

Health and Care Professions Council – Tuesday 4 December 2012

Appointments to Council

Executive Summary and Recommendations

Introduction

1. Under section 227 of the Health and Social Care Act 2012, the Privy Council is able to make arrangements with the Health and Care Professions Council (HCPC) and other regulators to assist them in the exercise of their appointments functions.
2. Where a vacancy arises due to a resignation, termination of appointment or death of a Council member, or if a reappointment is not being considered, the HCPC will be responsible for managing a process of appointing a new member and will make recommendations to the Privy Council.
3. The HCPC will also be responsible for managing the process of reappointment of a Council member or chair, extending appointments of Council members and chairs, suspending or removing a Council member or chair or making an emergency appointment.

Roles and Responsibilities

4. Under the new regime, the roles and responsibilities of HCPC, the Professional Standards Authority (PSA) and the Privy Council are defined as follows (See PSA's document entitled: "Professional Standards Authority scrutiny process to inform advice to the Privy Council"):-

Privy Council – power to appoint

Regulators are independent statutory organisations, and the nature of appointments to their governing bodies – their councils – is described in legislation. The legislation outlines who may be appointed, how long they can be appointed for, and makes provision for disqualification, suspension and removal of members among other governance matters. The power to make these appointment decisions rests with the Privy Council.

Regulators – managing the process

Under arrangements in the Health and Social Care Act 2012, the regulators are responsible for managing the processes and making recommendations to the Privy Council. Regulators can recommend the Privy Council appoints, reappoints, suspends, removes, or extends the appointment of individuals as council members or chairs. The

recommendations must comply with the legislative requirements, including regulators' Constitution Orders.

Professional Standards Authority – advising the Privy Council about the process

The Authority's role is solely to advise the Privy Council on the processes used by the regulators to make recommendations. It is important that the Privy Council can have confidence in the process used by the regulators to make these recommendations before the Privy Council makes its decision. The PSA will scrutinise the processes the regulators adopt and advise the Privy Council accordingly. The decision to accept a regulator's recommendation and to appoint an individual to a regulator's council, sits with the Privy Council. The Authority is not a decision-maker and will take no view on the appointment of any individual candidate recommended by a regulator.

5. It should be noted that a Memorandum of Understanding is being drawn up between the HCPC and the Privy Council and the Privy Council and the PSA and these documents set out how the organisations will work together as part of this new process.

Policy Development

6. Following a consultation during 2012, the PSA issued a good practice guidance document in November 2012 for Council member and Chair appointments to regulatory bodies. The Executive are currently drafting a policy setting out HCPC's proposed approach to appointments and will be seeking feedback from the PSA as part of the process.
7. Since any recommendations to the Privy Council in relation to appointments, will be made on behalf of Council, Council approval to the policy will be sought in February 2013 in advance of the anticipated recruitment campaign to fill vacancies in July 2013.
8. In discussing the policy in February 2013, Council should be mindful of the following advice received from Jonathan Bracken, Solicitor to the Council:-

“In due course, the Council will need to approve the appointments process. They should take a high level approach to doing so and avoid conducting a detailed analysis of that process or suggesting amendments to it.

Whilst I would not for one moment suggest that any Council member would seek to influence the process to their own advantage, it does affect them and they will need to bear this in mind. In particular, Council will need to be reminded that the public law test is not actual bias but the appearance of bias. Ensuring that the overall process is fit for purpose is one thing, making detailed changes to it is quite another.”

Decision

The Council is requested to note the update.

Background information

None

Resource implications

None

Financial implications

The cost of managing the process of appointments to Council has been incorporated into the Council budget 2012-2013.

Background papers

None

Appendices

None

Date of paper

22 November 2012