

25 November 2014

Health and Care Professions Council response to Department of Health consultation on ‘Professional Standards Authority for Health and Social Care – Draft fees regulations’

The Health and Care Professions Council welcomes the opportunity to respond to this consultation.

The Health and Care Professions Council (HCPC) is a statutory regulator of health, social work and psychological professions governed by the Health and Social Work Professions Order 2001. We regulate the members of 16 professions. We maintain a register of professionals, set standards for entry to our register, approve education and training programmes for registration and deal with concerns where a professional may not be fit to practise. Our main role is to protect the health and wellbeing of those who use or need to use our registrants’ services.

1. Overall comments

- 1.1 We have set out our response to the individual consultation questions below.
- 1.2 Overall, we disagree with the method put forward in the consultation for apportioning the Professional Standards Authority (PSA) fee, on the basis that it would unfairly and perversely penalise us for keeping registration fees low, and because other options to that proposed appear not to have been considered fully or at all.
- 1.3 We would observe more generally that the consultation document does not address the methodology that will be used in ensuring that the nine regulators of health and care professionals will only pay for those functions of the PSA which directly relate to them. Having a clear understanding of this methodology is important for ensuring confidence in the new arrangements, particularly in relation to those functions to be funded by the fees paid by the regulators, but only ‘in so far as such work related to regulatory bodies’ (pages 11 and 12).
- 1.4 We would expect as a minimum that in its annual report and accounts the PSA will need to provide detailed information about the methodology used in apportioning the fee, for example, how it has allocated employee costs and overheads to each of its functions.
- 1.5 We would further note that the consultation document is silent on what accountability arrangements would be put in place to ensure that, with the change from Department of Health funding, the PSA’s budget continues to be set at a proportionate level necessary to achieve its statutory functions, and that the PSA continues to provide ‘value for money’. The impact assessment uses a range of £3.9m to £8.5m as the annual savings achieved by changing the basis

of funding, suggesting perhaps that the PSA's spending is expected to increase, with the lower end estimate higher than the PSA's reported expenditure for 2013-2014. Any increase in the PSA budget will have an impact on the regulators and the fees charged to registrants.

2. Specific questions

Question 1: Do you agree that the functions listed in Table 1 should be covered by the fee? Please provide the rationale behind your response and any amendments to the included functions you would suggest.

Yes, we agree.

We are content that the consultation document has identified those functions of the PSA which relate to its statutory role in overseeing the nine statutory regulators of health and care professionals.

However, please see our comments in section one about a lack of information in the consultation document as to the methodology which will be used to ensure that the PSA's costs are apportioned correctly.

Question 2: Do you agree the functions listed in Table 2 should be excluded from the fee?

Yes, we agree.

We are content that the consultation document has identified those functions of the PSA which do not relate to its statutory role in overseeing the nine statutory regulators of health and care professionals.

However, please see our comments in section one about a lack of information in the consultation document as to the methodology which will be used to ensure that the PSA's costs are apportioned correctly.

Question 3: Do you agree that method 1 – apportionment of the fee according to the number of registrants - is currently the only viable option available for determining the fees? Please explain the rationale for your response.

We disagree. We have set out our rationale below.

Options appraisal

We are surprised that the consultation document and supporting impact assessment appears to fail to consider all the reasonable alternative options for determining the fee, or to explain why other potential alternatives have not been put forward for detailed consideration.

The consultation document and impact assessment fails to consider the following options.

- A method for apportioning the fee based on the income of the regulatory bodies. This method would be equally easy to understand and equally simple to calculate, based on equally available and reliable information, as method 1.
- A method for apportioning the fee based on some combination of registrant numbers and the income of the regulatory bodies. This method would be equally easy to understand and equally simple to calculate, based on equally available and reliable information, as method 1.
- A method for apportioning the fee based on operational metrics which would more fairly reflect the regulators' actual costs to the PSA, for example, the number of Section 29 referrals made to the High Court by the PSA for each regulator. Whilst we do not advance this option at this stage, as it may fail the 'easy to understand' consideration, there is no indication that the feasibility of this has even been considered, bar vague references in the consultation document to the (absence of sufficient) 'management information' (pages 13 and 14). We note that the Authority has 'committed to explore whether other management information may be used for determining the fees in the future' (page 13). However, there is no time period given for this commitment or for review of the regulations.

With respect to the first two options outlined in the bullet points above, these were previously considered in March 2011 as potential methods for determining the fee by the then Council for Healthcare Regulatory Excellence (CHRE; now the PSA).¹ We are therefore surprised that these options are not reflected in any way in the consultation document or in the impact assessment.

We further consider that those options that are put forward in the consultation have not been fully appraised. The consultation document and impact assessment justifies the Government's preferred method on the basis that it would meet the policy objective of reducing the cost to the taxpayer, whilst 'ensuring the fee structure would be easily understood and the smaller regulators would not be disproportionately impacted' (page 14). We do not dispute that these are valid considerations, but, as outlined above, the impact assessment fails to consider other options which would also achieve these aims. It further fails to consider the importance of the overall fairness of the proposals across all of the regulators, regardless of their size, and whether these proposals are consistent with the policy outlined in 'Enabling Excellence: Autonomy and accountability for healthcare workers, social workers and social care workers' (2011) and its challenge to the regulators to contain the cost of registration fees.

¹ Council for Healthcare Regulatory Excellence (2011). Proposals for calculating the statutory levy.

The consultation document says that method 1 is ‘compliant with HM Treasury Managing Public Money guidance’ (page 14). However, neither the consultation document nor the impact assessment provide any information about this guidance or how far other alternative options would also be compliant. Respondents are therefore provided with insufficient information to be able to reach an informed view about the preferred method.

