

Making council member appointments: role of Professional Standards Authority: draft proposals for comment

January 2012

1. Introduction

- 1.1 Subject to the passage of the Health & Social Care Bill 2011, health professional regulatory bodies will be responsible for managing the process of appointment and reappointment of council members and chairs (and any related processes) in line with the requirements of their Constitution Orders.
- 1.2 The role of the Professional Standards Authority (the Authority)¹ will be to advise the Privy Council that the process adopted by the regulators in these appointments is robust. The Privy Council may therefore be confident that the information upon which they base their decision is sound and that if they appoint an individual as a council member or chair (or reappoint, or any related decision) due process has been followed.
- 1.3 This new arrangement applies to eight health professional regulators:
 - General Chiropractic Council (GCC)
 - General Dental Council (GDC)
 - General Medical Council (GMC)
 - General Optical Council (GOC)
 - General Osteopathic Council (GOsC)
 - General Pharmaceutical Council (GPhC)
 - Health and Care Professions Council (HCPC)²
 - Nursing and Midwifery Council (NMC).

The arrangements outlined in the Health and Social Care Bill 2011 will not apply to the Pharmaceutical Society of Northern Ireland and the Authority will have no role advising on appointments to their council.

2. This paper

- 2.1 This paper sets out the direction of travel. It outlines our intended approach to our new role and describes the principles underlying it. It has been developed with comments from the regulatory bodies. Comments and feedback on this approach are welcome by 30 March 2012.

¹ CHRE will become the Professional Standard Authority for health and social care subject to Parliamentary Approval in 2012

² The HPC will become the Health and Care Professions Council subject to Parliamentary Approval in 2012

3. Our intended approach

Our aim

- 3.1 Our aim is to be an effective and efficient part of a consistent and credible appointment/reappointment process that ultimately supports good governance, protects the public and promotes confidence in regulation of health professionals.

When we advise the Privy Council

- 3.2 The Privy Council may ask for our advice on the process the regulators adopt across five appointment processes:
- Appointing a new council member or chair
 - Reappointing a council member or chair
 - Extending the appointment of a council member or chair
 - Suspending or removing a council member or chair
 - Making an emergency appointment of a council member or chair

Principles, standards, evidence and guidance

- 3.3 In our role advising the Privy Council, we will expect the regulators' processes to demonstrate the principles we have identified for a good appointments process. These principles form the basis of the standards we expect the regulators to meet.
- 3.4 At the end of this paper we give examples of the types of evidence regulators could provide to demonstrate that they have met the standards we have outlined for those circumstances where we would be called upon to advise the Privy Council. However, it is left to the regulators to manage the process as they see fit.
- 3.5 Alongside our advisory role, we will work with the Appointments Commission to produce guidance on good practice in making appointments to regulatory bodies, to support the regulators in their new role. This guidance is currently being developed.

Individual appointments

- 3.6 Regulators are free to manage the process as they wish. The Authority will not be prescriptive in terms of the process the regulators adopt in managing their new responsibilities around appointments of council members or chair. It is for the regulatory bodies to ensure that they implement suitable processes and that they comply with all relevant legislation, which may change over time.
- 3.7 We will expect the regulators to provide us with information about the appointment before they start ('advance notice to appoint'). This will ensure that preparations can be made with the Privy Council to meet the required timeframes and enable any emerging queries to be resolved with the regulator at the outset. At the end of this process, we expect the regulators to notify us of the outcome of the process, including reporting on any exceptions to the advance notice, to allow us to provide advice to the Privy Council.
- 3.8 We reserve the right to ask for extra information from the regulators if it is not clear to us, on the basis of the evidence they supply in support of their desired recommendation, how they have demonstrated the standards we have set. This allows the opportunity for information to be clarified or corrected before advising the Privy Council.

- 3.9 If we are not satisfied that the regulators have met our standards we will advise the Privy Council not to appoint and we will refer back to the regulators.

