments. Analysing consultation responses is primarily a qualitative rather than a quantitative exercise...In order to ensure that responses are analysed correctly, it is important to understand who different bodies represent, and how the response has been pulled together, e.g. whether the views of members of a representative body were sought prior to drafting the response...Consultation documents should, where possible, give an indication as to the likely timetable for further policy development. Should any significant changes in the timing arise, steps should be taken to communicate these to potential consultees...Following a consultation exercise, the Government should provide a summary of who responded to the consultation exercise and a summary of the views expressed to each question. A summary of any other significant comments should also be provided. This feedback should normally set out what decisions have been taken in light of what was learnt from the consultation exercise'*

In view of the above I suspect that any independent evaluation of the Report, set against these criteria, would conclude that it has not followed the code(s) of practice.

I do appreciate that the code does not contain any guidance on the length of time between a consultation closing and the publication of that analysis. However, I have written communications from your staff indicating that it is good practice to publish within 12 weeks of closure and acknowledging that they had failed to meet that deadline.

- b) While I appreciate that there are many messages within the report I remain concerned as to how some messages have been chosen as the 'key emerging themes' while others have not? Certainly, the chosen themes do not appear to be supported by evidence within the report, and it is difficult to comprehend how the document can acknowledge that the majority of public events and 68% of written respondents indicated a need for framework legislation, and 92% indicated a need for Safeguarding Boards to be placed on a statutory footing, and yet this is not reflected as a key emerging theme, despite substantial evidence having been supplied (whether or not 'vociferously' stated) to support these points.

In the circumstances I would be grateful for any guidance you can give as to what criteria was applied to validate what was or was not a key re-emerging theme?

- c) I have again reviewed the chapter in relation to safeguarding and the NHS.

It commences by listing those health professionals who contributed to the consultation and, while mentioning the contribution of listening events, does not indicate which events to which it is referring or the make up of the attendance of those events. Throughout the chapter mention is made of health practitioners or similar but no reference is made to any other sector or contributor (other than one brief statement attributed to the Probation Service). In fact, at one point the chapter indicates that the consultation 'asked health organisations to consider whether any parts of the NHS were less engaged in safeguarding than others.' I believe that this is not an accurate representation of the consultation questions, which were not directed toward any specific sector or grouping.

I use the health chapter as an example but, if I am in error in my analysis, I would be pleased to be advised as to where and in what manner other views and opinions have been reflected in this section, and consequently how it meets the requirements of the code of practice.

I note that you have additionally referred to the report having been quality-assured by an independent expert – Professor Jill Manthorpe. This raises a number of points that do require some additional elaboration:

- i) I am unaware of the legal process under which an independent expert is appointed to fulfil such a role in relation to a Government Report. I am equally unaware of any tendering, procurement or other transparent process used to make this appointment, including any terms of reference, criteria or qualification used to establish the expert nature of this function? These questions in no way reflect views and opinions about Jill herself, but about the process of her appointment and the terms of reference within which she was asked to act.
- ii) I am sure you are not suggesting that the appointment of Jill to perform this function could replace the function of the Programme Board, which was described to me in writing by your staff as '*responsible for shaping and quality assuring the project*'. I believe it has been suggested elsewhere that there was not time for the Board

to meet prior to publication *'as the analysis was only agreed between the four Government Departments involved on 15<sup>th</sup> July and we wanted to issue the report before the summer recess. That left no time to convene the Programme Board'*. So, if there was insufficient time to convene a meeting of the Programme Board, because the document was published on 17<sup>th</sup> July, it would be useful to know how much time was set aside for quality assurance? Indeed I have it in writing from your staff that on 15<sup>th</sup> July there still was not a finished copy, and that it was proofread on the evening of 16<sup>th</sup> July. I am therefore confused as to when this quality assurance was undertaken? If it was on a version not yet approved by Ministers there would have been sufficient time for this function to be undertaken by the Programme Board? If it was after that date it is difficult to understand how much time was devoted to this process? I am sure you will understand my confusion.

- d) The email of 17 July 2009 indicated our view that the legislation section did not clearly distinguish between framework, intervention and consolidation legislation and was not helped by having the criminal justice views separated elsewhere. I am disappointed that your response has continued that confusion.

Consequently, I cannot currently accept that the Government is listening carefully to the messages on guidance and legislation, although I remain open to being reassured. You must be aware that the concerns expressed by some (not all) older people and others relates to legislative 'powers of intervention' and not to any legislation intended to establish the structures within which adult protection mechanisms are constructed? Accordingly, to contrast the legitimate concerns and aspirations of people about control over their own lives, with the need to establish duties on agencies to collaborate and share information is, to use an analogy, like comparing apples to oranges; it is not relevant or sustainable and I am frankly surprised that the Department is continuing to proffer such arguments. The legislative responses were far more complex and deserved a more thorough analysis and presentation than this suggests.

We are obviously very aware of the current range of criminal and other law that can be captured within an adult protection arena, and we are equally aware of the need to consolidate such legislation (a point not clearly acknowledged within the Report). I note that your view that criminal legislation is being used to prosecute those who commit criminal offences against individuals who are in a position of vulnerability. The extent of such prosecutions however was not evident from the prevalence study and there is little evidence to give reassurance on this matter; indeed the responses from practitioners suggests that this is a real area of difficulty.

- e) Finally I note that you continue to indicate that legislation is neither ruled in nor ruled out, and that there will be a cross-Government response 'in due course'. Liam Byrne first made such indications in March 2006, and this consultation process was announced in March 2007. There is absolutely no sense of urgency from the Department's actions on this matter or from your letter and this does cause us and others very real concern. While I

appreciate you will not accept our view on this matter, we remain firmly of the view that the process and its conclusion would be far speedier if the vulnerability in question related to children.

I will of course make arrangements to meet with Richard to discuss these matters further, but I would in the meantime appreciate your views on the various questions I have posed within the letter.

With very best wishes

Yours sincerely,

A handwritten signature in cursive script that reads "Gary".

Gary FitzGerald  
Chief Executive.