

Consultation on the Authority's requirements for 2015/16 in respect of its regulatory and standards functions

May 2015

About the Professional Standards Authority

The Professional Standards Authority for Health and Social Care¹ promotes the health, safety and wellbeing of patients, service users and the public by raising standards of regulation and voluntary registration of people working in health and care. We are an independent body, accountable to the UK Parliament.

We oversee the work of nine statutory bodies that regulate health professionals in the UK and social workers in England. We review the regulators' performance and audit and scrutinise their decisions about whether people on their registers are fit to practise.

We also set standards for organisations holding registers for people in unregulated health and care occupations and accredit those organisations that meet our standards.

To encourage improvement we share good practice and knowledge, conduct research and introduce new ideas including our concept of right-touch regulation². We monitor policy developments in the UK and internationally and provide advice to governments and others on matters relating to people working in health and care. We also undertake some international commissions to extend our understanding of regulation and to promote safety in the mobility of the health and care workforce.

We are committed to being independent, impartial, fair, accessible and consistent. More information about our work and the approach we take is available at www.professionalstandards.org.uk.

¹ The Professional Standards Authority for Health and Social Care was previously known as the Council for Healthcare Regulatory Excellence

² Professional Standards Authority. 2010. Right-touch regulation. Available at <http://www.professionalstandards.org.uk/policy-and-research/right-touch-regulation>

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1. Introduction

- 1.1 In 2010, the Department of Health conducted a review of its Arm's-Length Bodies as part of the wider review of government bodies. The study found no compelling reason for the Professional Standards Authority (then the Council for Healthcare Regulatory Excellence), to continue to be funded by the Government and Devolved Administrations. Instead, the review recommended that the organisation be funded through a compulsory levy (or fee) on the Regulatory Bodies (RBs) it oversees.
- 1.2 The Professional Standards Authority for Health and Social Care (the Authority) was established on 1 December 2012. Its role and duties are set out in the Health and Social Care Act 2012.³
- 1.3 The Authority continues the work of the Council for Health Care Regulatory Excellence (CHRE), which was constituted by the Health and Social Care Act 2008⁴ and was a transformation of the Council for the Regulation of Health Professionals set up in April 2003 by the National Health Service Reform and Health Care Professions Act 2002.⁵ The Health and Social Care Act 2012 provided for the Authority to be funded by the regulatory bodies. The Act enabled the Privy Council to make regulations requiring each of the regulatory bodies that regulate health and social care professionals to pay fees to the Professional Standards Authority in relation to the functions undertaken by the Authority as specified in the regulations. This secondary legislation; The Professional Standards Authority for Health and Social Care (Fees) Regulations 2015 (the Fee Regulations) were laid in Parliament on 27 February 2015 and came into force on 1 April 2015.
- 1.4 The fee period for 2015/16 is to be from 1 August 2015 to 31 March 2016. The fee period for subsequent years will be for 1 April through to 31 March.
- 1.5 Prior to determining the fees the Privy Council must request from the Authority its proposal as to the amount of funding it considers necessary in order to undertake the work to be funded by the fees. The legislation specifies what is within the scope of the fees and specifically states that certain areas of the Authority's work are not to be funded through the fees payable by the regulatory bodies.
- 1.6 The Act requires that before the Authority responds to a request from the Privy Council setting out what funding it requires the Authority must consult with the regulatory bodies.
- 1.7 We therefore set out in this document our proposal for the funding required for the amount of funding we consider necessary in order that we may perform this work for 2015/16. We also, in so far as we are able to do so, provide a forward look, anticipating what might be required in the years beyond 2015-16.
- 1.8 The amount of funding identified as being required for this period for the funding of the work in relation to the functions in Section 3 of the Fee Regulations is £2,989,000. The activities covered are listed in Section 4.

³ Available at www.legislation.gov.uk/ukpga/2012/7/contents/enacted

⁴ Available at www.legislation.gov.uk/ukpga/2008/14/contents

⁵ Available at www.legislation.gov.uk/ukpga/2002/17/contents

- 1.9 Within the document we raise specific questions regarding our proposals. These are summarised in Section 8. Respondents are free to add additional comments; we would however appreciate answers to the particular questions we pose.
- 1.10 The Authority undertakes other duties and activities set out in the 2012 Act. In order to provide separation of finances relating to these the Authority operates with four distinct work streams:
- Regulatory oversight and improvement work in relation to the statutory regulated health professional bodies to be financed by fees from the regulatory bodies
 - The accreditation of the holders of registers of health and care occupations which are not statutory registered. This is financed by fees from the accredited registers and supported by additional funding from the Department of Health
 - Commissions and investigations requested by the Department of Health and/or the Governments and Assemblies in Scotland, Wales and Northern Ireland which will be financed through fees which will be set by the Authority and paid by the commissioning organisation
 - Commissions from, and consultancy to, regulatory bodies and other bodies which are financed by individual contracts with the third parties.
- 1.11 The functions within the scope of the Fees Regulations are those within the first work stream, that is the regulatory oversight and improvement work undertaken in relation to the statutory regulated health professional bodies.
- 1.12 Details of the breakdown of the four work streams are given in Section 6.

2. Strategic objectives for the Professional Standards Authority 2014-16

2.1 The Authority's strategic objectives which were agreed by the Board in September 2014 are set out below.

2.2 The Authority will work to:

1. Reconfigure our processes for oversight of the statutory regulators to ensure that they are risk based, targeted, right-touch and continue to focus on outcomes for public protection
2. Ensure we have the research and policies in place to maintain our thought-leadership now and in the next phase of regulatory reform
3. Deepen our understanding of good regulation through international knowledge exchange bringing benefits to the UK
4. Establish the value that Accredited Registers add to consumer protection and the public interest and make the model sustainable
5. Deliver effective financial management to inspire confidence internally and externally in our new funding arrangements
6. To deliver these strategic objectives the Authority will work to maintain and develop a high performing staff team and Board properly recognised, valued and resourced.

3. Business Principles

3.1 The Authority started operating with four work streams in 2012 and while it has in the intervening period increased the rigour of separation between the work streams we recognise that those subject to the Fee regulations will want to know how we intend to operate.

3.2 We set out below the principles that we will work to:

- All fees from the regulatory bodies will be applied only to our statutory functions of regulatory oversight and improvement as set out in the legislation
- Any surplus or deficit generated against our budget as approved by the Privy Council will be used in the calculation of the following year's fee. While it would be our intention that any unused funds would be used to offset the following year's requirements the Authority will be subject to Corporation Tax, and surplus income (including fees) may be subject to tax
- The pricing of commissions and consultancy contracts will cover all costs associated with the work. Any surplus arising will be deployed at the Board's discretion to support our organisational objectives in the public interest
- All fees for accreditation or renewal from occupational registers will be applied only to provide and develop the accredited registers programme. Any surplus generated will be retained for the benefit of the programme
- To ensure transparency we will:
 - publish our annual accounts and fully disclose our audited financial statements
 - show clearly our income and expenditure in relation to each of the Authority's four functions
 - publish an auditor's statement setting out our compliance with these business principles.

4. Regulatory oversight and standard setting – what our work entails

4.1 The Authority has been established in order to:

- Promote the interest of patients and other members of the public in relation to the performance of the regulatory bodies
- Promote best practice in the performance of professional regulation functions
- Formulate principles of good professional self-regulation and encourage regulatory bodies to conform
- Promote co-operation between regulatory bodies.

