
**6a - Response to the Department of Health (England) Consultation on the
Office of the Health Professions Adjudicator Regulations - Annex A**



The Office of the Health Professions Adjudicator Regulations 2009

A paper for consultation

DH INFORMATION READER BOX

Policy	Estates Commissioning IM & T Finance Social Care / Partnership Working
HR / Workforce Management Planning / Clinical	

Document Purpose	Policy
Gateway Reference	11523
Title	The Office of the Health Professions Adjudicator Regulations 2009, a Paper for Consultation
Author	DH, Workforce Directorate, Professional Standards Division
Publication Date	20 Mar 2009
Target Audience	Medical Directors, Directors of PH, Directors of HR, GPs, Regulatory Bodies, Professional Bodies, Other Government Health Departments: Scotland, Wales and Northern Ireland
Circulation List	PCT CEs, NHS Trust CEs, SHA CEs, Foundation Trust CEs
Description	A Consultation paper regarding the Office of the Health Professions Adjudicator Regulations 2009
Cross Ref	N/A
Superseded Docs	N/A
Action Required	For comment
Timing	Responses by 19/06/2009
Contact Details	Mike Lewis Professional Standards 2N10 Quarry House Quarry Hill LS2 7UE 0113 254 6146
For Recipient's Use	

© Crown copyright 2009

First published March 2009

Published to DH website, in electronic PDF format only.

<http://www.dh.gov.uk/publications>

Office of the Health Professions Adjudicator Regulations 2009

A Paper for consultation

Prepared by Mike Lewis

Contents

Executive summary	4
1. Introduction	5
2. The OHPA Regulations 2009	7
3. Consultation next steps	11
4. The Consultation Process	13

Executive summary

The draft Regulations attached to this paper make provision in respect of:

- Number of non-executive and executive members in addition to the Chair
- Requirements applying to persons appointed as a member of OHPA, including
 - Aggregate terms of office of members in respect of the Chair or Non-Executive Directors; and
 - Criteria for disqualification from appointment as a member.

1. Introduction

- 1.1 The White Paper *Trust, Assurance and Safety – The Regulation of Health Professionals in the 21st Century* (published in 2007) set out a substantial programme of reform to the United Kingdom's system for the regulation of health care professionals. The White paper was published following two comprehensive reviews of the UK professional regulatory systems. Both of these reviews, *Good doctors, safer patients* and *The regulation of the non-medical health care professions*, involved extensive public consultation, which generated in excess of 1200 responses.
- 1.2 Chapter four of the White Paper (*Tackling concerns: the national role*) included a number of recommendations in relation to the adjudication of fitness to practise proceedings and specifically the need to separate investigation and prosecution from adjudication, in line with the recommendations of Dame Janet Smith in the fifth Shipman Inquiry.
- 1.3 Currently the health care regulators undertake investigation, prosecution and adjudication functions, with varying degrees of internal separation. The White Paper proposed that, in future, a new independent body would adjudicate in cases involving the medical profession. Other regulators may adopt this system of adjudication over time.
- 1.4 The Health and Social Care Act 2008 established the framework for the establishment of the Office of the Health Professions Adjudicator (OHPA). This body will, in the first instance, deal with cases referred to it by the General Medical Council and, subsequently, the General Optical Council.
- 1.5 The Act set out the requirement for the Chair to be legally qualified and specified that regulations would be made by the Privy Council about the composition of the Board and certain other requirements applying to the members of it. These draft Regulations are attached to this consultation document.

- 1.6 The Tackling Concerns Nationally Working Group was established as one of seven working groups to implement Trust, Assurance and Safety. It made a number of recommendations including the early appointment of a Chair and the need for an initial board of three members (including the Chair) to consider the future governance arrangements of the new adjudicator. It also set out the competencies it would expect board members to have.

2. The OHPA Regulations 2009

Number of non-executive and executive members

- 2.1 The Health and Social Care Act 2008 set out that the OHPA should consist of the following members
- a) a chair appointed by the Privy Council,
 - b) non-executive members appointed by the Privy Council, and
 - c) executive members appointed in accordance with the Act.
- 2.2 It further requires the Chair to have legal qualifications as specified in Schedule 6 of the Act.
- 2.3 The Privy Council must by regulations make provision about the number of non-executive and executive members, with at least one of each and no more than three of each, with a proviso that the number of executive members must not exceed the non-executives. The draft regulations have specified that this number shall be one of each.
- 2.4 In considering the size of the Board, the Tackling Concerns Nationally Working Group in their report “*Establishing the Office of the Health Professions Adjudicator*” accepted a Government proposal that an initial board of three members should be appointed. The rationale for this was that it would be excessive and unduly expensive to form a large board to oversee the creation of the new body. However, the Working Group recognised that this may be insufficient once the body was fully operational. Accordingly, it recommended that

One of the first tasks of the initial board of OHPA, should be to produce a statement on governance. The statement should include consideration of the likely effectiveness of a board of three to provide proper governance and accountability and to be able effectively to hold the Chief Executive to account, with a view to having any additional members of the board appointed by the time that OHPA becomes operational.

- 2.5 As part of this consultation, we would welcome your views on the size of OHPA's initial board and also on the size of board require to provide proper governance and accountability for OHPA once it becomes fully operational. In responding to this question it would be helpful if you could state the reasoning behind any views in light of the functions that you would expect the board to undertake.
- 2.6 If at a later date, OHPA recommend that the size of the Board should be increased, up to the maximum provided fro in the Act, further regulations will need to be made.

