

**Department of Health Consultation
Professional Standards Authority for Health and Social Care - Draft Fees
Regulations**

The Optical Confederation accepted the Government's view in 2010 that the then Council for Healthcare Regulatory Excellence (CHRE) "fulfilled an ongoing need to assure quality assure professional regulation, but found no reason to quality assure professional regulation"¹. The Confederation also welcomed the Government's commitment to keep this under review.

It was always our view however that the General Optical Council was fit for purpose and did not need an additional quality assurance superstructure. It is clear from the recent Professional Standards (PSA) Review of the General Optical Council (GOC) that this remains the case whereas some of the other eight health and care regulators are in need of help, support, quality assurance and ongoing review from the PSA.

We feel the imbalance between regulators has not been taken into account in the development of PSA charging proposals on the polluter pays principle. It is in light of that that we respond to the consultation questions below.

Consultation 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.

Answer 1: Yes. These are clearly the functions of the Authority, set out in legislation, which would need to be funded by the fee.

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

Answer 2: Yes. It is right that the cost of setting up voluntary registers should be separately met by the professions or sub-professions seeking such voluntary registration. The burden of this should not be borne by other professions.

¹ Liberating the NHS: Report of the arm's length bodies review, Department of Health, July 2010, page 21, paragraph 3.34

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.

Answer 3: No. The proposed approach fails to take into account i.) the relative degrees of risk that the different professions pose and hence the need for regulatory oversight, and ii) their respective earnings and hence ability to pay, which is usually a fundamental principle of what is, in effect, a tax on the professional front-line.

Some professions command considerably higher fees than others, which is, in turn, a broad brush proxy for the level of risk involved in the care they provide and the commensurately higher level of trust placed on them by the public. It follows that these professions will also require a higher level of regulatory oversight in the public interest than those professions which pose less risk to the public.

A far fairer way therefore of apportioning the running costs of the PSA, in line with the principles above, would be to levy the fees on the basis of the relative turnover of each health and care regulator as set out in their annual accounts. This would better reflect the number of registrants, the level of risk involved in those professions and the consequent greater need for higher level quality assurance in regulation.

It is not clear whether this is one of the wide variety of options “initially considered by the PSA but deemed unsuitable at an early stage, with the majority deemed unsuitable at an early stage and therefore not assessed in detail by the Department of Health”².

However, we note that the Department of Health’s own assessment that the preferred option is clearly the “for want of anything better” option and that the Department itself may have preferred a different system had sufficient management information (such as Method 2) been available³.

It would be helpful therefore to understand why the option outlined above has not been considered or, if considered, on what grounds it was rejected.

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

Answer 4: Yes. This will make deadlines easier for everyone to understand and comply with.

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

Answer 4a: No. This seems unduly short.

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

² Professional Standards for Health and Social Care – Draft Fees Regulations, Department of Health, October 2014, page 13, paragraph 11 and footnote 2

³ *ibid*, page 14, paragraph 15

A period of 28 days would be more appropriate.

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

Answer 5: Yes, subject to a longer period. 1.5% above the base rate is normal, fair and easy to understand.

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

Answer 6: No. The GOC registers around 26,000 optometrists, dispensing opticians, student opticians and optical businesses, many of whom earn far less than other health care professions. Without a more equitable means of levying fees across the nine health and care regulators, the GOC could end up contributing more than its fair share. This would impact on optometric and optical registrants and the public either through higher fees for registrants and charges to the public, or reduced capacity for effective regulation by the GOC.

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

Answer 7: Yes. It is not immediately clear why under Draft Regulation 6 it is the Privy Council who must communicate charges (the "fee notice") to the Regulatory Body. We question whether it would make more sense for this to be carried out by the PSA on behalf of the Privy Council. Is this not what Parliament intended by

Section 25(a)(5) of the NHS Reform and Health Care Professions Act 2002 (as amended) – funding of the Authority and Sections 26(1) and (2) of the same Act – powers and duties of the Authority: general "the Authority may do anything which appears to be necessary or expedient for the purpose of or in connection with the performance of its functions to the extent that such functions are exercised in relation to the regulatory bodies."

In light of these comments, we hope that the Department of Health will consider a fairer and more proportionate means of funding the PSA, especially for lower risk, low income professions.

About Us:

The Optical Confederation represents the 12,000 optometrists, 6,000 dispensing opticians, 7,000 optical businesses and 45,000 ancillary staff in the UK, who provide high quality and accessible eye care services to the whole population. The Confederation is a coalition of five optical representative bodies: the Association of British Dispensing Opticians (ABDO), the Association of Contact Lens Manufacturers (ACLM), the Association of Optometrists (AOP), the Federation of Manufacturing Opticians (FMO) and the Federation of (Ophthalmic and Dispensing) Opticians (FODO). As a Confederation we work with others to improve eye health for the public good.