4.2 In order to comply with our overall purpose and duties to which the Professional Standards Authority for Health and Social Care (Fees) Regulations 2015 apply we undertake the following work:-

- Reviewing cases under section 29 of our legislation and referring cases to the relevant courts if we consider a decision about a practitioner's fitness to practise is unduly lenient or should not have been made
- Investigating and reporting on the performance of each regulatory body generally by means of an annual performance review
- Examining and reporting on how the performance of functions undertaken by the regulators compare
- Making recommendations to a regulatory body to change the way it performs its functions
- Providing advice to the regulatory bodies in relation to their statutory functions; based on research and our work to improve and develop standards
- Assisting the Privy Council with its appointments function in relation to the regulatory bodies
- Seeking the views of members of the public and bodies which appear to represent the interests of service users on matters relevant to our functions
- Providing the views and opinions of the Authority about regulatory matters to others consulting on such issues
- Organising meetings and other events to facilitate debate, discussion, co-operation and improvement
- Undertaking anything we believe to be necessary or expedient for the performance of our functions
- Reporting on any matter as requested by the UK Government, the Northern Ireland Assembly Government, The Welsh Assembly Government or the Scottish Government
- Supporting the Health Select Committee as and when required to develop its relationship with the Authority. Facilitating it in drawing on our annual performance review reports in preparing for accountability hearings and when examining the case for inviting professional regulators under the Authority's remit to appear before the Committee and submit evidence
- Undertaking the accounting, reporting planning and legislative requirements necessary for the running of the Authority
- Publishing information about the Authority and the exercise of its functions.

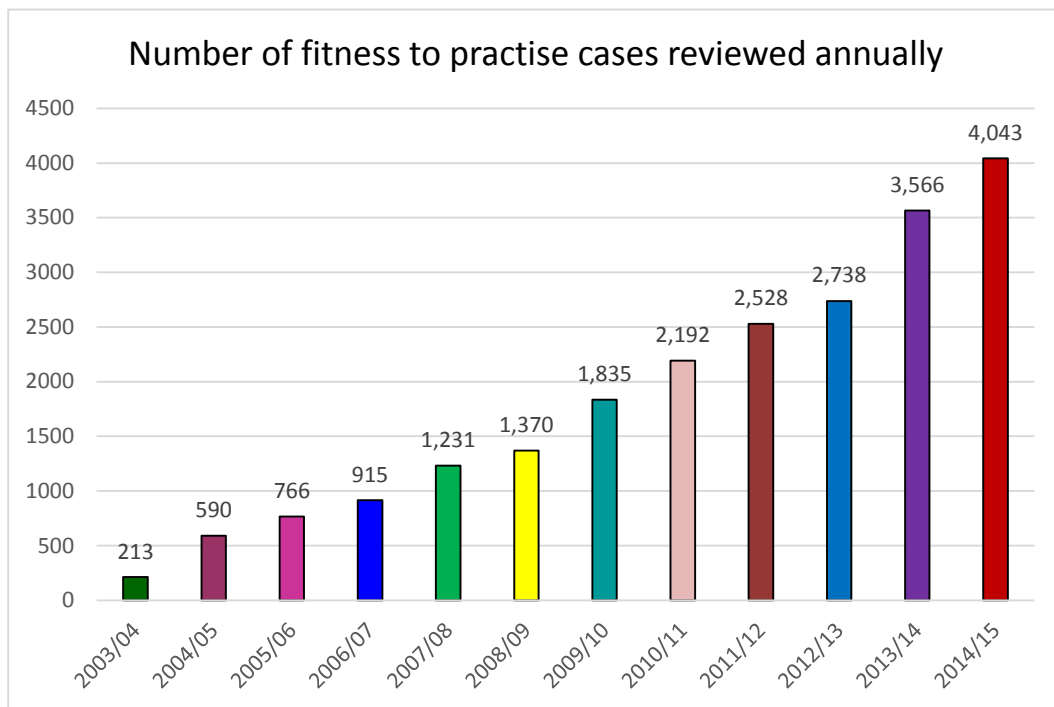
5. Regulatory and standards setting - our work in 2015-16

Scrutiny and Quality

- 5.1 The Scrutiny and Quality Directorate undertake the work that has the greatest direct interface with the Regulatory bodies. During 2015-16 they will continue to undertake the work necessary for the Authority to fulfil its statutory duties detailed on pages six and seven.
- 5.2 This work of this team underpins our first strategic objective.
- 5.3 The Authority has faced an increase in Section 29 cases, every year since it came into existence. In recent years however the increase in section 29 cases has changed from being a modest growth that can be absorbed to a significant year on year increase that directly impacts on our staffing resources and other costs as well as having the potential to impact on our performance if left unaddressed.
- 5.4 During 2015-16 we will be working to conclude our review of the staffing and resources in the Directorate which is being undertaken to enable us to be better able to address our changing and increasing workload. This review has included the introduction of two assistant director posts addressing the need to increase the senior management capacity within the team consequent upon the overall expansion of the team's work in recent years.
- 5.5 The Authority has a statutory power to challenge decisions made by the regulators' FTP panels by way of an appeal to the High Court.
- 5.6 The Authority's power to lodge an appeal is subject to strict statutory time-limits. Our process for reviewing all final FTP panel decisions is therefore geared to ensure that we can conduct sufficiently detailed reviews in each case and, where necessary, arrive at formal decisions to lodge an appeal, within the statutory time limit. The statutory time limit, combined with the volume of cases, allows very little room for flexibility in terms of staffing resources.
- 5.7 The rise in cases has continued during 2014-15 and the total number received is predicted to significantly exceed the previous year's total. Along with the recent rise in cases, we have seen a marked rise in the number of cases that we are appealing (in 2013-14 we appealed three times the number of case we had appealed in either of the two previous years, and that trend is also continuing in 2014-15), with a consequent rise in our external legal costs.⁶
- 5.8 The rise in number of cases we review in house in detail (post-transcript reviews), before considering whether or not an appeal is necessary, is particularly significant, because detailed reviews are resource-intensive exercises.

⁶ The Authority's published Section 29 process and guidance sets out our decision-making process, it requires any Authority panel considering, at a formal case meeting, whether or not to lodge an appeal to have the benefit of external legal advice – and external legal advisers also conduct any appeals that are lodged on behalf of the Authority.

Table 1 Number of fitness to practice cases reviewed annually



- 5.9 The percentage increase in 2012/13 was 8%, in 2013/14 it was 30% with the rise in 2014/15 being 13%.
- 5.10 In 2013 the Authority was required by the Department of Health to join with the Department of Health Arm's Length Bodies in sourcing external legal advice from a new panel of eleven solicitors firms. The terms of the Framework Agreement that was put in place to govern that arrangement did not include provision for discounted rates for secondees from the firms. The change in the arrangements governing the sourcing of external legal advice meant that the Authority decided to develop an in-house capacity to conduct detailed case reviews.
- 5.11 At the same time, the size of the Authority's section 29 caseload was increasing significantly. The Authority therefore created one permanent Senior Solicitor role and two fixed-term Legal Reviewer roles in 2013. The Legal Reviewers conducted the detailed case reviews previously done by external secondees. The Senior Solicitor also conducted a proportion of those detailed case reviews and was also responsible for managing in-house any appeals lodged by the Authority, and managing the Authority's relationships with the panel of external law firms. The continuing increase in the volume of both cases received and the number of appeals lodged in 2013/14 led to the creation of a second Senior Solicitor role in 2014.
- 5.12 The Authority replaced the fixed term Legal Reviewer posts in 2015, when it recruited two lawyers/senior legal reviewers following a revision of the requirements and job description.
- 5.13 The introduction of staff with legal training should, if the performance review processes change as planned, enable us to restructure the process we use for the initial review of all final fitness to practise outcomes, removing/reducing one layer of the current scrutiny process to make it more time-efficient.