Q1 Do you agree that the initial board of OHPA should be three in number?

Q2 Will proper governance and accountability require an increase in members? If so, what size board will provide this and at what point should the larger board be in place?

Requirements applying to persons appointed to OHPA

- 2.6 Requirements 1 and 2 apply only to the Chair and non-executive members of OHPA and reflect similar provisions for the councils of the health care regulators.

Requirement 1 – Living or working in the UK

- 2.7 This requirement is that the Chair and non-executive members must live or work wholly or mainly in the UK. As executive members of the board are required under Schedule 6 8 (3) of the Health and Social Care Act 2008 to be employees of OHPA, this requirement is already met with regard to them.

Requirement 2 – aggregate periods of office for non-executive members

2.7 Whilst recognising the need for continuity and stability, it is also necessary for the organisation to develop and adapt to meet changing circumstances. As part of this process it is important that new members are brought into the board, bringing with them fresh ideas. The draft regulations therefore provide as Requirement 2 that no person appointed as Chair or non- executive member should serve any more than 8 years in any period of 20 years. This does not apply to executive members as they will be employees of OHPA.

Q3 Do you agree that the Chair and any non-executive member should be prevented from holding office for more than an aggregate of 8 years during any period of 20 years?

Requirements 3 to 12 Disqualification from appointment as a member

- 2.8 Requirements 3 to 12 apply to all members and make provision to disqualify certain categories of people, for example those who have been a registrant member of a regulated health profession from being a member of OHPA. This is to ensure that the independence of OHPA may not be called into question by the perception of any conflict of interest.
- 2.9 For the same reasons, membership of any of the health professions regulatory bodies or the Council for Healthcare Regulatory Excellence are also grounds for disqualification. However, the regulations do not prevent persons who are members of those bodies or registered health care professionals from serving on any panels or sub-committees of OHPA's board that it may choose to establish.
- 2.9 Additional grounds for exclusion from membership include persons convicted of various offences (unless the conviction is spent), undischarged bankrupts or persons who have been removed from office with a public body on the grounds that it was not in the interests of that body for them to continue in office.

Q5 Do you agree with the grounds for disqualifying a person from appointment as a member of the OHPA? If not, please specify which grounds you disagree with and explain why, including any additional grounds you may wish to see included.

3. Consultation next steps

- 3.1 Individuals and organisations are invited to submit comments on any issues dealt with in the draft Regulations attached to this paper.

Response to the Consultation

- 3.2 Replies to this consultation should be received no later than Friday 19th June 2009
- 3.3 Please respond using the question template provided on the website. If you cannot access the question template, please e-mail the address below or write to us and we will send the consultation document and/or template to you. If you e-mail your response please do not send a duplicate hard copy.
- 3.4 The document is available on the Department of Health website at <http://www.dh.gov.uk/consultations/liveconsultations>
- 3.5 You can respond by e-mail to HRDListening@dh.gsi.gov.uk. You may also respond in writing to:

OHPA Regulations consultation
Department of Health
Room 2N10
Quarry House
Quarry Hill
Leeds
LS2 7UE

Attachments to e-mails should be in Microsoft word or rich text format only please.

- 3.6 Please indicate whether you are replying as an individual or on behalf of an organisation or group of people. Your response may be made public, but if you would prefer it to remain private please make this clear in your reply.

4 The Consultation Process

Criteria for consultation

4.1 This consultation follows the 'Government Code of Practice', in particular we aim to:

- formally consult at a stage where there is scope to influence the policy outcome;
- consult for at least 12 weeks with consideration given to longer timescales where feasible and sensible;
- be clear about the consultations process in the consultation documents, what is being proposed, the scope to influence and the expected costs and benefits of the proposals;
- ensure the consultation exercise is designed to be accessible to, and clearly targeted at, those people it is intended to reach;
- keep the burden of consultation to a minimum to ensure consultations are effective and to obtain consultees' 'buy-in' to the process;
- analyse responses carefully and give clear feedback to participants following the consultation;
- ensure officials running consultations are guided in how to run an effective consultation exercise and share what they learn from the experience.

4.2 The full text of the code of practice is on the Better Regulation website at:

[BRE - Guidance on consultation - BERR](#)

Comments on the consultation process itself

4.3 If you have concerns or comments which you would like to make relating specifically to the consultation process itself please

contact Consultations Coordinator
Department of Health
3E48, Quarry House
Leeds
LS2 7UE

e-mail consultations.co-ordinator@dh.gsi.gov.uk

Please do not send consultation responses to this address.

Confidentiality of information

- 4.4 We manage the information you provide in response to this consultation in accordance with the Department of Health's [Information Charter](#).
- 4.5 Information we receive, including personal information, may be published or disclosed in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA), the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).
- 4.6 If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this it would be helpful if you could explain to us why you regard the information you have provided as confidential. If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality can be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Department.
- 4.7 The Department will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

Summary of the consultation

- 4.8 A summary of the response to this consultation will be made available before or alongside any further action, such as laying legislation before Parliament, and will be placed on the Consultations website at

<http://www.dh.gov.uk/en/Consultations/Responsestoconsultations/index.htm>