We agree with the assessment in the consultation document that method two – whereby the fee would be determined through a combination of a fixed fee and a fee based on registrant numbers – is not a viable option because it would have a disproportionate impact on the smallest regulators.

Apportioning the fee based solely on registrant numbers

We consider that method 1, the preferred option, would have the effect of unfairly and perversely penalising the HCPC and our registrants.

We have been able to harness the benefits of economies of scale to achieve significant operational efficiencies. ‘Enabling Excellence’ set out the Government’s expectation that the regulators should ‘identify and secure significant cost reductions...and contain registration fees’ (page 11, paragraph 2.7). We have kept any increases in our registration fee to below inflation and the current registration fee of £80 per year is the lowest of all the nine regulators overseen by the PSA and 25% lower than the next lowest fee.

The proposed method for apportioning the fee is inconsistent with Enabling Excellence because it does not provide any reward for economies of scale already achieved, or any incentive to achieve further economies of scale in future. It would have a disproportionate impact on the HCPC compared to other regulators with smaller registrant numbers, but higher registration fees and therefore larger incomes. The CHRE has previously noted the ‘significant impact’ of this option on regulators such as the HCPC ‘with high numbers of registrants and low registration fees’ (CHRE 2011, page 6).

To illustrate this point, the impact assessment estimates that in year one the costs to the HCPC would be £0.8m and to the General Medical Council (GMC), with smaller registrant numbers, £0.6m. However, based on the most recent available data, the HCPC’s income to the nearest million was £25m and the GMC’s £95m.² To give another comparison, we calculate based on available data that the HCPC accounts for approximately 22% of the total number of registrants across all nine regulators but only approximately 10% of the total income from registration fees.

² Figures are based on HCPC reported income in the period 1 April 2013 to 31 March 2014 and GMC reported income for the year ending 31 December 2013.

Source: HCPC Annual report 2014 and GMC Annual report 2013
<http://www.hcpc-uk.org/publications/reports/index.asp?id=882>
http://www.gmc-uk.org/Annual_report_2013.pdf_57177544.pdf

The HCPC would therefore be in the unfair position of paying more despite having less income with which to meet the cost. We would therefore have less ability to absorb some or all of the costs as we might wish, without the need to pass this directly on to our registrants. Put simply – the proposed method means that regulators with less registrants, but with much higher fees and therefore higher income, will be in a much better position to absorb the cost without increasing pressure on existing fee levels.

Our preferred method – apportioning the fee based on income or on a combination of income and registrant numbers

We therefore propose that consideration should be given to apportioning the fee instead based on income or, alternatively, on some combination of income and registrant numbers. The latter would take account of both the need that the smaller regulators should not be disproportionately impacted, whilst ameliorating the perverse impact on regulators such as the HCPC with larger registrant numbers, but with lower incomes relative to those numbers. The CHRE previously concluded that a hybrid model would produce ‘a more distributive and proportionate outcome’, accommodating the ‘conflicting interests’ of a method based solely on registrant numbers or one based solely on income (CHRE 2011, page 6).

In our view income would provide a feasible proxy on which to base some or all of the fee and would meet the need set out in the consultation document to ensure that the fee structure was easily understood. It would also be relatively simple to administer.

Impact on the HCPC

If the Department of Health decides to progress the proposals as they currently stand, we would be forced to seek to make changes to our registration fees in order to pay the PSA fee. The impact on the HCPC of method 1 and of a fee based solely on income is estimated below. This is based on the lower estimate of £3.9m given in the impact assessment.

Number of registrants	Approximate income (£)	Estimated PSA fee based on registrant numbers (£)	% of income	Estimated PSA fee based on income (£)	% of income
322,021*	26,000,000**	860,000	3.3%	400,000	1.5%

* Figure from 2013-2014 PSA performance review report
 ** Approximate 2014-2015 forecasted figure
 N.B. Figures have been rounded

We have always sought to run the organisation on an efficient basis so do not have significant reserves from surplus budgets in previous years to draw on to absorb the cost of the PSA fee. We would have to pass on the cost to our registrants.

Each profession renews its registration every two years, staggered over a two year registration cycle. This means that it is a full two years before the HCPC realises the benefit of an increase in its fees. Therefore, if the current proposal was progressed, we may need to contemplate a more significant initial increase in order to ensure that we have sufficient funds to pay the PSA fee.

If the current proposal was progressed, we would request that Department of Health resources are allocated to supporting us in urgently progressing changes to our Rules which, by allowing us to reduce unnecessary costs, would ensure that we have sufficient income to pay the PSA fee, whilst minimising the impact, where possible, on registration fees.

Question 4: Do you agree that the regulations should specify that the demand for payment should include a period of notice?

Yes, we agree.

Question 4a: If so, do you agree that this period should be 15 days?

No.

Question 4b: If not please specify a different period and explain why it is preferred

We would suggest that 30 days would be a more appropriate period and more consistent with normal invoicing practice.

Question 5: Do you agree that interest due on late payment should be set as drafted?

Yes, we agree.

Question 6: Do you agree with the Department's assessment that the implementation of this policy will not have an adverse impact on equality?

No.

We consider that there will some impact on the basis of equality that is not considered in the impact assessment. There will be differences in the demographic and socio-economic profile of the different professions that each regulator regulates.

A large majority of our registrants are female and a significant proportion will work part time hours and will accordingly be lower paid. The proposed method of apportioning the

PSA fee is very likely to necessitate an increase in the registration fee and would therefore adversely impact upon this group of registrants with less ability to pay.

Question 7: Do you have any comments on the draft regulations?

No.