5.14 Currently the majority of the staff working in the team are multi-disciplined, undertaking a range of duties depending on the time of year and the work required. Most staff may review section 29 cases, audit regulators and participate in performance reviews and/or investigations and special reviews. Dedicated staff undertake the complaints and appointments elements of the work. Increases in the volume and complexity of the team's work means that we are looking at differing options; such as developing staff expertise in specific areas of the work.

Performance review

- 5.15 Our work on Performance review enables us 'to report to Parliament and the public on the performance of the health and care professional regulators in fulfilling their statutory duty to protect the public, uphold standards and maintain confidence in regulation'.
- 5.16 During 2014-15 we have been reviewing the way in which we undertake our performance review work. Our proposals for change are now formulated and are being put out to consultation with interested parties. This consultation will take place between May and August 2015.
- 5.17 While we do not wish to prejudge the outcome we anticipate that it will result in a significant change to the process for performance review from 2015 onwards with information from all of the audits, s29 case reviews, third party feedback and performance reviews being brought together in individual reports about each of the nine regulators which will be published as and when they are completed during the year, just as audit reports are now. A high level overview of professional regulation will be published in June as part of the Authority's annual report.
- 5.18 An important element of the revised performance review process will be a robust dataset with comparative elements across the regulators. The revised dataset will identify a small number of new indicators as well as questions relating to registration, education and regulatory risk.
- 5.19 The proposals do not involve any change to the purpose of the performance review process itself. However they will involve changes to the methods we use to check the level of each regulator's performance against the Standards of Good Regulation. We propose to make changes to the way that the Standards are presented, as well as proposing a possible new Standard relating to regulatory risk.
- 5.20 Details of the revised process can be found on Annex A on page 29.

Transition to the new process

- 5.21 Subject to the outcome of the consultation, it is intended that the revised process for the performance review will commence in the autumn of 2015-16.
- 5.22 At the present time, it is anticipated that the revised process will create a rolling programme of performance review, incorporating the current initial stages audit process where required.
- 5.23 As the implementation of the new performance review process is expected to happen in autumn 2015, conducting the usual audit programme in the summer of

2015 would mean that some regulators would be subject to two audits within a matter of months, which would be of limited value from both their and the Authority's perspective. It would also mean that some of the audit reports would not have been published by the time the new performance review process begins, which is likely to lead to resourcing difficulties for the Scrutiny and Quality team. Accordingly the Authority will not conduct its usual annual initial stages fitness to practise audit programme during the summer of 2015.

Audit of initial stages

- 5.24 During 2010-11 we introduced a risk based audit programme moving away from an audit of all regulators every year. The intention being that each regulatory body would be audited at least every three years.
- 5.25 The audits used to be undertaken by the team during the part of the year when there was a gap in the performance review programme. It is anticipated that undertaking the audits with the same staff/staff structure is likely to become increasingly difficult especially if we were to be required to undertake some form of audit of all regulators every year.
- 5.26 The current review of the performance review considers the possibility of integrating the audit programme within performance review. That may mean expanding the span of audits (to include registration as well as FTP) and also auditing more regulators each year. This means that in future we will not have a ten month PR cycle and an overlapping six month audit cycle as we have had up till now. There will just be one annual cycle including both elements of PR and audit.

Complaints and concerns

- 5.27 We continue our policy of sending certain concerns raised with us about a regulator, to the regulator and asking for its comments. We then share the regulator's comments and our thoughts on those comments with the individual who raised the concern with us.
- 5.28 We do not anticipate that the number of concerns we have to deal with will markedly change during 2015-16.

Supporting the quality of appointments to regulators' councils

- 5.29 We will continue to assist the Privy Council in the exercise of their appointment powers in respect of the regulatory bodies.
- 5.30 We do not anticipate that the workload will markedly change during 2015-16.

Impact of new Legislation

- 5.31 There are several legislative changes that are currently being developed that will we understand come into force during 2015-16. The consequences of the new legislation on our work and our financial requirements are difficult to quantify. We summarise below the changes that we are aware of and the likely impact on our work.
- The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social

Care (References to Court) Order 2015 giving the GMC powers to appeal decisions by the Medical Practitioners Tribunal Service (MPTS). This is likely to come into force in 2015, by means of a Commencement Order. The Authority will need to have in place a new process for scrutinising and referring MPTS decisions to the courts. This will be different from our process for scrutinising and referring the final decisions of the other regulators. Questions still remain about the detail of the legal mechanism that will empower the Authority to intervene in cases that the GMC has chosen to appeal. We do not know when this uncertainty will be resolved, and this is likely to complicate our planning for new arrangements

- The General Medical Council (Fitness to Practise and Over-arching Objective) and the Professional Standards Authority for Health and Social Care (References to Court) Order 2015 will also change our grounds for appealing final panel decisions made by all nine regulators, and the GMC's objective would be amended to match these grounds. This change to our grounds for referral would almost certainly result in additional costs for all parties, the Authority included, while its impact is tested in the courts
- The Health and Social Care (Safety and Quality) Act 2015 and the GMC/PSA section 60 Order contain provisions to harmonise the objective of most of the functions of the Authority and the regulators, except for the PSNI. We understand that the Department of Health intend to agree a commencement date for these with the Authority and the professional regulators concerned. The new objective will be an overarching objective of public protection involving:
 - a) protecting, promoting and maintaining the health, safety and well-being of the public;
 - b) promoting and maintaining public confidence in the professions that the regulators regulate;
 - c) promoting and maintaining proper professional standards and conduct for members of those professions.

5.32 For the GOC and GPhC, which also have functions in relation to business regulation, the overarching objective will also involve promoting and maintaining proper standards and conduct for business registrants (GOC), and proper standards for the safe and effective practice of pharmacy at registered pharmacies (GPhC).

5.33 For some this new objective will be a welcome improvement (GCC, GOsC and GDC). However for others, including ourselves, it is not clear what impact the change of wording will have, if any. This will be for the Courts to resolve when the need arises.