Complaints about regulators' appointments processes

- 3.10 Complaints from applicants about the appointments process will be handled by the regulatory body, as the organisation responsible for the appointments process. If, after the regulator's processes have been exhausted, the complainant remains unsatisfied, they may bring the complaint to the Authority if they believe there was an explicit failure to apply our standards. In these circumstances:
- A complaint received by the Authority at a point before we advised the Privy Council on a particular appointment could be taken into account as we prepare our advice
 - Complaints received after we have advised the Privy Council would be taken into account through our procedures for handling concerns about the regulatory bodies.
- 3.11 The Authority will not usually accept complaints relating to processes which concluded 12 months prior to the complaint being lodged, save in exceptional circumstances. Regulators would be responsible for making all applicants aware of the complaints process and associated timeframes. They should retain the relevant documentation, for a minimum of two years for audit purposes. In the interests of developing good practice, the regulator should also have a process in place for periodically reviewing all complaints and making any necessary improvements.

Familiarisation

- 3.12 Before taking on our new role, we will familiarise ourselves with all eight regulators' approaches to appointments. This will provide us with a baseline from which we can then quickly assess individual requests for Privy Council decisions from regulators, and against which regulators can 'exception report' explaining any variance from this approach, should the circumstances demand it.
- 3.13 We will take a risk-based approach to any subsequent reviews of regulators' appointments processes, informed by our experience of advising the Privy Council Office over time.

4. Principles

- 4.1 The Authority has identified four principles to be applied to all processes relating to the appointment, suspension and removal from office of chairs and members of Councils. These principles are based on those identified by the Commissioner for Public Appointments in his Code of Practice for Ministerial Appointments and should be demonstrated by the regulators throughout their work:
- *Merit* – all selection decisions are based on evidence of the merit. This means appointing and reappointing high quality individuals whose skills, experience and qualities have been judged to best meet the needs of the regulator and where appropriate, recommending the removal or suspension of individuals where there is a strong case for so doing
 - *Fairness* – Processes used in appointments, suspensions and removals are objective, impartial and applied consistently, and are free from discrimination.

- *Transparency and openness* – Public appointments must be advertised publicly in a way that is designed to attract a strong and diverse field of suitable candidates. Information about posts and appointment, suspension and removal processes adopted are publicly available. It is clear why regulators make recommendations to the Privy Council
- *Credibility* – the regulators’ processes and systems promote confidence among those involved directly and indirectly. All processes involve independent scrutiny and are in keeping with the legal framework laid down in the regulator’s Constitution Order.

4.2 These principles are at the heart of the standards we have set. The standards apply across different scenarios that arise in making and managing appointments to Councils.

5. Familiarisation review

5.1 A review of the eight regulators’ processes for managing appointments will be carried out by CHRE in summer 2012. The purpose of this review is to familiarise ourselves with the processes the regulators have in place. With a greater understanding of different regulators approaches to appointments and council membership, we will be able to make swifter assessments when we are asked to advise the Privy Council on individual recommendations.

5.2 The review will look at the regulators’ processes and systems in those areas essential to the operation of a good appointments/reappointments process. It will focus on the following areas:

- Competencies and person specifications for Council membership and chairs
- Internal management capacity and process for making appointments, including advertising and recruitment, and managing the balance of skills and terms of office of council members
- Council Members’ code of conduct and application of the Nolan Principles
- Induction, training and appraisal of council members and Chairs
- Complaints processes, and processes for managing suspension and removal of council members.

5.3 We will not set standards in these areas, but we will expect the regulators to be able to demonstrate how these aspects of the process contribute to the appointment recommendations they will put to the Authority to advise the Privy Council under these new arrangements.

6. The appointment scenarios

6.1 Below we outline five different scenarios where the Authority may be asked for advice by the Privy Council. These are:

- Appointing a new council member or chair
- Reappointing a council member or chair
- Extending the appointment of a council member or chair
- Suspending or removing a council member or chair
- Making an emergency appointment of a council member or chair.

