

To consider

Response to the Department of Health (England) Consultation on the Office of the Health Professions Adjudicator Regulations 2009

Issue

1. Whether Council is content with the proposed response to the consultation on the Office of the Health Professions Adjudicator Regulations 2009.

Recommendations

2.
 - a. To consider the draft response to the consultation on the Office of the Health Professions Adjudicator Regulations 2009 (paragraphs 12-19 and Annex B).
 - b. To authorise the Chair of the Council to finalise the response (paragraph 20).

Further information

3. If you require further information about this paper, please contact us by email: gmc@gmc-uk.org or tel. 0161 923 6602

Background

4. This paper is relevant to Key Aim Seven of the 2009 Business Plan - to enhance patient safety by dealing fairly and effectively with doctors whose fitness to practise may be impaired – by making all necessary preparations for the establishment of OHPA.

5. The White Paper *Trust, Assurance and Safety - The Regulation of Health Professionals in the 21st Century*, in February 2007, included proposals for the creation of OHPA, which will assume responsibility for the adjudication of GMC (and General Optical Council) fitness to practise cases.

6. The White Paper concluded:

'For doctors, the GMC has made significant changes to these procedures in recent years and fewer and fewer decisions are challenged successfully but, however fairly they operate in practice, it is critical that they are also perceived by all to be doing so fairly, and the constant scrutiny of the GMC on these issues risks undermining their progressive and patient-centred approach to their work elsewhere.' (White Paper – Chapter 4.35)

7. Provisions for OHPA were made within the Health and Social Care Act 2008. They included that regulations would be made by the Privy Council on the composition of OHPA's Board and on other requirements applying to the members of the Board. The Department of Health (England) is consulting on those regulations.

8. The Tackling Concerns Nationally Working Group was one of seven working groups established to implement the White Paper. The Working Group has made a number of recommendations on OHPA's governance. We recently updated members on the Working Group report, which was published in March 2009, and provided members with an update on developments regarding the proposed transfer of our adjudication responsibilities to OHPA.

9. It is expected that OHPA will first assume responsibility for GMC adjudication, from 2011, followed by GOC adjudication at some point. We understand that the review of the White Paper proposals, scheduled for 2011, will consider whether OHPA's remit should be extended to other regulators. We understand that OHPA's Board will operate in shadow form from late 2009-2010. DH(E) recently advertised the competition for OHPA's Chair.

10. DH(E) has established a project board to manage the transition; and Paul Philip is a member.

11. DH(E) is consulting on the OHPA Regulations 2009. Their scope is limited to provisions for the composition of OHPA's Board. The consultation paper is as Annex A. Our proposed draft response is at Annex B.

Discussion

12. The consultation poses four questions:

Question 1: Do you agree that the initial board of OHPA should be three in number?

Question 2: Will proper governance and accountability require an increase in numbers? If so, what size board will provide this and at what point should the larger board be in place?

Question 3: 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?

Question 4: Do you agree with the reasons for disqualifying a person from appointment as a member of the OHPA? If not, please specify which reasons you disagree with and explain why.

Questions 1 and 2 – size of Board

13. Arguably the thrust of Questions 1 and 2 should be reversed. A better way of approaching the issues would be to determine the size of the Board required when OHPA is fully operational and then asking whether it needs to be, or could be, different during the set-up phase.

14. OHPA will make an important contribution to the GMC's ability to protect, promote and maintain the health and safety of the public. However, OHPA's role, important though it will be, will be limited: OHPA will have a single function that will be largely operational in nature. The responsibility for the standards and ethics that underpin registration, and for the Indicative Sanctions Guidance, will remain with the GMC.

15. The general principle should be that, when OHPA is fully operational, the Board should be as small as is consistent with good governance. The Chair and the Chief Executive will be on the Board which would mean, if the Board was restricted to three, that there was only one non-executive member other than the Chair. It is questionable whether that is consistent with good governance.

16. Whether the full Board needs to be in place from the outset probably depends on two factors – the volume of work and the model that DH(E) wants to adopt. It is possible to imagine the full Board operating in shadow form from the outset. It is equally possible to imagine a model which had the Chair, and the Chief Executive once appointed, taking forward the preparatory work, and early decisions about location etc, with the remainder of the Board being appointed later.

Question 3 – period of office

17. A limit on the periods for which the Chair and non-executive members may hold office is consistent with public sector practice and with the principles of good governance. The proposed restrictions are consistent with the provisions for GMC Council members.

Question 4 – disqualification

18. Rule 3(4) of the draft regulations disqualifies certain categories from membership of the Board. They include registrants of the regulated healthcare professions. The intention is to ensure that OHPA's independence is not called into question by any perception of conflict of interest.

Draft response

19. We have prepared a draft response as a basis for discussion by the Council. This is at Annex B.

Recommendation: To consider the draft response to the consultation on the Office of the Health Professions Adjudicator Regulations 2009.

20. We will modify the draft response to reflect members' comments on 7 May 2009.

Recommendation: To authorise the Chair of the Council to finalise the response.

Resource implications

21. None.

Equality

22. There are no equality issues arising directly from this paper.