- The Government has given the NMC, GDC, GPhC and PSNI powers to check English language skills at registration (see the Health Care and Associated Professions (Knowledge of English) Order 2015), alongside a new ground for impairment in Fitness to Practise cases relating to insufficient knowledge of English. The GMC acquired equivalent powers in 2014. This Order could result in an increase in language-related complaints to the regulators, and a consequent increase in final decisions for the Authority to review

- Under The Nursing and Midwifery (Amendment) Order 2014, the NMC has recently introduced case examiners, who now make some of the decisions previously made by an Investigating Committee. It is possible that the use of case examiners could change the proportion of fitness to practise cases the NMC refer for a fitness to practise hearing and result in a commensurate change in the number of fitness to practise decisions we will need to scrutinise for the purposes of section 29 of our governing legislation
- The Nursing and Midwifery (Amendment) Order 2014 has also reinstated the NMC's power to strike off for lack of competence and health conditions, which is like to marginally reduce the number of review hearings
- The transposition of the revised Mutual Recognition of Professional Qualifications EU Directive would introduce, among other things, a professional card for certain professions, a more comprehensive alert system, and access through professional registration to certain activities of a profession for people who are partly qualified. This could lead to an increase in fitness to practise cases, at least initially, as any fraudulent registrations are flushed out. We would also need to oversee the implementation of the transposed MRPQ by the regulatory bodies through our Performance Review process. The deadline for transposition is 18 January 2016.

5.34 Overall the impact on the new legislation is likely to be an increase in the number of cases to be reviewed and an increase in the number of cases that proceed to case meetings and referrals and to increase the complexity of our oversight role.

Standards and Policy

- 5.35 The work of the Standards and Policy team ensures that the Authority meets its legislative responsibilities to promote the health, safety and wellbeing of patients, service users and the public; to promote good practice in regulation and to promote cooperation between regulators.
- 5.36 The work of this team supports our second and third strategic objectives as well as the fourth objective.
- 5.37 The team keeps the Authority and others informed about the latest research on regulatory matters and works with academics to ensure that research assisting the development of regulation is undertaken. The knowledge and information held by the team enables the Authority to advise colleagues on the development of our own regulatory processes and also underpins the advice we can provide on best practice and improvements in regulation. The team also leads on communication and media issues.
- 5.38 The team are responsible for maintaining a strategic, forward looking view of the regulation of people who work in health and social care. They maintain an overview of the work of the nine professional regulators we oversee, and the broader context in which they operate. They build the knowledge and evidence base we use to inform our views. They formulate and articulate the principles which underlie our approach to our work. They do this so that the Authority is able to provide assurance and advice to Parliament and the Health Committee; and to ensure that the work of the regulators now and in the future, is carried out as effectively as it can be to the benefit of the health, safety and well-being of the public.

Work for 2015 - 2016

- 5.39 We will monitor and advise upon new legislation and changes to legislation, analysing their impact on the effectiveness of the regulators and the Authority, on the protection of the public, declaring and upholding standards and maintaining confidence in the professions and the system of regulation.
- 5.40 We anticipate that we will need to respond to about 25-30 consultations and requests for briefings. In the first eight months of 2014-15 we responded to 18 consultations a significant rise from the 19 consultations responded to in the same period in the previous year. With several regulators seeking changes to their legislation and as regulators and others respond to the requirement for greater collaboration and cooperation between organisations in health and social care, we anticipate that the volume of consultations to which we should respond will be high.
- 5.41 The team compiles and drafts the Authority's evidence to the Health Committee about the performance of the regulators. The Health Committee holds approximately 2-4 hearings with regulators each year. If the Authority is called to give account of its own performance the Directorate will also carry out preparatory work for our attendance.
- 5.42 We will continue to analyse and examine cross-professional issues, which arise from our oversight of the work of the regulators. We will focus in particular in the period covered by this plan on the introduction by the regulators of new ways of responding to concerns about professionals' fitness to practise and their requirements for candour.
- 5.43 We will continue to encourage sharing and developing knowledge about regulation and its effects and to stimulate debate by organising and hosting a symposium, academic conference and seminars. Where ever possible supporting the collective voice for change.
- 5.44 We will continue to seek the public's views on the work of the regulators through the expansion of our public and patient user networks and by carrying out consumer focus research into issues that arise during the year. Previous work has included ascertaining their views on alternatives to fitness to practise hearings, sanctions, and online registers. This work, which is commissioned from specialist companies is undertaken in order to assess the impact of the regulators work to protect the public and to increase confidence in the professions and regulation. It helps us to fulfil our statutory responsibilities to inform and consult.
- 5.45 We will develop our thinking on Right-touch regulation and encourage its implementation. We will also continue to explore the effects of regulation on behaviour, seeking to identify what works well and why. We will do this by encouraging others to undertake research through our academic network, facilitating and discussion at our academic conference and by conducting research into and analyses of the data we hold on fitness to practise cases.
- 5.46 We will learn from others and continue to share our own regulatory knowledge and expertise, raising the profile of professional regulation in the UK by speaking at and attending conferences and events in the UK and internationally, horizon

scanning, submitting papers to relevant journals and through analysis of published sources.

- 5.47 We will ensure that the Authority engages effectively in each of the four countries of the UK so that our work takes proper account, where relevant, of the diverging health and care system in England, Scotland, N Ireland and Wales and developments in Europe. We will also input to their developments where they are relevant to our role.
- 5.48 We will monitor Parliamentary affairs and respond to Parliamentary questions as required.
- 5.49 We will respond to media and other enquires and proactively promote the work of the Authority through our website and publications.

Governance and Operations

- 5.50 The work of this team supports our fifth and sixth key objectives.
- 5.51 The team work to ensure that the Authority is an independent, effective, value for money organisation. They look to support staff and the Board in maintaining the functionality and smooth operation of the organisation.

Work for 2015 - 2016

- 5.52 The main work of the team during 2015-16 will be in preparing for the introduction of the new fee arrangements which will come into force in August 2015. Due to the timing of the introduction of the new arrangements the Authority will need to consult on the budgets it is seeking twice during the forthcoming financial year; for 2015-6 and then for 2016-17.
- 5.53 The staff will also be working to support the work of independent tax experts who are assisting the Authority on matters relating to Corporation tax.

Corporate affairs

- 5.54 We do not receive a significant number of complaints about the Authority or its staff, however there are occasions when the complainant having been to several other organisations before approaching the Authority, can have expectations that cannot be met.
- 5.55 We will be reviewing the way in which we handle complaints made against the Authority and/or its staff; looking at the process and the tone of our responses.
- 5.56 Information governance is important to us and we work to ensure that all new staff are trained with regards to how we maintain security of the information we hold. We also require staff to undergo annual refresher training. During the year we will be reviewing how we manage our cyber security and reviewing related training.
- 5.57 Requests for information that we hold, made in terms of the Data Protection or Freedom of Information Acts, are growing in number and can on occasion take up considerable resource.

IT

- 5.58 Following IT problems in early 2014-15 we have been working to increase the resilience of our IT system. Having considered the issues we are also taking the opportunity to change our back up arrangements and improve our remote working arrangements.
- 5.59 This work will continue during early 2015-16 and the capital expenditure is directed towards this.
- 5.60 The changes to our infrastructure have however enabled us to change our IT support arrangements to provide us with an on call service as and when needed which should reduce expenditure in this area.

HR and Finance

- 5.61 Authority staff are eligible to be members of the NHS Pension Scheme. Currently we submit manual updates to the Pensions Authority and are dependent on it updating its records with the information provided. We have no means of monitoring the time taken or the accuracy. This can result in issues that require significant staff time to resolve. We have made changes to our IT arrangements that have enabled us to access the records online and will be working to implement the new system which as well as making information more accessible to the finance team will mean individual employees will have access to their own records. This will also assist when we have to begin auto enrolment.
- 5.62 During 2014-15 we have moved to a new payroll package. This has integrated HR modules and we will be utilising them to enable staff to see data such as payslips and annual leave on line.

