Public business

**Statutory committee appointments: interim report and recommendations**

**Purpose**
This paper provides an interim report on the work of the Statutory Committee Appointments Task & Finish Group (SCAG) and makes recommendations for initial action.

**Recommendations**
The Group recommends that Council agree, subject to any further detailed considerations that may arise from the Group’s remaining work, to retain the existing structure and nature of membership of the Appointments Committee (AC), subject to:

a. timely completion of satisfactory appraisal of all AC members, including the Chair;

b. reinstatement of training & appraisal of Statutory Committee members; and

c. annual reporting of AC activities to the Council

1.0 **Introduction, background and scope**

1.1. Council previously agreed to carry across members of the RPSGB Appointments Group to form a GPhC Appointments Committee, to appoint members of and advisors to its statutory committees. More detail on the current arrangements can be found at Appendix A. However, Council intended that this should be a transitional arrangement, and established the Statutory Committee Appointments Task & Finish Group (SCAG) to make recommendations for how GPhC statutory committee members should be appointed in future.
1.2. There is a clear and consistent external policy trend towards enhanced independence in this area, more detail on which can be found in Appendix B, and the GPhC’s transitional Appointments Committee would seem at first sight to sit well with this trend, being an arms’-length structure. Nonetheless, Council will need to be assured that it has appropriate oversight, and the eventual solution will need to address governance concerns, raised by Council members, that centre on the Council’s accountability for the appropriateness and robustness of the organisation’s fitness to practise adjudication processes (see Appendix C).

1.3. The Task & Finish Group has so far met once, and has focussed on the first three items on the Group’s Terms of Reference; namely:

a. To review the advantages and disadvantages of the current transitional arrangements for the appointment of members of statutory committees by the Appointments Committee, and to learn any lessons from those arrangements and those of other health professions regulators.

b. To identify how much latitude Council has, within the current statutory framework and applicable legal principles, to develop its own policy and practice for the appointment of statutory committee members.

c. In the light of future clarity about the existence and remit of the Office of the Health Professions Adjudicator (OHPA), to learn any lessons from the work done to date by and on behalf of OHPA, relevant to the appointment of statutory committee members.

1.4. The Group will consider the remaining items in the Terms of Reference in future meetings; these include consideration of the scope and case for working with other regulators; issues relating to induction, training, discipline, performance monitoring & improvement, training and removal of statutory committee members; and consideration of how future arrangements can model good practice in equality and inclusion.

1.5. Council has agreed that reform of the GPhC’s adjudication process itself is outside the scope of this project. The Group has therefore not examined the options for change in this area.

2.0 The Group’s considerations

2.1. The Group started from the premise that, whatever the chosen appointments process, it would need to be transparent, demonstrate accountability, provide value for money and take account of best practice in appointments, in order to retain the confidence of public and registrants. It considered the current position
(as described in Appendix A), looked at the arrangements in place in the other regulators and took account of a range of legal, policy, governance and cost considerations before making its initial recommendations.

2.2. The Group felt that there were three main categories of options for appointment of Statutory Committee members available to the Council, on the understanding that these were not exhaustive and that various permutations were possible:

**Option One:** appointment by an arms-length entity (whether by a committee, as with the current model, or an external organisation) with no council members involved.
(If this option were to be selected, consideration would need to be given to the following:
-- does the existing arms-length structure need modification/replacement and if so what?
-- if the existing structure is retained, should the existing membership be retained?
-- would it be preferable to move to an annual remuneration model?)

**Option Two:** appointment by committee mainly comprising external members but with some degree of Council member involvement

**Option Three:** appointments panels including, say, a Council member, senior staff member, HR and specialist expertise as required, which could be drawn from a committee comprising Council, staff and external members.

2.3. **Arms-length v. in-house**  
The Group recognised the importance of cost-effectiveness as a policy driver, and understood that none of the options above would seem to be prohibited for legal reasons. However, it noted the clear and consistent external policy trend towards enhanced independence, whether from registrants, from rulemakers, or between investigation and prosecution, and the accompanying indications that Council should not appoint adjudicators, nor should it ratify such appointments (see Appendix B for more detail).

The Group also considered governance and oversight concerns, as summarised at Appendix C. While it appreciated the Council’s need to be assured that it has appropriate oversight, the Group felt that (whatever the chosen structure for recruitment) training, appraisal and performance management, together with meaningful reporting, would be key to providing Council with the oversight and assurance it needed, rather than direct representation on the recruiting body.
The Group accordingly decided to look for solutions that retained the principle of separation, as it would be important to remove all possible opportunity for challenge, and it felt that to pull the process back under Council’s control would send the wrong message within the policy context. It therefore recommends to the Council that the process for appointments should continue to be arms’ length.