6.2 We describe each scenario and the following aspects associated with these circumstances:

- The advisory role of the Authority in each case
- The standard we expect the regulators to demonstrate
- What the regulators would need to tell us in these circumstances
- The evidence the regulators could provide to support their recommendation
- The process that would be adopted when we advise the Privy Council.

6.3 In each scenario, the Authority will review the information provided by the regulator in order to provide the Privy Council with assurance that the processes adopted comply with the principles for making Council appointments and the requirements of this guidance. Once satisfied, the Authority will forward the recommendation and supporting evidence to the Privy Council with its endorsement of the process so that a final decision can be made.

Scenario 1	Appointing a new Council Member (or Chair)
Description:	<p>Where a vacancy arises due to the resignation, termination of appointment or death of an incumbent, or if a reappointment is not being considered, the regulator is responsible for managing a process to identify a suitable new candidate to recommend to the Privy Council for appointment.</p> <p>(NB - if a current member is eligible for re-appointment, the scenario 'reappointing a council member or chair' should be followed.)</p>
Role of the Authority:	To advise the Privy Council whether the regulator has met our standard for appointing a new Council Member (or Chair)
The Authority's standard:	The process used to recommend the appointment of a new council member (or Chair) actively demonstrates the four principles of a good appointments process
What we need to know from the regulator:	<ul style="list-style-type: none"> • The details of the appointment they want the Privy Council to make • How the process they used met our standard for appointing a new council member • The identity of the recommended candidate(s) • The recommended term of appointment
Evidence that could be provided:	<ul style="list-style-type: none"> • The reason for the vacancy (where re-appointment applies but open recruitment has been chosen, include details of factors considered in reaching this decision) • Requirements of the organisation, supported by profile of council (including skills mix, diversity and term end dates); role description and person specification • If within 12 months of an earlier campaign, information about appointable candidates from previous campaigns, where they were considered for this post

	<ul style="list-style-type: none"> • Where posts advertised externally, overview of methods used to attract a field of diverse applicants and details of the period for which the post was open for applications • Details of the number and diversity of applicants at key stages in the process • Details of the membership of the selection panel • Evidence that the processes adopted were free from direct and indirect discrimination and bias, ie. information offered to applicants in a variety of formats; use of appropriate wording/terminology • Details of any conflicts of interest identified, along with the panel's recommended course of action • Summary of the candidates interviewed • Evidence that the recommended candidate(s) meet the person specification and that they were the best candidate(s) available • Any other relevant information the panel wishes the Privy Council to consider e.g. recommended term of appointment • Details of compliance with Constitution Order • Report from an independent panel member • Explanation of any variance against regulator's own established processes
<p>Processes to be adopted:</p>	<p>Before advertising</p> <ol style="list-style-type: none"> 1. Anticipating the need to appoint a new council member or chair, the regulator would notify the Authority of their intention and provide information about their plans for filling the post 2. The Authority would consider regulator's advance notice to appoint and any proposed variance against the required standard, discussing any queries with the regulator where relevant and inform the Privy Council of likely request for appointment <p>When successful candidate identified</p> <ol style="list-style-type: none"> 3. Regulator would provide evidence to the Authority demonstrating compliance with the standards in the process used to recommend the appointment 4. The Authority would assess evidence and advise the Privy Council 5. Privy Council would notify the regulator and write to the successful applicant, confirming their appointment. 6. Regulator would announce the appointment