Question 1

Are there any activities we should be undertaking that have not been detailed?

Question 2

Are there any activities we propose that should be removed?

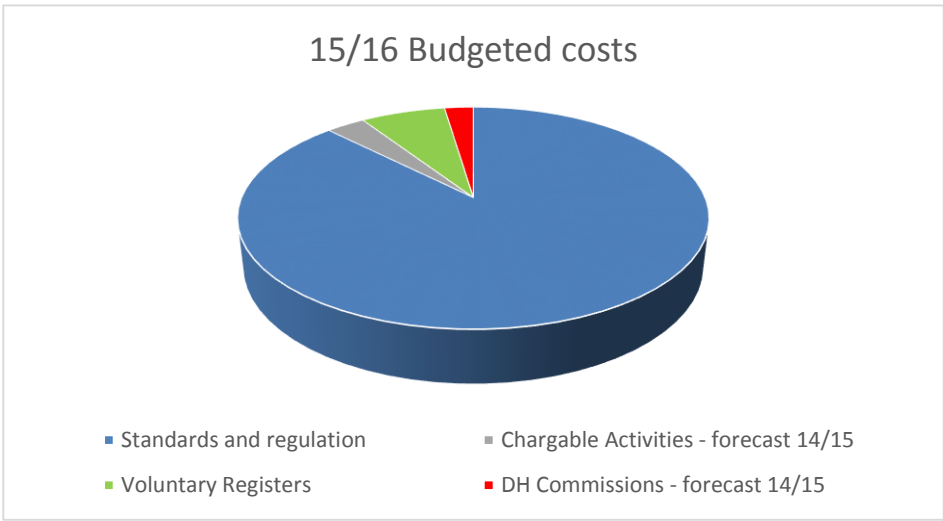
Question 3

Do you think that our proposals for our work in 2015-16 are reasonable?

6. Funding Requirements

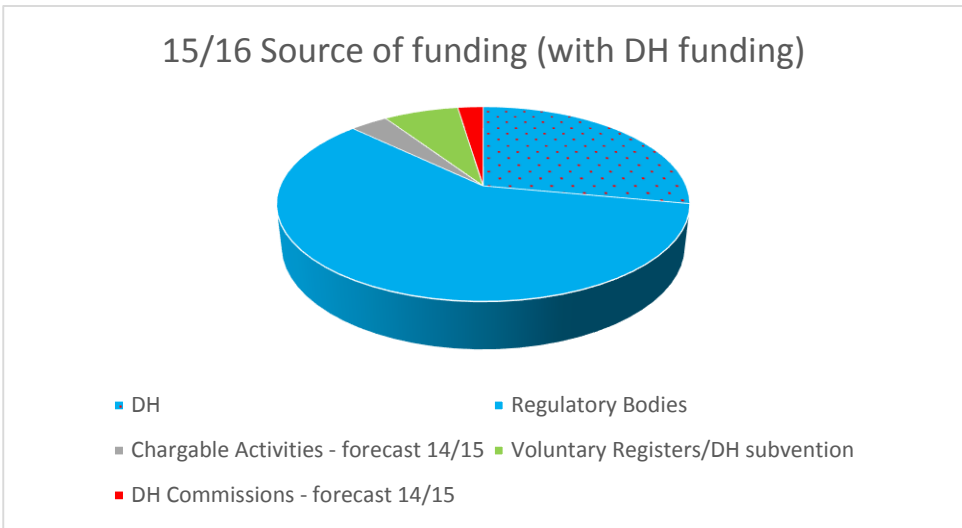
- 6.1 The initial starting point for the determination of the Authority’s requirements for funding by fees for 2015/16 was the Authority’s needs for the full year. The fees however will only be required to fund the last eight months of our financial year.
- 6.2 The requirement for funding for the regulatory and standards work stream was considered alongside the overall corporate budget comprising all four work streams. The relationship between our regulatory and standards work and other work streams, both in terms of budget and funding is set out below.

Table 2 Corporate Budget 2015/16



The costs of our chargeable activities work are based on our 14/15 outturn figures.

Table 3 Sources of funding 2015/16



The fees charged for chargeable activities and DH commissions are based on our 14/15 outturn figures.

- 6.3 As stated in our business principles the fees raised from regulatory bodies will be applied to our statutory functions of regulatory oversight and improvement as set out in the legislation.
- 6.4 Where staff are employed to work exclusively or predominantly on other work streams their salaries and associated overheads are allocated to that work stream.
- 6.5 The overheads are determined based on the percentage of the number of staff against the total establishment.
- 6.6 Where we undertake smaller consultancy projects, too small to justify the recruitment of personnel to undertake them, the staff time is recorded. The cost of their time in relation to attendance at meetings etc., uplifted by an appropriate percentage element to cover related overheads and will be charged to the project.

Assumptions

- 6.7 In determining our requirements for 2015/16 the following assumptions have been made.

Staff costs

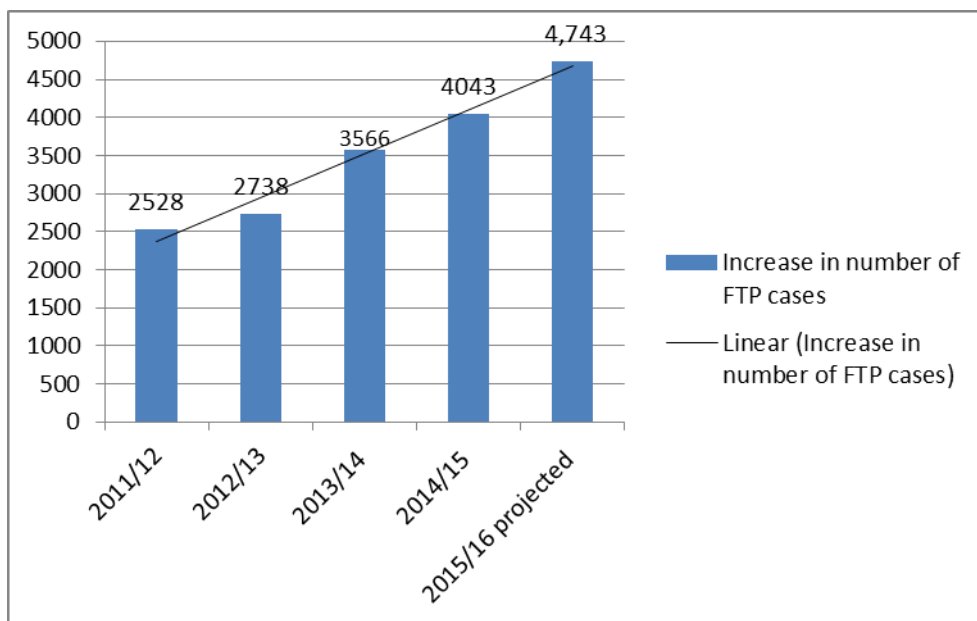
- 6.8 Staff costs for 2015-16 reflect the continuing increase in fitness to practise cases notified to us and the higher proportion of the cases requiring our input in feeding back learning points to the regulators, holding case meetings and making court referrals.
- 6.9 Changes to the Performance review process cannot be finalised until after the consultation exercise. The staff budget currently includes provision for the necessary staff for this work.