2.4. **Structure/composition/terms of office**

(a) **Structure and procedures**

The Group then considered whether a different arms’ length process from that currently in place would be preferable, and concluded that, aside from possible structural/compositional tweaking, the current process as set out at Appendix A compared favourably with other options. The Group noted, however, that it would be important to restart the appraisal and training cycle both for AC members and for Statutory Committee members and to re-instate regular reports from the AC to Council. Concerns about the cost of the recruitment process in the past were noted but, insofar as it was possible to ascertain, it was suggested that these high cost levels owed more to the office process at the time, which had since been streamlined, and that the costs of the recent recruitment process carried out by the Committee seemed reasonable.

(b) **Composition**

The Group noted that there were no immoveable constraints on the composition of the Appointments Committee. It considered a variety of possible permutations, and came to the conclusion that the current structure (see Appendix A) would not require much tweaking, if any. It agreed to seek the current Chair’s views on the current composition e.g. number, lay/registrant balance.

(c) **Terms of office**

The Group went on to consider the question of the periods of time for which Committee members should be reappointed, should Council decide to do this. It noted that the Committee’s current handbook specified a four year term of office with the possibility of one renewal subject to satisfactory completion of appraisal. All of the Appointments Committee members except one had already served their first four year term, and their service had at the end of that term (spring 2010) been extended by the GPhC on a transitional basis until “at least a year from the date of transfer”. The Group felt that, should Committee members be reappointed upon satisfactory completion of appraisal, the period from the end of the original term until September 2011 should be counted toward a second (or first, as appropriate) term of up to four years, but that reappointment should be staggered in the interests of continuity. Appraisal outcomes could inform the
decision on the respective lengths of term remaining.

2.5. **Appointment of members of the Appointments Committee**
The Group believed that members of the Appointments Committee should be appointed by a panel comprising up to 2 Council members (1 registrant, 1 lay, although there would be no preference if only one Council member were to be on the panel) plus the Chair of the Appointments Committee, an independent assessor and an HR professional. It was noted that this would be different from the current process, where a recent addition to the Appointments Committee had been appointed by members of the Committee with no Council member involvement, but this was not felt to be a problem.

2.6. **Staff resource**
The Group felt strongly that the Appointments Committee would need to have access to professional HR advice for e.g. help with appraisal.

3. **The Group’s conclusions so far**
3.1 The Group agreed to recommend to Council that the current Appointments Committee be retained both in structure and membership; the latter being subject to successful appraisal of both chair and members. These appraisals would need to be carried out before June, given that appointments had been carried over until “at least a year after the transfer date” i.e. September 2011, and that it would take at least three months to replace any members should their appraisals be unsatisfactory.

3.2 However, before we ask the Committee to go ahead with these appraisals, the Group wishes to ascertain whether Council is supportive of the retention of the Committee in broadly its current form.

3.3 Should the Council accept the Group’s proposal, appraisals could be initiated, bearing in mind that any acceptance of the principle on Council’s part would necessarily be caveated with the recognition that the Group’s work was as yet incomplete and that later considerations might affect, for example, the balance between lay and registrant members of the Committee and the detailed procedures for its work.

3.4 The Group gave initial consideration to a number of other issues around appraisal and the possibility of joint working, and these will be explored at the Group’s next meeting.

4.0 **Equality and diversity implications**

4.1 The Group will consider equality and diversity aspects more specifically at its next meeting, including the implications of the new Equality Act, but flagged the
need for the Committee to ensure that the membership of statutory committees reflected the makeup of both the professions and the public, took account of devolution and included a good leaven of frontline practitioners.

5.0 Communications implications

5.1 Any decision would need to be communicated to members of the Appointments Committee as soon as possible.

5.2 If the GPhC were to go against the external policy trend by pulling its statutory recruitment in house it would have to give careful consideration to communication of its reasons for doing so, to mitigate against the risk of the Government imposing change further down the line.