Scenario 2	Reappointing a council member
Description:	<p>Where the term of office of a council member is coming to an end, the incumbent may be eligible to be considered for a reappointment without the need for open competition (as outlined in the Constitution Order).</p> <p>Each case for reappointment will be considered on its individual merits at the appropriate time.</p> <p>Re-appointment will only be considered where it is in the best interests of the Council for the individual to remain in post. There is no automatic right to reappointment, even where post-holders are eligible for reappointment and even where the incumbent has performed well in the role as the needs of the Council may change over time.</p>
Role of the Authority:	To advise the Privy Council whether the regulator has met our standard on the process for reappointing council members
The Authority's standard:	The process adopted for recommending a reappointment demonstrates the four principles of a good appointments process
What we need to know from the regulator:	<p>The decision they want the Privy Council to make</p> <p>How the process they adopted to inform this decision met our standard</p>
Evidence that could be provided:	<ul style="list-style-type: none"> • Details of compliance with the Constitution Order • The rationale for making a reappointment, including: <ul style="list-style-type: none"> • Assessment of how the council member's skills, knowledge and experience met the current and likely future needs of the Council • Details of council member's attendance and satisfactory performance, via appraisals plus any other supporting documentation the regulator considers relevant, which may include induction, training, etc • Completed statement of suitability for appointment from incumbent • Recommendation from the Chair (for council members) • Additionally, in the case of the reappointment of a Chair – <ul style="list-style-type: none"> • Recommendations received by the regulator from third parties, including key stakeholders • Explanation of any variance against regulator's own established processes
Processes to be adopted:	<p>Before re-appointment process commences</p> <ol style="list-style-type: none"> 1. Anticipating the need to reappoint a Council member or chair, the regulator would notify the Authority, with details of the person specification and competencies, council's strategic needs etc

	<p>2. The Authority would consider and advise regulator about proceeding and inform the Privy Council of likely request for re-appointment</p> <p>When reappointment recommended</p> <p>3. Regulator would provide evidence to the Authority demonstrating compliance with the standards in the process used to recommend the reappointment</p> <p>4. The Authority would assess evidence, including independent feedback and advise the Privy Council</p> <p>5. Privy Council would notify the regulator and write to the successful applicant, confirming their reappointment</p> <p>6. Regulator would announce the reappointment</p>
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Scenario 3	Extending an appointment term
Description:	<p>If the term of office of a council member was a period less than allowed in the relevant Constitution Order, it may be appropriate to consider an extension of the appointment, ie if an initial appointment was for three years, but the maximum term of appointment is four years, it is possible to ask the Privy Council to extend the appointment up to the maximum term permissible. Circumstances where this may be considered include:</p> <ul style="list-style-type: none"> • A merger or review of council membership is anticipated • To allow a new chair to consider the needs of the Council going forward <p>An extension will only be granted by the Privy Council in exceptional circumstances. It is not a means of circumventing proper process.</p>
Role of the Authority:	To advise the Privy Council whether the regulator had met the standard for extending a term of appointment
The Authority's standard:	The process used for recommending the extension of a term of appointment of a council member (or chair) demonstrates the four principles of a good appointments process
What we need to know from the regulator:	<ul style="list-style-type: none"> • The details of the extension the regulator wants the Privy Council to make • Why the extension is needed • How the process used in these circumstances met our standard
Evidence that could be provided:	<ul style="list-style-type: none"> • Rationale for extending the term of appointment rather than taking another course of action • Details of compliance with Constitution Order around term of office • Evidence of satisfactory performance of council member to date, eg, attendance, upholding Nolan Principles and Council Code of Conduct, regular appraisal information

	<ul style="list-style-type: none"> • Explanation of any variance against regulator's own established processes
Processes to be adopted:	<p>Before extending appointment</p> <ol style="list-style-type: none"> 1. Anticipating the need to extend the term of an appointment, the regulator would notify the Authority and the Privy Council of their intention 2. The Authority would consider and advise regulator about proceeding and inform the Privy Council of likely request for extension of appointment <p>When extension recommended</p> <ol style="list-style-type: none"> 3. Regulator would provide evidence to the Authority demonstrating compliance with the standards in the process used to recommend the extension 4. The Authority would assess evidence and advise the Privy Council 5. Privy Council would notify the regulator and write to the successful applicant, confirming the extension to their appointment 6. Regulator would announce the extension