Financial

- 6.10 The following assumptions are made with respect to the Authority's financial arrangements and budget requirements for this work stream:
- The effective date for the commencement of the fee arrangements will be 1 August 2015
 - The DH will fund the Authority up to 31 July 2015 (1/3 of the financial year)
 - The Authority will, going forward, be funded in respect of its regulatory and standards work from fees paid by the regulators
 - Since the fee income is unlikely to be received by the Authority prior to November 2015 the Department of Health will provide financial facilities to the Authority from August until the receipt of the new funding
 - The Authority, having the benefit of credit facilities from the Department will not seek to collect contingency funding or funding to allocate to reserves in this period
 - The Authority will need, over time, to build reserves to cover working capital requirements and longer term expenditure
 - The Authority is unlikely to be able to sublet all the space that it currently sublets after the existing tenants move out

- That fitness to practice cases, and related work, will continue to rise as shown below. There may be a further increase as a consequence of Section 60 orders
- The Authority has estimated that it will recover 40% of its expenditure on legal advice related to section 29 cases
- The Authority will make arrangements to enable it to borrow monies to cover any shortfall should its workload exceed expectations
- The Authority will be liable to pay Corporation tax.

Table 4 Fitness to practice cases.



Section 29 legal costs

- 6.11 Expenditure on legal advice and representation in relation to our section 29 role is a significant cost to the Authority. It is a cost that is difficult to estimate; the volume of work can only be estimated, as set out in the tables and while the Authority can recover some of its legal costs this cannot be accurately predicted. There is also the prospect of the Authority being required to pay the costs incurred by other parties should the case be lost. The recoveries are not normally agreed or paid immediately after the case is decided and it can be some months before the Authority receives them.
- 6.12 The methodology for dealing with Section 29 costs and recoveries are set out in detail in the notes to our annual accounts.
- 6.13 We have looked at the relationship between expenditure and recoveries in previous years. Based on this we have estimated that we will be able to recover and reuse 40% of the original allocated budget. The value of the recoveries is however dependent upon the decision of the court and there is no guarantee that this level of recovery will be maintained.

Table 5 Section 29 case meetings.

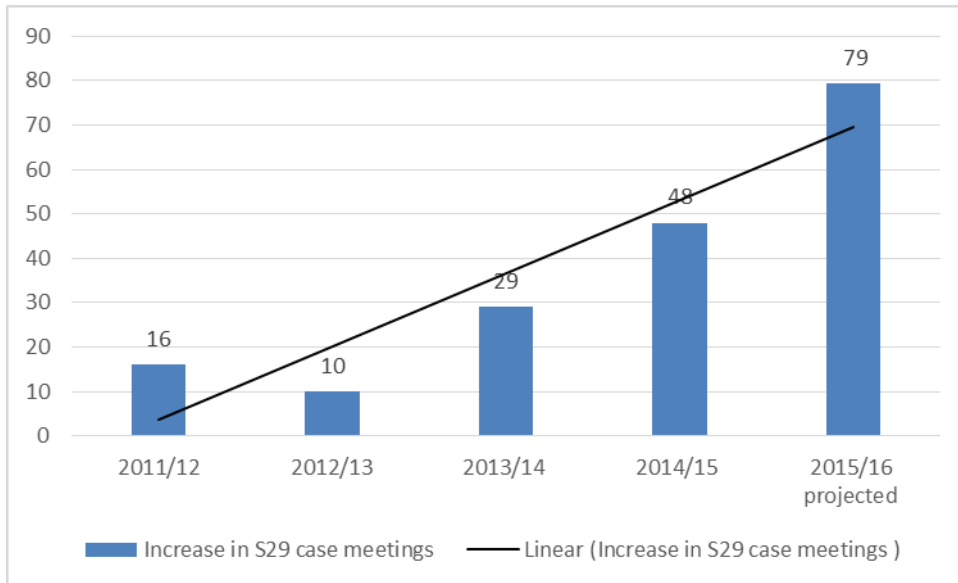
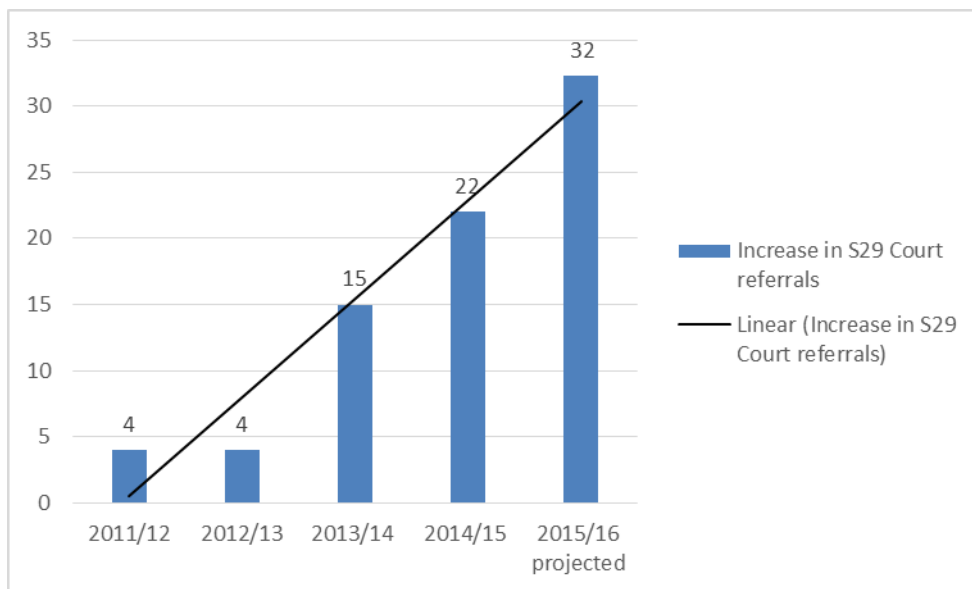


Table 6 Section 29 court referrals.



Corporation Tax

- 6.14 The Authority, whilst a government body, was only required to pay corporation tax in respect of any interest that it earned.
- 6.15 It has been advised that as an independent organisation it must pay corporation tax on any surplus made in each financial year as this is treated as taxable profit under HMRC regulations. We have taken expert advice on this matter and have made a submission to HMRC for agreement that fee income should be exempt

from corporation tax. Until such time as a decision is made we have to assume that fee income will be subject to corporation tax.

- 6.16 The 2012 Act enables the Authority to borrow money. This means that, should it prove necessary, and the Authority requires significant funding at short notice, or towards the end of the financial year, it could decide to borrow rather than re-levy in year. The cost of this would need to be included in the following year's budget. This is not something the Authority would wish to do on a routine basis. It will however provide flexibility in the initial years of the new arrangements when the Authority has no reserves and while the position regarding corporation tax remains unclear.

Reserves

- 6.17 The Authority acknowledges that it may need to build up a reserve appropriate to manage the financial risks it may face. It would be beneficial if the position of fees income in relation to corporation tax was determined before it did so.
- 6.18 Accordingly the Authority will look to develop a reserves policy prior to the consultation on its 2016/17 requirements.

Question 4

Do you think our assumption regarding the increase in Section 29 cases is sound?

Question 5

Do you think our approach regarding cost recoveries is sound?

Question 6

Do you think our approach to borrowing and reserves is appropriate at this point in time?