6.0 Resource implications

6.1 Many of the costs of recruitment, such as advertising, room hire etc. would be common to any process. The costs of the committee members, however, would not. If, for example, the GPhC were to emulate some of its fellow regulators in opting for a recruitment panel comprising, say, a staff member, a Council member and an independent assessor, the only attendance fee to be paid would be that for the independent assessor, as Council members receive an annual fee and staff are on salary. This contrasts with the Committee, where three fees must be paid. However, the time demands on the staff and Council members involved would be considerable.

6.2 If, on the other hand, the GPhC decided to outsource the process to e.g. an agency, the costs would be likely to be significantly greater. The Appointments Committee recently recruited 17 panellists for the GPhC. An external supplier, which frequently carries out this kind of work for government departments, has offered a quote for a similar recruitment process at a cost per head that was three to four times higher.

6.3 In any case, once in steady state the numbers to be recruited each year would normally be small and the major costs of the process would seem to be those which would be incurred regardless of the process chosen, e.g. advertising, ongoing training and appraisal (depending upon method; various options will be explored at the Group’s next meeting).

6.4 The Group felt strongly that the Appointments Committee would need to have access to professional HR advice for e.g. help with appraisal. This would have cost implications; the Society used to provide such a resource (the previous secretariat resource who worked with the committee had HR skills and experience) but this person left earlier this year and has not been replaced.
7.0 **Risk implications**

7.1 If a new system is to be implemented, one area of risk would be to business continuity and the efficient running of the GPhC’s statutory committees. This risk can be managed with appropriate planning.

7.2 Policy and political risks with wider strategic implications may arise, as described above, if GPhC policy develops against the grain of the wider regulatory policy context, although appropriate communications could help reduce this.

**Recommendations**

The Group recommends that Council agree, subject to any further detailed considerations that may arise from the Group’s remaining work, to retain the existing structure and nature of the membership of the Appointments Committee (AC), subject to:

(a) timely completion of satisfactory appraisal of all AC members, including the Chair

(b) reinstatement of training & appraisal of Statutory Committee members; and

(c) annual reporting of AC activities to the Council

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Appendix A

GPhC appointments to statutory committees: the current position

1. GPhC Rules deal with matters relating to the appointment and removal of statutory committee members, and provide that an Appointments Committee be set up by the Council. The Rules, however, do not specify the composition of the Committee itself, nor do they contain any requirements for eligibility.

2. In preparation for the previous Pharmacy Order, the RPSGB established an Appointments Group in 2005 to appoint panel members to the new statutory committees, together with legal, clinical and specialist advisers. This Group comprised a lay Chair, lay deputy Chair, two pharmacists (one of whom, Liz Kay, resigned to take up her place on the GPhC Council) and a pharmacy technician, all of whom received specific recruitment and HR training. The Group also had the responsibility to investigate, suspend and remove its appointees where appropriate. Recruitment was carried out by a panel of no less than three group members, comprising two professional members and the Chair or Deputy Chair.

3. More recently, the GPhC Council agreed that members of the RPSGB’s Appointments Group should, for a transitional period, become members of the GPhC’s Appointments Committee, to ensure business continuity. At the moment, therefore, the functions of the GPhC Appointments Committee are being carried out according to the broad provisions set out in the GPhC Rules, but otherwise the Committee is operating more or less in accordance with the provisions set out in the handbook established for the RPSGB Appointments Group in 2005.

4. The Appointments Committee has recently carried out a recruitment exercise to make up the difference in statutory committee member numbers between those required under the 2007 Order and those required for the GPhC. The Committee examined the structure and costs of the process, which has recently been streamlined, and felt it was reasonable (see 6.2 above).

Appraisal, suspension and removal

5. From its inception, membership of the RPSGB Appointments Group was subject to the completion of satisfactory regular appraisal, and the Group Chair had a duty to appraise the chairs of the Statutory Committees. The chairs, in turn, were responsible for appraising the members of the Committees, although this duty could be shared with the deputy chairs. The Chair of the Appointments Group and the chairs and deputy chairs of statutory committees were trained in appraisal techniques. In addition, chairs and members were given feedback forms to complete after each panel sitting, the results of which were fed into the appraisal process.

6. No panellists have been formally suspended or removed since the Group’s inception. However, the Chair has considered the management of performance to be part of her role.
Policy drivers

1. The Group noted the clear and consistent external policy trend towards enhanced independence in this area. This began with the Fifth Report of the Shipman Inquiry, in which The Rt. Hon Lady Justice Smith stated that the measure of separation introduced by the General Medical Council (GMC) by using only non-members of the Council to undertake adjudication represented “no real separation at all”, and went on to say that the adjudication stage of the FtP procedures must be undertaken by a body independent of the GMC and that this body should appoint and train lay and medically qualified panellists and provide administrative support for the hearings. The government signalled its agreement in Trust, Assurance and Safety, which led to the creation of OHPA in January 2010.