Scenario 4	Suspending or removing a Council Member (or chair)
Description:	<p>Suspension allows for a full investigation to be carried out establishing whether there are grounds for an office holder to be removed from office. Further periods of suspension can be considered if more time is needed to complete an investigation or until the outcome of a criminal investigation is known.</p> <p>In exceptional circumstances, it may be necessary to remove a Council member (or a chair) from office.</p> <p>The Constitution Orders set out the details of how this may happen.</p>
Role of the Authority:	<p>If the Privy Council is asked by a regulator to suspend or remove a member, we may be asked by the Privy Council to advise on the process used by the regulator.</p> <p>If the individual contests the suspension/removal we may be asked to advise the Privy Council whether the regulator had met our standard on suspending/removing a council member.</p>
The Authority's standard:	The process adopted for suspending or removing a Council member (or chair) demonstrates the four principles of a good appointments process as appropriate to the circumstances

What we need to know from the regulator:	<ul style="list-style-type: none"> • The suspension/removal decision they want the Privy Council to take • How the process they adopted to inform this decision met our standard
Evidence that could be provided:	<ul style="list-style-type: none"> • Details of compliance with Constitution Order • The rationale for suspending/removing the council member • The process used to recommend suspension/removal • Explanation of any variance against regulator's own established processes
Processes to be adopted:	<ol style="list-style-type: none"> 1. If the suspension or removal is contested by the individual, the Authority can be asked by the member/ regulator to consider if the process was correctly followed. Alternatively, the Privy Council may ask our advice on the process used by a regulatory body when they recommend the removal or suspension of a council member or chair 2. The Authority will review the process adopted by the regulator and will advise the Privy Council whether they should confirm the regulator's recommendation <ol style="list-style-type: none"> a. If the Authority is satisfied that the process has been properly conducted, then it would recommend to the Privy Council that it should confirm the removal/suspension in writing to the individual b. If the Authority disagrees with the process followed, it will tell the Privy Council and refer the case back to the regulator.

Scenario 5	Making an emergency appointment of a council member or chair
Description:	<p>Unplanned situations may arise in which it may be appropriate to consider making an emergency appointment.</p> <p>This situation may arise when it has not been possible to follow other processes set out here, for example following an unexpected resignation or death of a council member or chair of council.</p> <p>Appointments made in such circumstances will normally be for a maximum of 12 months.</p>
Role of the Authority:	To advise the Privy Council whether the regulator has met our standard on making an emergency appointment
The Authority's standard:	The process adopted for making an emergency appointment demonstrates the four principles of a good appointments process as appropriate to the nature of the appointment

What we need to know from the regulator:	<ul style="list-style-type: none"> • The appointment they want the Privy Council to make • How the process they adopted to inform this decision met our standard
Evidence that could be provided:	<ul style="list-style-type: none"> • The rationale for making an emergency appointment and plans for making a substantive appointment • Proposed period of appointment • Details of compliance with Constitution Order • How they identified the candidate, and how they assessed that the individual's knowledge, skills and experience meets the needs of the appointment • Explanation of any variance against regulator's own established processes
Processes to be adopted:	<p>Before making emergency appointment</p> <ol style="list-style-type: none"> 1. In the event that an regulator needed an emergency appointment to be made, the regulator would notify the Authority and the Privy Council 2. The Authority would consider the intended process and advise the Privy Council. 3. The Privy Council would confirm with the regulator whether they can proceed <p>After candidate identified</p> <ol style="list-style-type: none"> 4. Regulator would provide evidence to the Authority demonstrating compliance with the standards in the process used to recommend the emergency appointment 5. The Authority would assess evidence and advise the Privy Council 6. The Privy Council would notify the regulator and write to the successful applicant, confirming their appointment and term of office 7. The regulator would agree plans for making a substantive appointment with the Authority 8. The regulator would announce the appointment and plans for making a substantive appointment