Budgetary requirements 2015-16 (full 12 months)

Total funding requirement	2015-16	2014-15 comparator*
	£'000	£'000
Net operating expenditure	4,339	3,456
Capital expenditure	60	60
Total funding	4,399	3,516

*the comparator is based on the 2014/15 unaudited annual report and accounts for the Authority.

Budgetary requirements 2015-16 split by funding source

Total funding requirement	2015-16
	£'000
Funding from Department of Health	1,410
Funding from the regulatory bodies	2,989
Total funding	4,399

6.19 Accordingly the amount to be collected via the Fee Regulations is £2,989K and it is this amount that we propose to ask the Privy Council to use in making the calculations set out in the Fee Regulations.

6.20 The significant increases in costs from 2014/15 to the current year are:

Pay

- Changes to the structure of the Authority with the addition of Assistant Director posts which add depth to the management of the Authority and provide for continuity
- Changes to the staffing in the scrutiny and quality team to address the increasing volume of work and potential changes to the performance review
- The provision of a publications officer
- The provision of an additional post in the finance team
- An uplift to staff salaries to reflect market value to ensure that the Authority can attract and retain staff.

Non Pay

- Increased legal costs in particular for Section 29 cases

- The potential costs of changes arising from Section 60 orders
- An increase in rates due to the end of a period of reductions
- An increase in rental costs as well as a related increase in service charges

6.22 Within the overall budget smaller other increases are set against reductions.

Net operating expenditure requirement	2015-16
<i>Expenditure</i>	£'000
Staff costs	2,552
Other administrative costs	2,191
<i>Income</i>	
Operating income	(404)
Net operating expenditure*	4,339

*Net operating expenditure relates to core regulatory oversight and improvement activity and *excludes* any costs associated with; accreditation of registers of health professionals; commissions and investigations requested by the Department of Health or other statutory bodies; and commissions from/consultancy to regulated bodies and other bodies.

Capital expenditure requirement	2015-16
	£'000
Information technology	46
Fixtures and fittings	9
Other	5
Capital expenditure	60

7. Indicative budget requirements 2016-18

- 7.1 We are not aware of any long term legislative changes that are already planned for 2016 and beyond. Should the legislation relevant to our work change then we may need to change our processes and organisation in order to comply with any changes required of us. These changes may result in additional costs.
- 7.2 We are not currently planning any changes to start in 2016. It is however possible that we will be required to amend our Welsh language Scheme. The Welsh Language Commissioner is currently undertaking inquiries, in terms of the Welsh Language Measure (Wales) Act 2011 into the degree to which health bodies, including the Authority should comply with her standards. We estimate that changes could add up to £30,000 to our costs.
- 7.3 We believe that the main change from 2015-16 will be in the number of fitness to practise cases that we will need to review and the consequent number of case meetings and referrals. With the changes to legislation planned for 2015-16 and the ongoing upward trend in numbers which shows no sign of plateauing we believe that the numbers will continue to increase and that the increase may be greater than previously experienced.
- 7.4 Should this be the case then our costs are likely to rise as a consequence of requiring additional staff and increases in our legal costs.
- 7.5 At the present time we estimate that we will require an additional senior solicitor to work on cases arising from the Section 60 Orders and a further senior solicitor and two legal reviewers to work on Section 29 cases.
- 7.6 However should case numbers markedly fall we would look to identify savings.

8. Identified Risks and Key and Performance Indicators (KPIs) for 2014-15

Risks

Risks pertinent to the Regulatory and standards function	Managing impact
<p>The Authority fails to effectively manage its operation and finances</p>	<ul style="list-style-type: none"> • A robust system of financial control is in place • The Directors Group meets every two weeks • Finance reports are provided at Board meetings • The Authority’s finances are audited each year by internal and external auditors • Areas of concern regarding budget management and planning are monitored closely and remedial action taken when needed • Procedures and timetables are in place to ensure performance review and the annual report are prepared, scrutinised internally and printed within set timescales
<p>The Authority fails to meaningfully impact on the behaviour of those it oversees</p>	<ul style="list-style-type: none"> • Performance review findings published, discussed with each of the regulators • Areas of good practice highlighted and disseminated through learning points • Honest relationships with regulators maintained • Regular follow-up of recommendations • Scrutiny and Quality staff undertake training sessions with RB staff.

<p>The Authority fails to protect the public</p>	<ul style="list-style-type: none"> • Robust processes and procedures are in place to enable adherence to timescales • Case management database regularly checked by managers • Process arrangements reviewed, updated and documented • Scrutiny committee reviews decisions taken at section 29 case meetings and quality controls the process • Good practice disseminated • eNewsletter published regularly • Case meeting notes published.
<p>The Authority fails to enhance public confidence in the regulation and assurance of health and care professions</p>	<ul style="list-style-type: none"> • Board ensures a focus on public protection • Open publication of the performance of the regulatory bodies • Strong clear communication of right-touch regulation.
<p>The increase in the number and cost of Section 29 cases (including those unresolved at year end) and the number of appeals exceeds both staffing and financial capacity</p>	<ul style="list-style-type: none"> • DG receives reports on and monitors the workload • The process for reviewing cases will be reviewed • The resources and capacity needed is being reviewed • Staff capacity increased when necessary • Legal costs monitored monthly.
<p>The Authority fails to retain/recruit suitably skilled staff</p>	<ul style="list-style-type: none"> • A pay policy for the independent Authority will be developed and put to the Remuneration committee • A skills assessment has been undertaken • A training assessment for every post has been undertaken • Training needs will be linked to a new appraisal scheme. • The training budget has been increased • Restructuring will be undertaken.
<p>The Authority suffers damage to its reputation</p>	<ul style="list-style-type: none"> • A contingency plan has been put in place • Arrangements have been made to seek advice as required • The Standards and Policy team regularly scans and considers potential risks.

Key performance indicators

Regulatory Function Work stream	Key performance indicators
Corporate Governance	<ul style="list-style-type: none"> • The Authority operates with a full complement of Board members.
Producing Advice	<ul style="list-style-type: none"> • Advice meets the specific objectives • Advice is provided to agreed timescales • Receive affirmation that advice provided supports well-informed decisions.
Encouraging learning and improvement	<ul style="list-style-type: none"> • Use data available to improve our management information and publish thematic reports • Hold symposium and academic conference • Produce one piece of consumer research.
External communications	<ul style="list-style-type: none"> • Website content is accurate, clear and is regularly accessed • Key messages are developed to support our transition to a new funding model and are used to help maintain our reputation • We maintain regular contact with external stakeholders in England, Scotland, Northern Ireland and Wales.
Section 29 decisions	<ul style="list-style-type: none"> • 100% of relevant decisions considered within statutory deadline.
Initial stages audit	<ul style="list-style-type: none"> • Use risk-based process for initial stages audit • Publish individual reports as soon after the audit as possible.
Performance review	<ul style="list-style-type: none"> • Report on regulatory bodies' performance (including any recommendations, areas for improvement and good practice) to Parliament via the Annual report within statutory deadline.
Public concerns about Regulatory bodies	<ul style="list-style-type: none"> • 100% of concerns acknowledged within five working days • Concerns addressed in accordance with our published criteria.
DPA - FOI Data and Information security	<ul style="list-style-type: none"> • Ensure that appropriate information governance arrangements are in place to assure the security of our information and that we comply with statutory requirements • All (100%) FOIA and DPA requests dealt with within statutory deadlines.