2. However, since then, the coalition government has noted “fundamental change at the GMC”, and has recently decided to abolish OHPA and, in separate legislation, take forward steps to enhance independence of adjudication and modernise existing processes at the GMC (and subsequently review whether to do so for the General Optical Council (GOC) and other health regulators). The majority of responses to the government’s prior consultation on the subject, OHPA’s excepted, were generally supportive of the government’s approach.

3. In particular, the GMC agreed\(^1\) with the government that significant reform of its adjudication function was significant and desirable, and proposed to deliver this by establishing a Medical Disciplinary Tribunal (MDT), together with reforming aspects of the adjudication process itself. This would be a new statutory committee of the GMC with responsibility for appointing and training lay and medical panellists, case managers, legal assessors and specialist advisers. In addition, it would be responsible for the appraisal of panellists and the quality assurance of their work. It was proposed that the MDT should report biannually to the GMC Council and annually to Parliament, and that the GMC should have the right of appeal against its decisions.

4. This proposal is fairly similar to what the GPhC already has in place. It differs in that the Tribunal would be a statutory committee, and that it would appear to consist of both those who appoint panellists and the panellists themselves. It also differs in that the Chair would be appointed independently, not by GMC Council members, and in that the GMC would wish to have the right of appeal.

\(^1\) [http://www.gmc-uk.org/GMC_response_to_the_DH_E__consultation_on_Fitness_to_Practise_Adjudication_for_Health_Professionals_35892530.pdf](http://www.gmc-uk.org/GMC_response_to_the_DH_E__consultation_on_Fitness_to_Practise_Adjudication_for_Health_Professionals_35892530.pdf)
against its decisions.

5. The government noted in the consultation impact assessment\(^2\) that the GMC’s proposals would “strengthen the ability of the GMC to deliver adjudication in a more independent manner, and would build on the reforms that the GMC has already implemented”.

6. CHRE pointed out\(^3\) that the extent of the problem that OHPA was set up to address was not the same as it was in 2004, and that the regulators had improved their outcomes, processes and governance. It supported the GMC tribunal proposal (while maintaining that CHRE should retain power to appeal its determinations), suggesting that it set itself up in such a way that it could provide adjudication services that other regulators could choose to use in the future, and also that other regulators might choose to offer shared services across the sector, to increase confidence in the independence of the process and to realise some of the consistency and cost benefits that OHPA was supposed to deliver. It noted that appropriate resources must be made available to the tribunal.

7. Several of the other health regulators do currently have Council involvement in the appointments process. However, some other regulators who have recently reformed their appointments processes have opted for arms’ length solutions, such as the Association of Chartered Certified Accounts, the Accountancy and Actuarial Discipline Board, the Taxation Disciplinary Board and the Bar Standards Board.

\(^3\)http://www.chre.org.uk/_img/pics/library/pdf_1286805811.pdf
Governance concerns

1 The GPhC Council is accountable for the appropriateness and robustness of the organisation’s fitness to practise adjudication processes and thus needs to feel assured that it has appropriate oversight. There are various methods by which this could be achieved:

**Council member involvement in recruitment**

2 This would help Council members feel connected to the process, and help assure them that it was robust (although the CMs, like anyone else involved in the recruitment process, would need to receive appropriate training). There would seem to be no legal barrier to this, and some other regulators currently have such involvement. On the other hand, this could be seen as out of step with the clear policy trend towards enhanced independence as set out in Appendix B, and might perhaps result in a different solution being imposed on the GPhC by the Government further down the line.

**Reporting**

3 The GMC proposal for a tribunal requires that the tribunal chair reports to the Council on a bi-annual basis. The Chair of the RPSGB Appointments Group used to report to RPSGB Council and this practice could usefully be revived. Thought would need to be given to the information such a report should contain in order to make it meaningful and worthwhile.

**Training, appraisal, performance management**

4 The GPhC is reviving the original procedures for Appointments Group training and appraisal as an interim measure, and the Group will be asked to consider various options for future appraisal etc. at its next meeting. Whether or not the GPhC decides to retain the Appointments Committee in its current form, it is suggested that training, appraisal and performance management, together with meaningful reporting, will be key to providing Council with the oversight and assurance it needs.