Financial Governance and Annual Accounts	<ul style="list-style-type: none"> • Strategic plan and levy calculations submitted to Privy Council to agreed timetable • Reports provided to the NAO, DH, Treasury and others meet required standards and do not result in findings or sanctions from any of these bodies • A scheme of delegation for the independent Authority to be introduced • 100% of audit queries are responded to within agreed timescales and to the satisfaction of the auditors • Ensure that Authority responds to Government requests for information and that information is disclosed when appropriate • Accounts produced and circulated within ten working days of the end of the month to which they relate • To pay undisputed invoices: 60% in five days, 100% in 10 days.
HR	<ul style="list-style-type: none"> • Sickness no more than 2.5% • Staff turnover to be less than 10%.
Risk	<ul style="list-style-type: none"> • The risk register is reviewed quarterly • The risk register is reported to Audit Committee and Board to agreed timetable.
Business continuity	<ul style="list-style-type: none"> • Manage the IT contract to ensure that operation of the Authority is not interrupted • The Business Continuity Plan will be reviewed every six months.
Sustainability	<ul style="list-style-type: none"> • Provide the DH with the reports and information it requests, to the agreed timetables
Complaints about the Authority	<ul style="list-style-type: none"> • 100% of complaints acknowledged in five days • Response to all complaints to be completed within 28 days.
Appointments to RB Boards	<ul style="list-style-type: none"> • The appointment process operates effectively and provided consistent and timely advice to the Privy Council.

9. Summary of consultation questions

9.1 The questions that the Authority has posed within the document are set out below:

1. Are there any activities we should be undertaking that have not been detailed?
2. Are there any activities we propose that should be removed?
3. Do you think that our proposals for our work in 2015-16 are reasonable?
4. Do you think our assumptions regarding the number of Section 29 cases are sound?
5. Do you think our approach regarding cost recoveries is sound?
6. Do you think our approach to borrowing and reserves is appropriate at this point in time?

10. How to respond

You can respond to this paper by email to fee.consultation@professionalstandards.org.uk or by post to:

The Professional Standards Authority
FAO Linda Allan
157-197 Buckingham Palace Road
London
SW1W 9SP

If you have any queries, or require an accessible version of this document, please contact the Authority on 020 7389 8030 or by email at info@professionalstandards.org.uk.

Please return your response to us by 15 July 2015.

Confidentiality of information

We will manage the information you provide in response to this consultation in accordance with our information security policies.

All responses to the consultation will be forwarded to the Privy Council

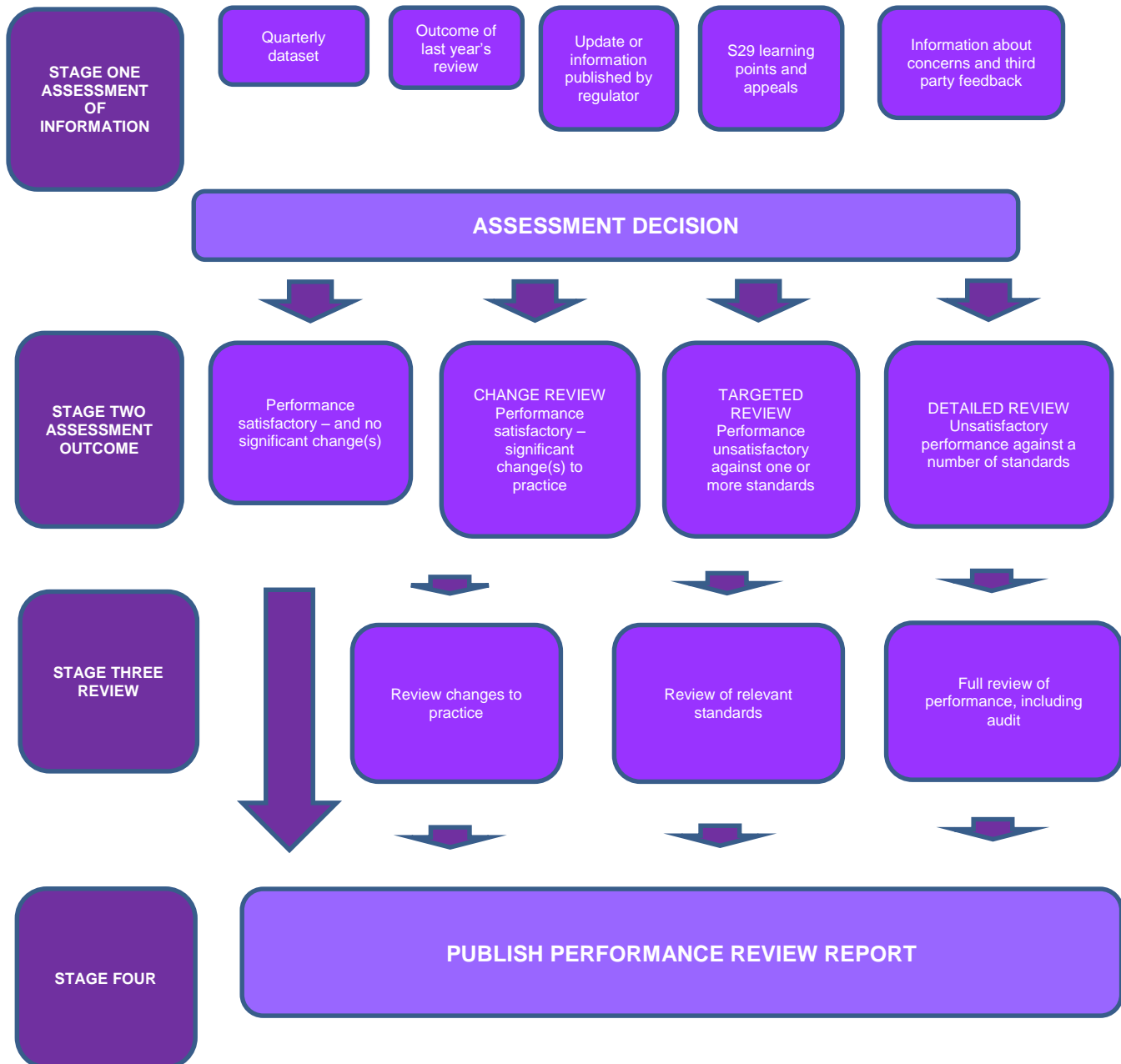
Any information we receive, including personal information, may be published or disclosed elsewhere in accordance with the access to information regimes (primarily the Freedom of Information Act 2000 (FOIA) the Data Protection Act 1998 (DPA) and the Environmental Information Regulations 2004).

If you want the information that you provide to be treated as confidential, please be aware that, under the FOIA, there is a statutory Code of Practice with which public authorities must comply and which deals, amongst other things, with obligations of confidence. In view of this, it would be helpful if you could explain to us why you regard the information you have provided as confidential.

If we receive a request for disclosure of the information we will take full account of your explanation, but we cannot give an assurance that confidentiality will be maintained in all circumstances. An automatic confidentiality disclaimer generated by your IT system will not, of itself, be regarded as binding on the Authority.

The Authority will process your personal data in accordance with the DPA and in most circumstances this will mean that your personal data will not be disclosed to third parties.

Annexe A New Performance Review Process



Professional Standards Authority for Health and Social Care

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